



City of Killeen

Agenda City Council

Tuesday, March 8, 2022

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

Citizens Petitions

Comments should be limited to three minutes.

1. [CP-22-003](#) Raoul Daniels - Killeen Parks and Open Space Master Plan
2. [CP-22-004](#) Charles Jackson - City Ordinance Chapter 28-132, Truck Parking

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 four (4) minutes. The Presiding Officer may allow a one (1) minute extension, if requested at the end of the original three (3) minute period. A majority vote of the City Council is required for any other time extensions.

Consent Agenda

3. [MN-22-006](#) Consider Minutes of Regular City Council Meeting of February 8, 2022.
Attachments: [Minutes](#)
4. [RS-22-030](#) Consider a memorandum/resolution approving the purchase of LED solar lights for Conder Park Sport Field from Musco Sport Lighting in the amount of \$184,750.
Attachments: [Staff Report](#)

[Quote](#)

[ARPA Appendix A](#)

[Certificate of Interested Parties](#)

[Presentation](#)

5. [RS-22-031](#) Consider a memorandum/resolution authorizing an Enterprise Licensing Agreement (ELA) with Azteca Systems, LLC in an amount not to exceed \$205,250 over a three-year period.
- Attachments: [Staff Report](#)
- [Agreement](#)
- [Certificate of Interested Parties](#)
- [Presentation](#)
6. [RS-22-032](#) Consider a memorandum/resolution authorizing the City Manager to enter into an Advance Funding Agreement with the Texas Department of Transportation for the WS Young and Little Nolan Road Traffic Signal HSIP Grant Project.
- Attachments: [Staff Report](#)
- [Project Budget](#)
- [Agreement](#)
- [Presentation](#)
7. [RS-22-033](#) Consider a memorandum/resolution authorizing the execution of Amendment No. 1 to the Professional Services Agreement with Kimley-Horn and Associates, Inc., in the amount of \$12,000 for the Little Nolan Rd-WS Young Traffic Signal Project.
- Attachments: [Staff Report](#)
- [Agreement](#)
- [Amendment No. 1](#)
- [Proposal](#)
- [Certificate of Interested Parties](#)
- [Presentation](#)
8. [RS-22-035](#) Consider a memorandum/resolution to appoint a Presiding Municipal Court Judge.
- Attachments: [Staff Report](#)
- [Resume](#)
- [Presentation](#)

Public Hearings

9. [PH-22-017](#) HOLD a public hearing and consider an ordinance requested by Russell and Oteeka Davis (Case #FLUM 22-08) to amend the Comprehensive Plan's Future Land Use Map (FLUM) from 'Residential Mix' (R-MIX) to

‘General Commercial’ (GC), being approximately 0.22 acres out of the Spofford Addition, Block D, part of Lot 8. The property is addressed as 409 761st Tank Battalion Avenue, Killeen, Texas.

Attachments: [Staff Report](#)

[Maps](#)

[Minutes](#)

[Ordinance](#)

[Presentation](#)

10. [PH-22-018](#) HOLD a public hearing and consider an ordinance requested by Russell and Oteeka Davis, (Case #Z22-07), to rezone approximately 0.22 acres out of the Spofford Addition, Block D, part of Lot 8, from “R-3” (Multifamily Residential District) to “B-5” (Business District). The property is addressed as 409 761st Tank Battalion Avenue, Killeen, Texas.

Attachments: [Staff Report](#)

[Maps](#)

[Minutes](#)

[Site Photos](#)

[Ordinance](#)

[Considerations](#)

[Presentation](#)

11. [PH-22-019](#) HOLD a public hearing and consider an ordinance requested by Magdy Abadir, on behalf of Carmen Figueroa (Case #Z22-08), to rezone approximately 0.776 acres out of the Kinderland Addition Phase Two, Block 01, Lot 01, from “B-DC” (Business Day Care District) to “R-1” (Single-Family Residential District). The property is located at 1303 Trimmier Road, Killeen, Texas.

Attachments: [Staff Report](#)

[Maps](#)

[Minutes](#)

[Ordinance](#)

[Site Photos](#)

[Considerations](#)

[Response](#)

[Presentation](#)

12. [PH-22-020](#) HOLD a public hearing and consider an ordinance requested by Jim Wright, on behalf of Kerry Property, LLC (Case #Z22-09), to rezone a part of approximately 3.04 acres out of the Neimac Addition Phase Two Amending, Block 1, Lot 3A, from “B-3” (Local Business District) to “B-4” (Business District). The property is located at 3000 W. Stan Schlueter Loop, Suites 108-109, Killeen, Texas.

Attachments: [Staff Report](#)
[Maps](#)
[Site Photos](#)
[Minutes](#)
[Ordinance](#)
[Considerations](#)
[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 March 3, 2022.

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.

- Love Your Park, March 12, 2022, 8:00 a.m., Conder Park
- NAACP Freedom Fund Banquet, April 22, 2022, 6:00 p.m., Killeen Civic and Conference Center

Dedicated Service -- Every Day, for Everyone!



City of Killeen

Legislation Details

File #: CP-22-003 **Version:** 1 **Name:** Citizens Petition
Type: Citizens Petition **Status:** Citizens Petitions
File created: 2/25/2022 **In control:** City Council
On agenda: 3/8/2022 **Final action:**
Title: Raoul Daniels - Killeen Parks and Open Space Master Plan
Sponsors: City Manager Department
Indexes:
Code sections:
Attachments:

Date	Ver.	Action By	Action	Result
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City of Killeen

Legislation Details

File #: CP-22-004 **Version:** 1 **Name:** Citizens Petition
Type: Citizens Petition **Status:** Citizens Petitions
File created: 2/25/2022 **In control:** City Council
On agenda: 3/8/2022 **Final action:**
Title: Charles Jackson - City Ordinance Chapter 28-132, Truck Parking
Sponsors: City Manager Department
Indexes:
Code sections:
Attachments:

Date	Ver.	Action By	Action	Result
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City of Killeen

Legislation Details

File #: MN-22-006 **Version:** 1 **Name:** Minutes of Regular City Council Meeting of February 8, 2022
Type: Minutes **Status:** Minutes
File created: 2/9/2022 **In control:** City Council
On agenda: 3/8/2022 **Final action:**
Title: Consider Minutes of Regular City Council Meeting of February 8, 2022.
Sponsors: City Secretary
Indexes:
Code sections:
Attachments: [Minutes](#)

Date	Ver.	Action By	Action	Result
3/1/2022	1	City Council Workshop		

City of Killeen
City Council Meeting
Killeen City Hall
February 8, 2022 at 5:00 p.m.

Presiding: Mayor Jose Segarra

Attending: Mayor Pro Tem Debbie Nash-King, Councilmembers Nina Cobb (arrived 5:04 p.m.), Michael Boyd, Ken Wilkerson, Rick Williams, and Mellisa Brown.

Absent: Councilmember Jessica Gonzalez

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

Mr. Jones gave the invocation. Councilmember Boyd 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 Boyd. The motion carried unanimously.

Citizen Comments

Mr. Raoul Daniels - spoke on agenda item RS-22-019.

Discussion Items

DS-22-020 Discuss the rescheduling of the Strategic Planning Work Session
Due to the inclement weather that occurred last week, the February 5, 2022 Strategic Planning Work Session was canceled.

Motion was made by Councilmember Brown to table DS-22-020 for discussion at the February 15, 2022 City Council Workshop Meeting. Motion was seconded by Councilmember Wilkerson. Motion carried unanimously.

Consent Agenda

MN-22-003 Consider Minutes of Regular City Council Meeting of January 11, 2022.

MN-22-004 Consider Minutes of Special City Council Meeting of January 18, 2022.

RS-22-019 Consider a memorandum/resolution adopting the Parks Master Plan.
(REMOVED FROM CONSENT AGENDA FOR SEPARATE CONSIDERATION)

RS-22-020 Consider a memorandum/resolution approving the purchase of two restroom facilities to be built and installed at Long Branch Park and Conder Park from CXT,

Inc., through the Sourcewell Purchasing Cooperative in the amount of \$407,623.20.

- RS-22-023** Consider a memorandum/resolution accepting a Concessions Rent Relief Airport Rescue Grant in the amount of \$151,319.
- RS-22-024** Consider a memorandum/resolution approving Addendum No. 7 to the American Airline lease agreement with the Killeen Fort Hood Regional Airport.
- RS-22-025** Consider a memorandum/resolution ratifying an emergency purchase for repairs to Unit #240 (Ladder 9) by Metro Fire Apparatus Specialists in the amount of \$180,798.82.
- OR-22-005** Consider an ordinance calling a Charter Amendment Election on May 7, 2022.
(REMOVED FROM CONSENT AGENDA FOR SEPARATE CONSIDERATION)
- OR-22-006** Consider an ordinance to approve redistricting of the City of Killeen single member council districts and establishing new district boundaries.

The City Secretary read the caption of the ordinance (OR-22-005).
AN ORDINANCE ORDERING THE HOLDING OF AN ELECTION IN THE CITY OF KILLEEN, TEXAS, FOR THE PURPOSE OF SUBMITTING TO THE VOTERS OF THE CITY PROPOSED AMENDMENTS TO THE HOME RULE CHARTER OF THE CITY; SPECIFYING THAT THE PROVISIONS OF THE GENERAL ELECTION LAWS SHALL CONTROL ALL QUESTIONS PERTAINING TO SUCH ELECTION; PRESCRIBING THE CONTENTS OF THE OFFICIAL BALLOT; PROVIDING FOR COMPENSATION; DESIGNATING THE POLLING PLACES, AND PROVIDING FOR POSTING AND PUBLICATION OF NOTICE OF ELECTION AND CONTAINING MISCELLANEOUS PROVISIONS.

The City Secretary read the caption of the ordinance (OR-22-006).
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KILLEEN, TEXAS, APPROVING THE REDISTRICTING OF THE CITY'S SINGLE MEMBER COUNCIL DISTRICTS AND ESTABLISHING NEW DISTRICT BOUNDARY LINES FOR KILLEEN CITY COUNCIL ELECTIONS BASED ON 2020 CENSUS DATA; AND PROVIDING FOR AN EFFECTIVE DATE.

Motion was made by Mayor Pro Tem Nash-King to approve the consent agenda as written. Without a second, the motion died. Councilmember Wilkerson made a motion to approve the consent agenda removing RS-22-019 for separate consideration. Motion was seconded by Councilmember Williams. Councilmember Brown made a motion to amend approving the consent agenda and removing RS-22-019 and OR-22-005 for separate consideration. Councilmember Wilkerson seconded the amended motion. The amendment carried unanimously. The motion as amended carried unanimously.

- RS-22-019** Consider a memorandum/resolution adopting the Parks Master Plan.
Mr. Joe Brown, Executive Director of Recreation Services was available to answer questions and to provide additional information.

Councilmember Wilkerson made a motion of direction to have staff conduct a meeting specifically for youth organization representatives to give them another opportunity to add input towards the Parks Master Plan for a possible amendment to the Plan focusing on youth programs. Councilmember Boyd seconded the motion of direction. The motion of direction carried unanimously.

Motion was made by Mayor Pro Tem Nash-King to approve RS-22-019. Motion was seconded by Councilmember Cobb. Motion carried unanimously.

OR-22-005 Consider an ordinance calling a Charter Amendment Election on May 7, 2022. Ms. Holli Clements, Deputy City Attorney was available to answer questions and to provide additional information.

Motion was made by Councilmember Brown to table OR-22-005 until after the Public Hearing Items allowing staff to add a proposition to the ordinance that would require a member of the City Council to resign from their present office immediately upon announcing to run for office as defined by the Texas Ethics Commission or filing for either the office of the Mayor or the office of Councilmember. Motion was seconded by Councilmember Wilkerson. Councilmember Williams made a motion to amend to table OR-22-005 to after the Public Hearing Items allowing staff to add a proposition to the ordinance that would require a member of the City Council to resign from their present office immediately upon filing for either the office of the Mayor or the office of Councilmember. The amended motion was seconded by Councilmember Boyd. The amendment carried unanimously. The motion as amended carried unanimously.

Resolutions

RS-22-021 Consider a memorandum/resolution amending the appointment of councilmembers to the Senior Citizen Advisory Board subcommittee.

Mayor Segarra advised that he would like to amend the Senior Citizen Advisory Board subcommittee appointment of Mayor Pro Tem Nash-King by replacing her with Councilmember Cobb.

Motion was made by Mayor Pro Tem Nash-King to approve RS-22-021. Motion was seconded by Councilmember Williams. Motion carried unanimously.

RS-22-022 Consider a memorandum/resolution declaring vacancies on various citizen boards and commissions and appointing members to fill the unexpired terms.

Staff Comments: Traci Briggs, City Attorney

Ms. Briggs reviewed City Council's nominations to boards and commissions during the February 1, 2022 City Council Workshop Meeting. In addition, Ms. Briggs, identified Planning and Zoning's recommendation of Commissioner Riakos Adams to serve as the Planning and Zoning representative on the Zoning Board of Adjustment.

Motion was made by Councilmember Brown to approve RS-22-022 with Planning and Zoning's recommendation of Commissioner Riakos Adams serving on the Zoning Board of Adjustment. Motion was seconded by Councilmember Williams. Motion carried unanimously.

RS-22-026 Consider a memorandum/resolution confirming the City Auditor's annual evaluation and pay increase.

City Council met with Mr. Matt Grady, City Auditor, on January 18, 2022 for his annual performance evaluation. Based on the majority consensus City Council approved a five percent (5%) salary increase for Mr. Grady.

Motion was made by Mayor Pro Tem Nash-King to approve RS-22-026. Motion was seconded by Councilmember Wilkerson. Motion carried unanimously.

Public Hearings

PH-22-013 HOLD a public hearing and consider an ordinance requested by Joshua Welch on behalf of CP Summit Group, Loverd Wilson Mitchell Trust, Penelope McDonald & Ray Fread (Case #Z21-41), to rezone approximately 80.85 acres out of the J.H. Lewis Survey, Abstract No 0536, the J.W. Morton Survey, Abstract No. 0587, and the T. Arnold Survey, Abstract No. 0055, from "A" (Agricultural District), "A-R1" (Agricultural Single-Family Residential District), and "R-1" (Single-Family Residential District) to Planned Unit Development (PUD) with "SF-2" (Single-Family Residential District). The property is generally located south of Prewitt Ranch Road and East of Clear Creek Road, 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 80.85 ACRES OUT OF THE J.H. LEWIS SURVEY, ABSTRACT NO 0536, THE J.W. MORTON SURVEY, ABSTRACT NO 0587, AND THE T. ARNOLD SURVEY, ABSTRACT NO 0055, FROM "A" (AGRICULTURAL DISTRICT), "A-R1" (AGRICULTURAL SINGLE-FAMILY RESIDENTIAL DISTRICT), AND "R-1" (SINGLE-FAMILY RESIDENTIAL DISTRICT) TO PLANNED UNIT DEVELOPMENT (PUD) WITH "SF-2" (SINGLE-FAMILY RESIDENTIAL DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

Staff Comments: Wallis Meshier, Director of Planning

The property is designated as general residential on the Future Land Use Map (FLUM) of the Comprehensive Plan. The request is consistent with the FLUM. If approved, the applicant intends to build approximately three-hundred and thirty-three (333) residential lots over nine (9) blocks. Proposed Planned Unit Development Standards and the proposed Homeowner's Association's open space amenity plan have been submitted and reviewed by city staff and the Planning and Zoning Commission. Staff notified one-hundred and ninety-one (191) surrounding property owners. To date, staff has not received any written responses regarding this request. Staff recommends approval of the request with the condition of

Architectural Standard number three (3) in the proposed PUD document be revised to state: "For all homes within the proposed development, the exterior wall on either side of the garage door shall not protrude further than any other horizontal building plane on the front elevation." The Planning and Zoning Commission recommended approval with the condition that the east / west street be moved north to shorten the block length of the northern block by a vote of 5 to 1. The applicant has since complied with the recommended condition, which is reflected on the submitted concept plan.

Mayor Segarra invited the applicant to speak.

The applicant, Josh Welch, was available to provide additional information and answer questions.

Mayor Segarra opened the public hearing.

Mr. Bear Jones spoke in opposition of the conditions of only allowing parking on one side of the street and the street size.

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

Motion was made by Councilmember Wilkerson to postpone PH-22-013 to the February 15, 2022 City Council Workshop Meeting. Motion was seconded by Mayor Pro Tem Nash-King. Motion carried 4 to 2 with Councilmember Boyd and Councilmember Brown in opposition.

PH-22-014 HOLD a public hearing and consider an ordinance requested by Chris Doose, on behalf of Schoolgirl LLC (Case #FLUM 21-12), to amend the Comprehensive Plan's Future Land Use Map (FLUM) from a 'Rural' (R) and 'Suburban Commercial' (SC) designation to 'General Residential' (GR) designation, being approximately 4.586 acres out of the James Cook Survey, Abstract No. 161. The property is locally addressed as 5801 and 5803 Clear Creek Road, Killeen, Texas.

The City Secretary read the caption of the ordinance.

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN'S FUTURE LAND USE MAP TO CHANGE APPROXIMATELY 4.586 ACRES OUT OF THE JAMES COOK SURVEY, ABSTRACT NO. 161, FROM A 'RURAL' (R) AND 'SUBURBAN COMMERCIAL' (SC) TO 'GENERAL RESIDENTIAL' (GR) DESIGNATION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

Staff Comments: Wallis Meshier, Director of Planning

The property is designated as rural and suburban commercial on the Future Land Use Map (FLUM) of the Comprehensive Plan. The applicant has submitted a concurrent request to rezone the property from agricultural district to R-1 and B-3 (local business district) to R-2. If approved, the applicant intends to develop fourteen (14) duplexes on the property. Staff mailed courtesy notices to thirty-eight (38) surrounding property owners. Staff recommends approval of the

request. The Planning and Zoning Commission recommended approval by a vote of 6 to 0.

Mayor Segarra invited the applicant to speak.

The applicant's representative, Mr. Craig Langford, was available to provide additional information and answer questions.

Mayor Segarra opened the public hearing.

With no one appearing, the public hearing was closed.

Motion was made by Councilmember Wilkerson to approve PH-22-014. Motion was seconded by Mayor Pro Tem Nash-King. Motion carried 5 to 1 with Councilmember Brown in opposition.

PH-22-015 HOLD a public hearing and consider an ordinance requested by Chris Doose on behalf of Schoolgirl, LLC (Case #Z21-45), to rezone approximately 4.586 acres out of the James Cook Survey, Abstract No. 161 from "A" (Agricultural District), "R-1" (Single-Family Residential District), and "B-3" (Local Business District) to "R-2" (Two-Family Residential District). The property is addressed as 5801 and 5803 Clear Creek Road, 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 4.586 ACRES OUT OF THE JAMES COOK SURVEY, ABSTRACT NO. 161, FROM "A" (AGRICULTURAL DISTRICT), "R-1" (SINGLE-FAMILY RESIDENTIAL DISTRICT), AND "B-3" (LOCAL 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: Wallis Meshier, Director of Planning

The property is designated as rural and suburban commercial on the Future Land Use Map (FLUM) of the Comprehensive Plan. The applicant has submitted a concurrent request to amend the Future Land Use Map from rural and suburban commercial to general residential. Staff notified thirty-eight (38) surrounding property owners. To date, staff has not received any written responses regarding this request. Staff recommends approval of the request. The Planning and Zoning Commission recommended approval by a vote of 6 to 0.

Mayor Segarra invited the applicant to speak.

The applicant's representative, Craig Langford, did not speak but was available in the audience to provide additional information and answer questions.

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 approve PH-22-015. Motion was seconded by Councilmember Boyd. Motion carried 5 to 1 with Councilmember Brown in opposition.

OR-22-005 Consider an ordinance calling a Charter Amendment Election on May 7, 2022.
(TABLED FROM EARLIER IN THE MEETING)

As directed, Ms. Clements made the recommended amendment to the ordinance calling the Charter Amendment Election by adding Proposition 13 that would require a member of the City Council to resign from their present office immediately upon filing for either the office of the Mayor or the office of Councilmember.

Motion was made by Councilmember Brown to approve OR-22-005. Motion was seconded by Councilmember Wilkerson. Motion carried unanimously.

Adjournment

With no further business, upon motion being made by Mayor Pro Tem Nash-King, seconded by Councilmember Brown, and unanimously approved, the meeting was adjourned at 7:08 p.m.



City of Killeen

Legislation Details

File #:	RS-22-030	Version:	1	Name:	Conder Park Lighting
Type:	Resolution	Status:		Status:	Resolutions
File created:	1/24/2022	In control:		In control:	City Council
On agenda:	3/8/2022	Final action:		Final action:	
Title:	Consider a memorandum/resolution approving the purchase of LED solar lights for Conder Park Sport Field from Musco Sport Lighting in the amount of \$184,750.				
Sponsors:	Recreation Services Department				
Indexes:					
Code sections:					
Attachments:	Staff Report Quote ARPA Appendix A Certificate of Interested Parties Presentation				

Date	Ver.	Action By	Action	Result
3/1/2022	1	City Council Workshop		



STAFF REPORT

DATE: March 1, 2022

TO: Kent Cagle, City Manager

FROM: Joseph Brown, Executive Director of Recreation Services

SUBJECT: Purchase LED lights for Conder Park Sport Field

BACKGROUND AND FINDINGS:

The current lights at Conder Park have been inoperable for the past ten (10) years. The electric buried lines to all fixtures deteriorated requiring a complete rewire and panel box replacement. Parts are no longer made, outliving their lifespan. Currently there is no lighting for the Sport Field. Conder Park Sport Field is heavily used by the community for soccer, football, military unit gatherings, and open field play. With the installation of new lights, the community will be able to safely utilize this field at night.

The department received a quote under the Buyboard Cooperative contact #592-19 from Musco Sport Lighting, LLC, to replace the existing light fixtures for \$184,750. This project is part of the ARPA related improvements to be made within Conder Park.

The new lights will consist of four (4) pre-cast concrete bases, four (4) 70-foot galvanized steel poles and sixteen (16) factory wired pole top luminaries. The new LED lights will have a 25-year warranty program that covers materials and onsite labor which eliminates 100% of maintenance costs for 25 years. Musco guarantees light levels of 30 foot-candles through this light purchase/install. In addition, the lights have the BallTracker technology, which is targeted light, optimizing visibility of the ball in play with no glare in the player's typical line-of-sight. These lights have a security light feature that will keep a light on at all times, increasing the safety of Conder Park.

This light purchase also gives our staff Control Systems and Services, also known as the Control-Link® Control and Monitoring system, which provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support.

Recreation Services converted Lions Club Park fields in 2020 to the Musco LED lights and have seen a decrease in light outages and maintenance costs.

By authorizing the purchase of the LED lights, we will reduce the cost for maintenance to maintain the lights and will reduce the cost of the electricity bill as the LED lights use less wattage and do not need time to warm up.

THE ALTERNATIVES CONSIDERED:

Option 1: Do not approve the purchase of the LED lights for the sports fields.

- This option will result in the Conder park not having lighting for the sports field.

Option 2: Approve the purchase of the LED lights for the sports field.

Which alternative is recommended? Why?

Staff recommends purchasing the LED lights as proposed so that Conder Park will have lighting for its sports field that will be easier to maintain. Funds are available this fiscal year, from the ARPA funds. From date of order, the process of having these new lights installed in 8-10 weeks.

CONFORMITY TO CITY POLICY:

Purchases made through a cooperative contract satisfy the state competitive bidding requirements as stated in Texas Local Government Code section 271.102, subchapter F; a local government that purchases goods or services under this subchapter satisfies any state law requiring the local government to seek competitive bids for the purchase of the goods or services.

FINANCIAL IMPACT:

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

Current fiscal year cost is \$184,750.

Is this a one-time or recurring expenditure?

One-time

Is this expenditure budgeted?

Yes, funds are available in Governmental CIP Fund account #349-8930-493.69-03.

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 Manager or his designee be authorized to execute the proposed purchase of the LED lights from Musco Lighting, LLC in the amount of \$184,750 and further be authorized to execute any and all change orders as allowed by state law and city policy.

DEPARTMENTAL CLEARANCES:

Purchasing
Finance
Legal

ATTACHED SUPPORTING DOCUMENTS:

Quote

ARPA Appendix A

Certificate of Interested Parties

Project: Conder Park Multipurpose Field
Killeen, TX
Musco Ref: 159617
Date: January 17, 2022

BuyBoard

Master Project: 196290, **Contract Number:** 592-19, **Expiration:** 09/30/2022
Commodity: Parks and Recreation Equipment and Field Lighting Products and Installation

All purchase orders should note the following:
BuyBoard purchase – Contract Number: 592-19

Quotation Price – Materials Delivered to Job Site and Installation

Multipurpose Field - \$ 184,750

Sales tax is not included.

Pricing furnished is effective for 60 days unless otherwise noted and is considered confidential.

Light-Structure System™ with Total Light Control – TLC for LED™ technology

Guaranteed Lighting Performance

- Guaranteed light levels of 30 foot-candles and uniformity of 2.5:1

Light-Structure System™ Description

- 4 - Pre-cast concrete bases with integrated lightning grounding
- 4 – 70' Galvanized steel poles
- Factory wired and tested remote electrical component enclosures
- Pole length, factory assembled wire harnesses
- 4 - Factory wired poletop luminaire assemblies
- 8 - OSQ area luminaires
- 16 - Factory aimed and assembled luminaires
- UL Listed assemblies

Control Systems and Services

- Control-Link® control and monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support.

Operation and Warranty Services

- Product assurance and warranty program that covers materials and onsite labor, eliminating 100% of your maintenance costs for 25 years
- Support from Musco's Lighting Services Team – over 170 Team members dedicated to operating and maintaining your lighting system – plus a network of 1800+ contractors

Installation Services Provided

See scope of work below.



Payment Terms

Musco's Credit Department will provide payment details.

Email or fax a copy of the Purchase Order to Musco Sports Lighting, LLC:

Musco Sports Lighting, LLC
Attn: Amanda Hudnut
Fax: 800-374-6402
Email: musco.contracts@musco.com

**All purchase orders should note the following:
BuyBoard purchase – Contract Number: 592-19**

Delivery Timing

8 - 10 weeks for delivery of materials to the job site from the time of order, submittal approval, and confirmation of order details including voltage, phase, and pole locations.

Due to the built-in custom light control per luminaire, pole locations need to be confirmed prior to production. Changes to pole locations after the product is sent to production could result in additional charges.

Notes

Quote is based on:

- Shipment of entire project together to one location.
- 240 Volt, 1 Phase electrical system requirement.
- Structural code and wind speed = 2015 IBC, 115 mi/h, Exposure C, Importance Factor 1.0.
- Owner is responsible for getting electrical power to the site, coordination with the utility, and any power company fees.
- Includes supply and installation of Musco system by a licensed contractor.
- Standard soil conditions – rock, bottomless, wet or unsuitable soil may require additional engineering, special installation methods and additional cost.
- Confirmation of pole locations prior to production.
- Field size – 300' x 160'

Thank you for considering Musco for your lighting needs. Please contact me with any questions or if you need additional details.

Brant Troutman
Texas Field Sales Representative
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**Condor Park Multi-Use Field
Killeen, TX
Turnkey Scope of Work**

Customer Responsibilities:

1. Complete access to the site for construction utilizing standard 2-wheel drive rubber tire equipment.
2. Locate existing underground utilities not covered by your local utilities. (i.e. water lines, electrical lines, irrigation systems, and sprinkler heads). Musco or Subcontractor will not be responsible for repairs to unmarked utilities.
3. Locate and mark field reference points per Musco supplied layout. (i.e. center of field)
4. Pay for extra costs associated with foundation excavation in non-standard soils (rock, caliche, high water table, collapsing holes, etc.) or soils not defined in geo-technical report. Standard soils are defined as soils that can be excavated using standard earth auguring equipment.
5. Pay any power company fees and requirements.
6. Pay all permitting fees and obtain the required electrical permitting.
7. Provide area on site for disposal of spoils from foundation excavation.
8. Provide area on site for dumpsters.
9. Provide sealed Electrical Plans. (If required)

Musco Responsibilities:

1. Provide required foundations, poles, electrical enclosures, luminaires, wire harnesses, and control cabinets.
2. Provide layout of pole locations and aiming diagram.
3. Provide Project Management as required.
4. Provide stamped foundation designs based on soils that meet or exceed those of a Class 5 material as defined by 2018 IBC Table 1806.2.
5. Assist our installing subcontractor and ensure our responsibilities are satisfied.

Subcontractor Responsibilities

General:

1. Obtain any required permitting.
2. Contact 811 for locating underground public utilities and then confirm they have been clearly marked.
3. Contact the facility owner/manager to confirm the existing private underground utilities and irrigation systems have been located and are clearly marked to avoid damage from construction equipment. Notify owner and repair damage to marked utilities. Notify owner and Musco regarding damage which occurred to unmarked utilities.
4. Provide labor, equipment, and materials to off load equipment at jobsite per scheduled delivery.
5. Provide storage containers for material, (including electrical components enclosures), as needed.
6. Provide necessary waste disposal and daily cleanup.
7. Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
8. Keep all heavy equipment off playing fields when possible. Repair damage to grounds which exceeds that which would be expected. Indentations caused by heavy equipment traveling over dry ground would be an example of expected damage. Ruts and sod damage caused by equipment traveling over wet grounds would be an example of damage requiring repair.
9. Provide startup and aiming as required to provide complete and operating sports lighting system.



10. Installation to commence upon delivery and proceed without interruption until complete. Notify Musco immediately of any breaks in schedule or delays.

Demolition:

1. Remove and dispose of the existing lighting poles, fixtures, and electrical enclosures. This will include the recycling of lamps, aluminum reflectors, ballast, and steel, as necessary.
2. Demolish existing foundations to 2 ft (0.6 m) below grade.
3. Leave existing power feed in place for connection to new pole locations.

Foundations, Poles, and Luminaires:

1. Mark and confirm pole locations per the aiming diagram provided. If there are any issues, immediately notify your Musco Project Manager.
2. Provide labor, materials, and equipment to install 4 LSS foundations as specified on Layout and per the stamped foundation drawings, if applicable.
3. Remove spoils and dispose of off site.
4. Provide labor, materials, and equipment to assemble Musco TLC-LED luminaires, electrical component enclosures, poles, and pole harnesses.
5. Provide labor, equipment, and materials to erect 4 dressed LSS Poles and aim utilizing the pole alignment beam.

Electrical:

1. Provide labor, materials, and equipment to install new 240v/Single phase electrical service panels as required.
2. Provide labor, materials, and equipment to install all underground conduit, wiring, pull boxes etc. and terminate wiring as required.
3. Provide as-built drawings on completion of installation, **(if required)**.

Control System:

1. Provide labor, equipment, and materials to install 1 Musco control and monitoring cabinet and terminate all necessary wiring.
2. Provide a dedicated 120 V 20 A controls circuit or a step-down transformer for 120 V control circuit if not available.
3. Check all zones to make sure they work in both auto and manual mode.
4. Commission Control-Link® by contacting Control-Link Central™ at 877-347-3319.



CODE OF CONDUCT

In order to maintain a high-quality jobsite and installation, Subcontractor represents to Musco that it has the supervision necessary to, and shall train, manage, supervise, monitor, and inspect the activities of its employees for the purpose of enforcing compliance with these safety requirements. Subcontractor acknowledges that Musco does not undertake any duty toward Subcontractor's employees to train, manage, supervise, monitor, and inspect their work activities for the purpose of enforcing compliance with these safety requirements, but Subcontractor agrees to abide by any reasonable recommendations made by Musco or Musco representatives with respect to safety.

Subcontractor agrees that it is or will be familiar with and shall abide by the safety rules and regulations of Musco and the Owner, including, but not limited to the Occupational Safety and Health Act of 1970 (OSHA), all rules and regulations established pursuant thereto, and all amendments and supplements thereto.

Subcontractor further agrees to require all its employees, subcontractors, and suppliers to comply with these requirements. Subcontractor shall also observe and comply with all laws with respect to environmental protection applicable to the Project.

Subcontractor shall require all its subcontractors, employees, visitors, suppliers, and agents under its direction to comply with the following:

1. GENERAL JOBSITE SAFETY AND CLEANLINESS.

- a. Subcontractor's employees and agents shall be required to wear appropriate personal protective equipment including, but not limited to, safety glasses with side shields, work shoes, fall protection devices, and hard hats.
- b. Where a walking or working surface has an unprotected side or edge which is six feet or more above a lower level, Subcontractor shall use guardrail systems, safety net systems, or personal fall arrest systems.
- c. Jobsite shall be kept free of debris including, but not limited to, cardboard and packing materials which can become windborne.
- d. Construction equipment shall be parked during non-use in an orderly fashion so as not to create inconvenience to others using the jobsite.
- e. Subcontractor shall provide for and ensure the use of safety equipment for the Project in accordance with Musco's and Owner's safety requirements, to the extent these may be stricter than federal, state, or local standards, or generally recognized industry applicable standards.
- f. Subcontractor shall provide the Musco project manager with an "Emergency List" showing Subcontractor's designated medical doctor, hospital, insurance company, and any other health service providers, such list to be updated within 24 hours of any change in the information provided.
- g. Within eight (8) hours from the time of an accident (or such shorter period as laws may require), Subcontractor shall advise Musco of any accident resulting in injury to any person or damage to any equipment or facility. Upon request, Subcontractor shall promptly furnish Musco with a written report of any such accident as well as a copy of all insurance and worker's compensation claims involving the Project.
- h. Subcontractor shall maintain and inspect all construction equipment, including cranes and other lifting equipment, prior to each use. Subcontractor warrants that all equipment operators shall be qualified for each piece of construction equipment they intend to operate. Documentation of specific training is the responsibility of the Subcontractor.
- i. Jobsite shall be policed daily for compliance to the above conditions.



- j. Subcontractor's employees and agents are prohibited from using drugs and alcohol on the Project property or being under the influence of alcohol or drugs while performing work on the Project. Anyone observed participating in or observed under the influence will be removed from the Project immediately and prohibited from returning, with no exceptions.
- 2. CONFORMANCE TO STANDARD MUSCO INSTALLATION GUIDELINES.
 - a. Review and understand installation instructions are provided with every product installation.
 - b. Education of installation personnel to allow for highest efficiency and lowest possibility of failure.
 - c. Verify that components have been assembled per Musco installation instructions.
 - d. Verify plumb of concrete foundations prior to standing of poles.
- 3. PROVIDING A QUALITY INSTALLATION TEAM.
 - a. Subcontractor's work directly reflects the quality of the installation and may indirectly relate to the quality of the product upon which Musco's reputation is built.
 - b. Provide and maintain quality installation equipment. Records of maintenance and/or calibration shall be provided upon request.
 - c. Personnel shall be knowledgeable in operation of equipment as well as installation of Musco product.
 - d. All personnel provided by Subcontractor shall understand the relationship developed by and between Subcontractor and Musco, also by and between Musco and the customer, and act accordingly.



Appendix A
Required Contract Clauses
2 C.F.R. § 200.326 and 2 C.F.R. Part 200

1. Remedies.

- a. Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A. All remedies are stipulated in the Purchase Order Terms and Conditions.
- b. Applicability: This requirement applies to all FEMA grant, cooperative agreement programs, and City contracts that are funded through federal awards and grants.

2. Termination for Cause and Convenience.

- a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- b. Applicability. This requirement applies to all FEMA grant, cooperative agreement programs, and City contracts that are funded through federal awards and grants. The Termination for Cause and Convenience is in the City's Purchase Order Terms and Conditions.

3. Equal Employment Opportunity.

- a. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶C.
- b. Key Definitions.
 - (1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

- (2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Applicability. This requirement applies and the clauses incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

c. During the performance of this Contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (3) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or

workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. As amended (40 U.S.C. 3141-3148). When required by Federal Program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.
- b. In accordance with the statute, Contractors are required to pay wages to laborers

and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractors are required to pay ‘wages not less than once a week.

- c. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding- agency.
- d. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or sub recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to federal awarding agency.
- e. Compliance with the Davis-Bacon Act
All transactions regarding this Purchase Order hereby incorporates the requirements of compliance with the Davis-Bacon Act (40U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractors are required to pay ‘wages not less than once a week.

- f. Compliance with the Copeland "Anti-Kickback" Act.
All transactions regarding this Purchase Order hereby incorporates the requirements of compliance with the Copeland “Anti-Kickback” Act:

(1) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract

clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

5. Contract Work Hours and Safety Standards Act.

Applicability: This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

- a. All Contractors awarded by the City of Killeen entity in excess of \$100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶E.
- b. Under 40 U.S.C. § 3702, each Contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- c. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- d. In accordance with 29 C.F.R. § 5.5(b) the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act are hereby incorporated:

Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any pay of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and

subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

6. Rights to Inventions Made Under a Contract or Agreement.

This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

- a. If the Federal award and grants meet the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the City of Killeen or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the City hereby incorporates the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the federal awarding agency into the contract. See 2 C.F.R. Part 200, Appendix II, ¶ F.
- b. The regulation at 37 C.F.R. § 401.2(a) currently defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the

performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.

This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

- a. Clean Air Act

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

- (2) The Contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government} will, in tum, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

- (3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the federal awarding agency.

- b. Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

- (2) The contractor agrees to report each violation to the City of Killeen and understands and agrees that the City of Killeen will, in tum, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

- (3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal

assistance provided by the awarding agency.

8. Debarment and Suspension.

Applicability: This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants.

- a. (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

9. Byrd Anti-Lobbying Amendment.

Applicability: This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

- a. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶J; 44 C.F.R. Part 18; Chapter IV, 6.c; Appendix C, ¶ 4.
- b. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal Award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

d. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by

31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form• LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*,

10. Procurement of Recovered Materials.

Applicability: This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

- a. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ K; 2 C.F.R. § 200.322; Chapter V, ¶7.
- b. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- c. (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA• designated items unless the product cannot be acquired-
 - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.
- (2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.

11. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

Applicability: This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

- (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential

component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115–232, section 889 for additional information.

(d) See also § 200.471.

12. Domestic Preferences for Procurements.

Applicability: This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

(a) As appropriate and to the extent consistent with law, the non–Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

13. Access to Records.

This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

- (1) The Contractor agrees to provide the City of Killeen (insert name of state agency or local or Indian tribal government), (insert name of recipient), the federal awarding agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the federal awarding agency or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

14. DRS Seal, Logo, and Flags.

This requirement applies and the clause is incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

- a. The Contractor shall not use the DRS seal(s), logos, crests, or reproductions of flags or likenesses of DRS agency officials without specific federal awarding agency pre• approval.

15. Compliance with Federal Law, Regulations, and Executive Orders.

This requirement applies and the clause is incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

- a. This is an acknowledgement that FEMA financial assistance, CARES Funds, or other federal funds will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, federal awarding agency policies, procedures, and directives.

16. No Obligation by Federal Government.

This requirement applies and the clause is incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

- a. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

17. Program Fraud and False or Fraudulent Statements or Related Acts.

This requirement applies and the clause is incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

- a. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

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

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2022-842587

Date Filed:
01/24/2022

Date Acknowledged:

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

Musco Sports Lighting, LLC
Oskaloosa, IA United States

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

City of Killeen, TX

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

592-19
Field lighting at Conder Park Multipurpose field

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Musco Corporation	Oskaloosa, IA United States	X	

5 Check only if there is NO Interested Party. ☐

6 UNSWORN DECLARATION

My name is James M. Hansen, and my date of birth is 12/9/58.

My address is 100 1st Avenue West, Oskaloosa, IA, 52577, USA.
(street) (city) (state) (zip code) (country)

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

Executed in Mahaska County, State of Iowa, on the 24 day of January, 2022.
(month) (year)


Signature of authorized agent of contracting business entity
(Declarant)



LED LIGHT PURCHASE FOR CONDER PARK SPORT FIELD

RS-22-030

March 1, 2022

Background

2

- ❑ There is currently no lighting on the sport fields at Conder Park
- ❑ Current lights have been inoperable for the past 10 years
- ❑ Light poles are in disrepair
- ❑ Sport field heavily used by community
- ❑ This park component is part of the ARPA plan to re-activate Conder Park

New LED Lights

3

- ❑ TxBuyboard Quote from Musco Sport Lighting for \$184,750 to replace all inoperable lights
- ❑ Lights include four (4) concrete bases, four (4) galvanized steel poles, and sixteen (16) luminaries
- ❑ 25-year warranty that covers materials and onsite labor
- ❑ LED lights will reduce energy and maintenance costs

New LED Lights

4

- ❑ Control Link service providing remote scheduling, on/off, and customer support real time
- ❑ Remote on/off dimming control and performance monitoring
- ❑ BallTracker Technology which optimizing visibility of the ball in play with no glare
- ❑ Installation within 8 – 10 weeks

Alternatives

5

- The City Council has two (2) alternatives:
 - ▣ Option 1 - Do not approve the purchase of the LED lights
 - ▣ Option 2 - Approve the purchase of the LED lights as proposed

Recommendation

6

City Council approve the purchase of the LED field lights in the amount of \$184,750.00 and that the City Manager or designee be authorized to execute any change orders as permitted by state and local law.



City of Killeen

Legislation Details

File #:	RS-22-031	Version:	1	Name:	Azteca/CityWorks License
Type:	Resolution	Status:		Status:	Resolutions
File created:	2/7/2022	In control:		In control:	City Council
On agenda:	3/8/2022	Final action:		Final action:	
Title:	Consider a memorandum/resolution authorizing an Enterprise Licensing Agreement (ELA) with Azteca Systems, LLC in an amount not to exceed \$205,250 over a three-year period.				
Sponsors:	Information Technology Department				
Indexes:					
Code sections:					
Attachments:	Staff Report Agreement Certificate of Interested Parties Presentation				

Date	Ver.	Action By	Action	Result
3/1/2022	1	City Council Workshop		



STAFF REPORT

DATE: March 1, 2022

TO: Kent Cagle, City Manager

FROM: Willie Resto, Executive Director of Information Technology

SUBJECT: Enterprise License Agreement with Azteca Systems, LLC

BACKGROUND AND FINDINGS:

The Cityworks asset management system (AMS) is the City's current work order system which has been used by Public Works since 2007. Cityworks AMS is a critical element for the City to progress towards a data driven environment. Utilizing Cityworks AMS, departments are able to capture valuable information which will aid staff in making sound decisions backed by relevant and timely information. Defining City assets and capturing inventory of critical infrastructure allows staff to strategically schedule proactive maintenance tasks, log repairs, and track replacements necessary for the smooth operations of City services.

Cityworks AMS utilizes the GIS database systems for managing an inventory of geographically distributed assets. GIS assets tracked include roadways, bridges, traffic control, parks and park amenities, facilities, trees, surface water systems, water and wastewater systems and so forth.

A GIS centric system allows asset records to be fully integrated with the GIS mapping of various City asset systems, such as Cityworks AMS. City asset records can be accessed and updated by using map locations. For those assets that may not be "location specific", for example the internal components of a pump station, such assets and their related maintenance can be stored independently within a GIS centric system like Cityworks AMS.

The enterprise license allows for an unlimited number of users. In 2019 the City Council approved the request to purchase a tiered three-year Enterprise License Agreement with year three in the amount of \$60,000. The proposed agreement is also a tiered agreement with \$60,000 being the cost for year one, year two cost \$71,750 and year three cost \$73,500.

The current Enterprise License Agreement expires March 2022.

THE ALTERNATIVES CONSIDERED:

1. Enter into an Enterprise License Agreement with Azteca Systems LLC for unlimited user licensing of the CityWorks Asset Management Software.
2. Do not enter into an Enterprise License Agreement with Azteca Systems LLC for unlimited user licensing of the CityWorks Asset Management Software.

Which alternative is recommended? Why?

Staff recommends alternative 1 which will provide licensing needed for CityWorks software.

CONFORMITY TO CITY POLICY:

This purchase conforms to the City Policy and Local Government Code, Section 252.022 that items available from only one source because of patents, copyrights, secret processes, or natural monopolies are exempt from being competitively solicited. CityWorks software, maintenance and support are only available from the manufacturer Azteca Systems.

FINANCIAL IMPACT:**What is the amount of the expenditure in the current fiscal year? For future years?**

Fiscal Year 22/23	\$60,000
Fiscal Year 23/24	\$71,750
Fiscal Year 24/25	\$73,500

Is this a one-time or recurring expenditure?

Recurring

Is this expenditure budgeted?

Yes, funds are available in the Information Technology Internal Service Fund account 627-2705-419.42-43.

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, or designee, to execute an Enterprise License Agreement with Azteca Systems, LLC in an amount not to exceed \$205,250 over a three-year period and that the City Manager, or designee be expressly authorized to execute any and all change orders or supplemental agreements within amounts set by state and local law.

DEPARTMENTAL CLEARANCES:

Purchase
Finance
Legal

ATTACHED SUPPORTING DOCUMENTS:

Agreement

Certificate of Interested Parties

CITYWORKS® SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

This Software License and Maintenance Agreement ("Agreement") is made by and between Azteca Systems, LLC ("Azteca Systems" or "Azteca") a Delaware limited liability company, with a place of business set forth on Addendum #1 below, and the **City of Killeen, Texas**, (hereinafter referred to as "Licensee" or "Customer"), using certain of Azteca Systems Licensed Products. This Software License and Maintenance Agreement is effective upon the date of signature by Licensee below (the "Effective Date").

Azteca Systems Products are licensed under the terms and conditions of this Agreement. This Agreement, when executed by the Licensee and Azteca Systems, as licensor of the Software, or the Online Services, and Documentation licensed under this Agreement, will supersede any previous agreements.

This Agreement includes (i) this Software License and Maintenance Agreement, (ii) Addendum #1 – Product Licensing, (iii) Addendum #2 – Standard Maintenance and Support, and (iv) Addendum #3 – Third-Party Contractor Acknowledgment.

This Agreement may be executed in duplicate by the Parties. An executed Agreement, modification, amendment, or separate signature page shall constitute a duplicate if it is transmitted through electronic means, such as fax or email, and reflects the signing of the document by any Party. Duplicates are valid and binding even if an original paper document bearing each Party's original signature is not delivered.

ARTICLE I—DEFINITIONS

1.1 Definitions. The terms used are defined as follows:

- a. "Agreement" means this Software License and Maintenance Agreement between Azteca Systems and Licensee, inclusive of all schedules, exhibits, attachments, addenda, and other documents incorporated by reference.
- b. "Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, account username and password, or other mechanism required for use of a Product.
- c. "Authorized User" or "User" shall mean: (i) a direct user of the Licensed Products, including but not limited to Licensee's employees; (ii) Licensee's consultants who have agreed to maintain the Licensed Property in confidence and use it only for the benefit of Licensee, or (iii) members of the public gaining access to, and only limited use of, the Licensed Products via the Software's public web portal (if applicable). Other than limited use of the Products through the software's web portal, the public is not considered an authorized user.
- d. "Beta" means any alpha, beta, or other prerelease version of a Product.
- e. "Client Data" means the data provided or inputted by or on behalf of Licensee, including personally identifiable information, for use with the Software.
- f. "Cloud Services" means both Azteca Systems Managed Cloud Services and Online Services.
- g. "Covered Software" shall mean the particular Cityworks Software, scripts, interfaces and custom code identified in Addendum #1.
- h. "Concurrent Use License" means that Licensee may install and use the Software on computer(s) on a network, but the number of simultaneous users (logins) may not exceed the number of licenses required.
- i. "Testing Server License" means a license that authorizes Licensee to install and use the Software on a server in Licensee's internal use to provide testing License rights prior to deployment.
- j. "Documentation" means all user reference documentation that is supplied to the Licensee by Azteca Systems pursuant to this Agreement for aiding or enabling the use of the Software and is deemed to include any Azteca Systems-provided revisions thereof.
- k. "Internal Use" means use of the Licensed Products by employees of Licensee in Licensee's internal operations but does not include access of the Licensed Products by or use of the Licensed Products in the provisions of services to Licensee's clients or customers. Internal Use also includes use of the Licensed Products by contractors of Licensee, including contractors providing outsourcing or hosting services, as long as Licensee assumes full responsibility for the compliance with this Agreement in such use. Use of the Licensed Products (or any part thereof) for the benefit of others, whether by means of a software as a

service offering, service bureau application, application service provider, outsourcing, or other means of providing service to any third party shall not be considered Internal Use.

- l. "Licensed Products" or "Products" shall mean the portion of the Cityworks Software and the Documentation to which Licensee has purchased a License as identified in Addendum #1 attached hereto. Licensed Products shall include any updates or upgrades to the Licensed Products that Azteca Systems may at its discretion deliver to Licensee. Products includes but is not limited to Software and Documentation licensed under the terms of this Agreement.
- m. "Login" means a license that allows Licensee to permit a single authorized named end user to use the Software, Data, and Documentation installed on a server and accessed from a computer device.
- n. "Malicious Code" means software viruses; worm time bombs; Trojan horses; or any other computer code, files, denial of service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.
- o. "Named User(s)" is Licensee's employee, agent, consultant, or contractor to whom Licensee has assigned a unique, secure login credential (identity) enabling access to a Product that requires such identity in order to access identity-managed capabilities within a Product or subscription to Online Services for Licensee's exclusive benefit.
- p. "Online Services" means the commercially available, internet-based asset management system that Azteca Systems provides (commonly known as Cityworks Online), including applications and associated APIs, for storing, managing, publishing, and using maps, data, and other information. Online services exclude Data and Content.
- q. "Online Services Subscription" means a limited-term subscription conveying the right for one or more named users to access and use Online Services.
- r. "Ordering Document(s)" means a sales quotation, purchase order, or other document identifying the Products that Licensee orders.
- s. "Preview" means any alpha, beta, or prerelease Product.
- t. "Product(s)" means Software and Documentation licensed under the terms of this Agreement.
- u. "Sample(s)" means sample code, sample applications, sample add-ons, or sample extensions of Products.
- v. "Server" means each single instance of an operating system, whether physically installed on a computer or within a virtualized environment.
- w. "Software" or "Cityworks Software" means all or any portion of Azteca Systems proprietary software technology, excluding data, accessed or downloaded from an Azteca Systems (Cityworks) authorized website or delivered on any media in any format including backups, documentation, updates, upgrades, and service packs. Without limitation, the Software is deemed to include any alpha, beta, prerelease or restricted version(s), or final commercial release(s), provided in source, object, or executable code format(s), inclusive of backups, updates, service packs, sample code, or merged copies permitted hereunder or subsequently supplied under this Agreement. Unless otherwise indicated by the context herein, the term Software is also deemed to include its associated Documentation.
- x. "Standard Maintenance" or "Maintenance Addendum" shall mean the Standard Software Maintenance & Support Addendum #2.
- y. "Term License" means a license or access provided for use of a Product for a limited time period ("Term") or on a subscription or maintenance basis as specified herein.

ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

All Azteca Systems Offerings are the copyrighted works of Azteca Systems. Azteca Systems or its licensors own the Products and all copies, which are protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights, including trade secrets. This Agreement does not transfer ownership rights of any description in the software, materials, products, or services to Licensee or any third party. Licensee agrees to use reasonable means to protect Products from unauthorized use, reproduction, distribution, or publication. All rights not specifically granted in this Agreement are reserved to Azteca Systems and its licensor(s). Azteca Systems does not acquire any rights in Customer Content under this Agreement other than as needed to provide Azteca Offerings and Services to Customer.

ARTICLE 3—GRANT OF LICENSE

- 3.1 **Grant of License.** Subject to the terms of this Agreement, Azteca Systems grants to Licensee a personal, nonexclusive, nontransferable license solely to use the Products as set forth in Addendum #1 – Product Licensing (i)

for which the applicable license fees have been paid; (ii) for Licensee's own internal use; (iii) in accordance with this Agreement and the configuration ordered by Licensee or as authorized by Azteca Systems; and (iv) for the applicable Term or until terminated in accordance with Article 6. License types may include, but are not limited to Login, Workgroup, Departmental, ELA (Enterprise License) licenses. Licensee may allow Third-Party Contractors to access and use the licensed Software, provided Licensee and Third-Party Contractor agree to and are bound by the terms set forth in Addendum 3. In addition to the Scope of Use in Article 4, Addendum #1 – Product Licensing which applies to specific Products, Addendum #2 – Standard Maintenance and Support, and Addendum #3 – Third-Party Contractor Acknowledgment (if applicable) collectively, are incorporated by reference into this Agreement.

- a. *Software.* Use and license for specific Software products are set forth in Addendum #1– Product Licensing, which is incorporated by reference.
- b. *Maintenance.* Maintenance terms are set forth in Section 9.11 below and in Addendum #2 – Standard Maintenance and Support, which terms are incorporated by reference.
- c. *Third Party Contractor.* Terms of use for Third-Party Contractor software usage (if applicable) are set forth in Addendum #3 – Third-Party Contractor Acknowledgment, which is incorporated by reference.

3.2 **Delivery.** Unless otherwise agreed, Azteca Systems shall provide an electronic link to make available to Licensee the Licensed Products by electronic download and a license key to activate the Licensed Products.

ARTICLE 4—SOFTWARE AND ONLINE SERVICES

4.1 Software Terms of Use

- a. For Products delivered to Licensee, Licensee may:
 1. Install, access, and store Products on electronic storage device(s);
 2. Make archival copies and routine computer backups;
 3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed the Licensee's licensed quantity; thereafter, Licensee shall not use more Software in the aggregate than Licensee's total licensed quantity;
 4. Move the Software in the licensed configuration to a replacement server; and
 5. Governmental or not-for-profit organization that operate a website or offer internet services may use server Software for revenue-generating purposes on a cost-recovery basis and not for profit.
- b. Licensee may use, copy, or prepare derivative works of Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portions of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this Agreement. Licensee shall include the following copyright attribution notice acknowledging the proprietary rights of Azteca Systems and its licensors: "Portions of this document include intellectual property of Azteca and its licensors and are used herein under license. Copyright © [Licensee will insert the actual copyright date(s) from the source materials] Azteca Systems, LLC. and its licensors. All rights reserved."
- c. *Consultant or Contractor Access.* Subject to Section 3.1 and Addendum #3, Azteca Systems grants Licensee the right to permit Licensee's Third-Party Consultants or Contractors to use the Products exclusively and solely for Licensee's benefit. Licensee must comply with terms and provisions of Addendum #3 and provide a copy to Azteca Systems. Licensee shall be solely responsible for compliance by Third-Party Consultants and Contractors with this Agreement and shall ensure that the Third-Party Consultant or Contractor discontinues Product use upon completion of work for Licensee. Access to or use of Products by Third-Party Consultants or Contractors not exclusively for Licensee's benefit is prohibited.

4.2 Online Services Terms of Use

- a. **Use of Online Services** is also subject to the Cloud Services Terms found in Addendum #2.
- b. **Modification of Online Services.** Azteca Systems may change Online Services and associated APIs at any time, subject to 30 days' notice of material changes and 90 days' notice for deprecations. If any

modification, discontinuation, or deprecation of Online Services causes a material, adverse impact to Customer's operations, Azteca Systems may, at its discretion, attempt to repair, correct, or provide a workaround for Online Services. If a viable solution is not commercially reasonable, Customer may cancel its subscription to Online Services, and Azteca Systems will issue a prorated refund.

4.3 Named User Licenses. Except as expressly set forth in this Agreement, the following terms apply to Software and Online Services for which Customer acquires Named User Licenses.

a. Named Users.

1. Named User login credentials are for designated users only and may not be shared with other individuals.
2. Customer may reassign a Named User License to another user if the former user no longer requires access to the Software or Online Services.
3. Customer may not add third parties as Named Users, other than third parties included within the definition of Named Users.

4.4 Limited-Use Programs.

a. Trial, Evaluation, and Beta Programs. Products acquired under a trial, evaluation, or beta program are licensed for evaluation and testing purposes only and not for commercial use. Any such use is at Customer's own risk and the Products do not qualify for Maintenance. If Customer does not convert to a purchased license or subscription prior to the expiration of the trial, evaluation, or beta license, Customer may lose any Customer Content and customizations made during the license term. If Customer does not wish to purchase a license or subscription, Customer should export such Customer Content before the license expires.

b. Educational Programs. Licensee agrees to use Products provided under an educational program solely for educational purposes during the educational use Term. Licensee shall not use Products for any Administrative Use unless Customer has acquired an Administrative Use license. "Administrative Use" means administrative activities that are not directly related to instruction or education, such as asset mapping, facilities management, demographic analysis, routing, campus safety, and accessibility analysis. Customer shall not use Products for revenue-generating or for-profit purposes.

c. Other Azteca Systems Emergency or Limited-Use Programs. If Licensee acquires Products under any limited-use program not listed above, Licensee's use of the Products may be subject to the terms set forth in the applicable launching page, letter, or enrollment form or as described on Azteca's website in addition to the nonconflicting terms of this Agreement.

4.5 Uses Not Permitted. Except to the extent that applicable law prohibits or overrides these restrictions, or as provided herein, Licensee shall not:

- a. Sell, rent, lease, sublicense, lend, assign, or time-share Licensed Software or Products;
- b. Permit persons other than Authorized Users to access or use the Licensed Products (or any part thereof);
- c. Act as a service bureau or Commercial ASP;
- d. Use Software, Data, or Documentation for a site or service and operate the site or service for profit or generate revenue through direct or indirect methods (e.g., advertising or by charging for access to the site or service);
- e. Redistribute Software, Data, or Online Services to third parties, in whole or in part, including, but not limited to, extensions, components, or APIs;
- f. Distribute Authorization Codes to third parties;
- g. Reverse engineer, decompile, or disassemble Products;
- h. Make any attempt to circumvent the technological measure(s) that controls access to or use of Licensed Products;
- i. Upload or transmit content or otherwise use Products in violation of third-party rights, including intellectual property rights, privacy rights, nondiscrimination laws, or any other applicable law or government regulation;
- j. Remove or obscure any Azteca Systems (or its licensors') patent, copyright, trademark, proprietary rights notices, and/or legends contained in or affixed to any Product, Product output, metadata file, or online and/or hard-copy attribution page of any Data or Documentation delivered hereunder;
- k. Unbundle or independently use the individual or component parts of Software or Online Services;

- l. Incorporate any portion of the Software into a product or service that competes with the Software;
- m. Publish the results of benchmark tests run on Software without the prior written permission of Azteca Systems; or
- n. Use, incorporate, modify, distribute, provide access to, or combine any computer code provided with the Software in a manner that would subject such code or any part of the Software to open source license terms, which includes any license terms that require computer code to be (i) disclosed in source code form to third parties, (ii) licensed to third parties for the purpose of making derivative works, or (iii) redistributable to third parties at no charge.

ARTICLE 5—AZTECA SYSTEMS MANAGED CLOUD SERVICES

5.1 **Definitions.** The following are supplemental definitions provided in Article 1.

- a. “Azteca Managed Cloud Services” means the hardware, Software, Data, network platform that Azteca Systems or its third-party supplier provides as part of Azteca Managed Cloud Services.
- b. “Hosting” means the business of housing and making accessible Licensee Content via the internet.

5.2 **Provision of Azteca Managed Cloud Services.**

- a. **General Terms.** Use of Azteca Systems Managed Cloud Services is subject to the Cloud Services terms found in Addendum #2 of this Agreement.
- b. **Requirements Planning.** It is Customer's responsibility to plan for and address with Azteca Systems changes to Customer's requirements, such as the need for additional capacity, the update of an application or dataset, or increased level of system availability.
- c. **Compensation and Expenses.** Azteca Systems will invoice Customer annually for the Azteca Systems Managed Cloud Services to be provided the upcoming year. Customer will pay invoices within 30 days of receipt. Customer is responsible for any shipping or temporary storage costs incurred during the delivery of Customer Content to Azteca Systems or removal of Customer Content from the Azteca Systems Managed Cloud Services environment.
- d. **Risk of Loss.** Risk of loss for all Customer Content shall at all times remain with Customer, and it is Customer's sole responsibility to maintain regular backups of Customer Content.
- e. **Personally Identifiable Information.** Prior to providing any Customer Content under this Agreement, Customer shall notify Azteca Systems if Customer Content includes personally identifiable information.
- f. **Public Software.** Customer may not use, and may not authorize its end users or contractors to combine or use any Azteca Systems Offerings with any software (including any underlying dependencies), documentation, or other material distributed under an open source or other similar licensing or distribution model that requires as a condition of such model that any component of the Azteca Systems Offering to be (i) disclosed or distributed in source code form, (ii) made available free of charge to third parties, or (iii) modifiable without restriction by third parties.
- g. **Monitoring.** Licensee will provide information and other materials related to its Licensee Content as reasonably requested by Azteca Systems or its Hosting partner to verify Azteca's or Licensee's compliance with this Agreement. Azteca Systems or its Hosting partner, as applicable, may browse, index, or otherwise monitor the external interfaces of any Licensee Content solely for the purpose of verifying compliance with this Agreement.

ARTICLE 6—TERM AND TERMINATION

6.1. The initial term of this Agreement will begin on the Effective Date, or upon such latter dates set forth in Addendum #1, and in each case provided a valid purchase authorization is issued. This Agreement may then be renewed annually by payment of the then current maintenance fees for the next annual maintenance period as set forth in Addendum #1.

6.2. Either party may terminate this Agreement or any Product license for a material breach that is not cured within thirty (30) days of written notice to the breaching party, except that termination shall be deemed to have immediate effect for a material breach that is impossible to cure.

6.3. **Termination by Licensee for Convenience.** In the event that either funding from Licensee or other sources is

withdrawn, reduced, or limited, or the authority of Licensee to perform any of its duties is withdrawn, reduced, or limited in any way after the Effective Date of this Agreement, or for convenience, Licensee may terminate subsequent Term Maintenance Periods by giving Azteca Systems at least thirty (30) days' written notice prior to the end of the current Term Maintenance Period. The effective date of such termination will be the start of the subsequent Term. If terminated prior to current term, no refund is provided unless termination is made prior to the first 90 days of the initial term period.

6.4. Termination by Azteca Systems. Azteca Systems may terminate this Software License and Maintenance Agreement and/or any license granted hereunder if:

- a. Licensee violates its obligations under this Software License and Maintenance Agreement and fails to cure the breach within thirty (30) days after Azteca Systems' written notification, provided however, that no cure period prior to termination will be required as noted in section 6.2.
- b. Licensee ceases to do business in the ordinary course, or becomes insolvent, enters bankruptcy, reorganization, composition or other similar proceedings under applicable laws, whether voluntary or involuntary, or admits in writing its inability to pay its debts, or makes or attempts to make an assignment for the benefit of creditors. Such termination shall be effective upon notice to such party or as soon thereafter as is permitted by applicable law.

6.5. Upon termination of the License and Maintenance Agreement, all Product licenses granted hereunder terminate as well. Upon termination of a License or the Software License and Maintenance Agreement, Licensee will (i) stop accessing and using affected Product(s); (ii) clear any client-side data cache derived from Online Services; and (iii) uninstall, remove, and destroy all copies of affected Product(s) in Licensee's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Azteca Systems.

6.6. If this Agreement is terminated per section 6.3, the Licensee is only liable for payment required by the terms of this Agreement for license, maintenance, and support services rendered or products and software received and accepted prior to the effective date of termination.

6.7. If this Agreement is terminated per section 6.3 or 6.4, Licensee shall then return to Azteca Systems all of the Software, related modules, related updates, and any whole or partial copies, codes, modifications, and merged portions in any form. Azteca will then, for no additional charge to Licensee and at Licensee's option, either grant a license to the Licensee for a period of one (1) year, which will allow Licensee to retain the ability to access records and data contained in the Software, or allow Licensee to create digital copies of all files needed by the Licensee for the same period. Upon termination, Azteca Systems will no longer provide updates, patches, or support. If Licensee needs to retain access to records or data for a period longer than one (1) year, in order to transfer data to another system, Azteca will consider reasonable requests to extend beyond one (1) year.

6.8. If Licensee has an Online Services Subscription, Managed Cloud Services, or Online Services Product, then upon termination per section 6.3 or 6.4, Azteca Systems will provide Licensee the ability for 30 days to download, backup, or otherwise archive all Licensee Data.

6.9. The parties hereby agree that all provisions which operate to protect the intellectual rights of Azteca Systems shall remain in force should breach or termination of any kind occur.

ARTICLE 7—LIMITED WARRANTIES AND DISCLAIMERS

7.1 Limited Warranties. Except as otherwise provided in this Article 7, Azteca Systems warrants for a period of ninety (90) days from the date Azteca Systems issues the Authorization Code enabling use of Software and that the unmodified Software will substantially conform to the published Documentation under normal use and service.

7.2 Special Disclaimer. Third-Party Content; Data; Samples; hot fixes; patches; updates; Online Services provided at no charge; and trial, evaluation, and beta Products are delivered "as is" and without warranty of any kind.

7.3 Disclaimers.

- a. **Internet Disclaimer.** Neither party will be liable for damages under any theory of law related to the performance or discontinuance of operation of the internet or to regulation of the internet that might restrict or prohibit the operation of Cloud Services.
- b. **Third-Party Websites; Third-Party Content.** Azteca Systems is not responsible for any third-party website or third-party content that appears in or is referenced by Azteca Systems Products or Azteca Systems websites, including www.cityworks.com and <https://mycityworks.force.com>. Providing links to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.

7.4 General Disclaimer. Except for the express limited warranties set forth in this Agreement, Azteca Systems disclaims all other warranties or conditions of any kind, whether express or implied, including, but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, or non-infringement of intellectual property rights. Azteca Systems is not responsible for any nonconformities with Specifications or loss, deletion, modification, or disclosure of Licensee Content caused by Licensee's modification of any Azteca Systems Product or Service other than as specified in the Documentation. Azteca Systems does not warrant that Products and Services hereunder or Licensee's operation of the same, will be uninterrupted, error free, fault-tolerant, or fail-safe or that all nonconformities can or will be corrected. Products are not designed, manufactured, or intended for use in environments or applications that may lead to death, personal injury, or physical property/environmental damage. Licensee should not follow any suggestions or instructions that appear to be hazardous, unsafe, or illegal. Any such use shall be at Licensee's own risk and cost.

7.5 If Licensee utilizes data fields available in the Licensed Products to store data not required for the normal use and operation of our Licensed Products and Software for their intended purpose, Licensee agrees (i) that Azteca Systems is not responsible for compliance with laws, rules and regulations specific to such Data (eg. HIPAA or PCI Rules); and (ii) Licensee assumes all risks associated with, related to, or arising from Licensee's use of data fields to store such data.

7.6 Exclusive Remedy. Licensee's exclusive remedy and Azteca Systems' entire liability for breach of the limited warranties set forth in this Section shall be limited to replace any defective media; (i) repair, correct, or provide a workaround for the applicable Products or Services and subject to the Azteca Systems Maintenance Services and Support Addendum; or (ii) at Azteca Systems election, terminate Licensee's right to use and refund the fees paid for Azteca Systems Products or Services that do not meet Azteca Systems limited warranties, provided that Licensee uninstalls, removes, and destroys all copies of Software or Documentation; ceases using the Software or Online Services; and executes and delivers evidence of such actions to Azteca Systems.

ARTICLE 8—LIMITATION OF LIABILITY

8.1 Disclaimer of Liability. Neither Licensee, Azteca Systems, nor any Azteca Systems distributor or third party licensor will be liable for any indirect, special, incidental, or consequential damages; lost profits; lost sales; loss of goodwill; costs of procurement of substitute goods or services; or damages exceeding the applicable license fees paid for the current Term support period, or current Subscription fees, or Services fees actually paid to Azteca Systems for the Azteca Systems Products or Services giving rise to the cause of action.

8.2 The limitations and exclusions of liability in the preceding paragraph do not apply to Licensee's infringement, misuse, or misappropriation of Azteca Systems or Azteca Systems licensors' intellectual property rights, either party's indemnification obligations, gross negligence, willful misconduct, or violations of the Export Compliance clause of this Agreement or any applicable law or regulation.

8.3 Applicability of Disclaimers and Limitations. Azteca Systems (or its authorized distributor if any) has set its fees and entered into this Agreement in reliance on the disclaimers and limitations in this Agreement; the fees reflect an allocation of risk that is an essential basis of the bargain between the parties. **These limitations will apply whether or not a party is aware of the possibility of any damage and notwithstanding any failure of essential purpose of any exclusive, limited remedy.**

8.4 The foregoing warranties, limitations, and exclusions may be invalid in some jurisdictions and apply only to the extent permitted by applicable law or regulation in Licensee's jurisdiction. Licensee may have additional rights under

law that may not be waived or disclaimed. Azteca Systems does not seek to limit Licensee's warranty or remedies to any extent not permitted by law.

ARTICLE 9—INDEMNIFICATIONS

9.1 Definitions. The following definitions supplement the definitions provide in Article 1:

- a. "Claim" means any claim, action, or demand by a third party.
- b. "Indemnitees" means Customer and its directors, officers, and employees.
- c. "Infringement Claim(s)" means any Claim alleging that Customer's use of or access to any Azteca Systems Products or Services infringes a patent, copyright, trademark, or trade secret.
- d. "Loss(es)" means expenditure, damage award, settlement amount, cost, or expense, including awarded attorney's fees.

9.2 Infringement Indemnity.

- a. Azteca Systems will defend, hold all indemnitees harmless from and against any Loss arising out of an Infringement Claim.
- b. If Azteca Systems determines that an Infringement Claim is valid, Azteca Systems may, at its expense, either (i) obtain rights for Customer to continue using the Azteca Systems Products or Services or (ii) modify the Azteca Systems Products or Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, Azteca Systems may terminate Licensee's right to use the Azteca Systems Products or Services and will refund any unused portion of fees paid for Term Licenses, Subscriptions, and Maintenance.
- c. Azteca Systems has no obligation to defend an Infringement Claim or to indemnify Customer to the extent the Infringement Claim arises out of (i) the combination or integration of Azteca Systems Products or Services with a product, process, or system or element not supplied by Azteca Systems or specified by Azteca Systems in its Documentation, (ii) alteration of Azteca Systems Products or Services by anyone other than Azteca Systems or its subcontractors, (iii) compliance with Licensee's specifications, or (iv) use of Products or Services after Azteca Systems either provides a modified version to avoid infringement or terminates Licensee's right to use the Products or Services.

9.3 General Indemnity. Azteca Systems will defend and hold all Indemnitees harmless from, and indemnify any Loss arising out of, any Claim for bodily injury, death, or tangible or real property damage brought against any of the Indemnitees to the extent arising from any negligent act or omission or willful misconduct by Azteca Systems or its directors, officers, employees, or agents performing Services while on Customer's site.

9.4 Conditions for Indemnification. As conditions for indemnification, Indemnatee will (i) promptly notify Azteca Systems in writing of the Claim, (ii) provide all available documents describing the Claim, (iii) give Azteca Systems sole control of the defense of any action and negotiation related to the defense or settlement of any Infringement Claim, and (iv) reasonably cooperate in the defense of the Infringement Claim at Azteca Systems request and expense.

9.5 This section sets forth the entire obligation of Azteca Systems, its authorized distributor (if any), and its third-party licensors (if any) regarding any Claim for which Azteca Systems must indemnify Licensee.

ARTICLE 10—GENERAL PROVISIONS

10.1 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, re-export, import, transfer, or release Products, in whole or in part, to (i) any US embargoed country, (ii) any person on the US Treasury Department's list of Specially Designated Nationals, (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List, or (iv) any person or entity or into any country where such export, re-export, or import violates any US, local, or other applicable import/export control laws or regulations including, but not limited to, the terms of any import/export license or license exemption and any amendments and supplemental additions to those import/export laws as they may occur from time to time.

10.2 Taxes and Fees, Shipping Charges. License and Subscription fees quoted to Licensee are exclusive of any and all taxes or fees, including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.

10.3 **No Implied Waivers.** The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

10.4 **Severability.** The parties agree that if any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

10.5 **Successor and Assigns.** Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate Licensee's obligations under this Agreement without Azteca Systems' prior written consent, and any attempt to do so without consent shall be void. This Agreement shall be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a government contractor under contract to the government to deliver Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Azteca Systems, provided the government customer assents to the terms of this Agreement.

10.6 **Survival of Terms.** The provisions of Articles 2, 6, 7, 8, 9 and 10 of this Agreement, and the provisions of section 4.1 of Addendum #2, shall survive the expiration or termination of this Software License and Maintenance Agreement.

10.7 **US Government Licensee.** The Products are commercial items, developed at private expense, provided to Licensee under this Agreement. If Licensee is a US government entity or US government contractor, Azteca Systems licenses Products to Licensee in accordance with this Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Azteca Systems Data and Online Services are licensed under the same subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. The commercial license rights in this Agreement strictly govern Licensee's use, reproduction, or disclosure of Products. Azteca Systems Software source code is unpublished, and all rights to Products are reserved by Azteca Systems and its licensors. Licensee may transfer Software to any licensed government procuring agency facility to which computer(s) on which Software is installed are transferred. If any court, arbitrator, or board holds that Licensee has greater rights to any portion of Products under applicable public procurement law, such rights shall extend only to the portions affected.

10.8 **Governing Law.** This Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods.

- **Government Entities.** If Licensee is a government entity, the applicable laws of the Licensee's jurisdiction govern this Agreement.
- **Nongovernment Entities.** US federal law and the law of the State of Utah exclusively govern this Agreement, excluding their respective choice of law principles.

10.9 **Dispute Resolution.** The parties will use the following dispute resolution process:

- **Equitable Relief.** Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.
- **US Government Agencies.** This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601-613).
- **Other Government Entities.** Azteca Systems will comply with mandatory dispute resolutions under applicable law.
- **Negotiation and Litigation.** The parties will attempt negotiation in good faith and a spirit of mutual cooperation. Except as noted above, if the parties are unable to resolve any dispute through negotiation, then the governing law shall be as set forth in section 10.8.

10.10 **Maintenance.** Maintenance for qualifying Software consists of updates (provided on a when-and-if available basis) and other benefits, such as access to technical support, which are provided during the Term. Maintenance is specified as set forth in Addendum #2.

10.11 **Audit.** Upon Azteca System's written request, Licensee shall certify in a signed writing that its use of the Licensed Product is in full compliance with the terms of this Agreement (including any restrictions herein). Azteca

Systems, or its authorized representative, may, upon prior reasonable notice of at least ten (10) days, inspect and audit Licensee's records and use of the Licensed Products to confirm compliance with this Agreement. All such inspections and audits will be conducted during regular business hours and in a manner that does not unreasonably interfere with ordinary business activities. Licensee shall be responsible for any audit costs only in the event that such audit reveals that Licensee's use is not in accordance with the permitted uses under this Agreement, and for unpaid license fees.

10.12 Feedback. Azteca Systems may freely use any feedback, suggestions, or requests for Product improvements that Licensee provides to Azteca Systems. Regardless of the source of any feedback or suggestions, any improvements to Software or Products, and any related intellectual property, are owned by Azteca Systems.

10.13 Patents. Licensee may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Azteca Systems technology or services. This express prohibition on patenting shall not apply to Licensee's software and technology except to the extent that Azteca Systems technology or services, or any portion thereof, are a part of any claim or preferred embodiment in a patent application or a similar application.

10.14 Force Majeure. A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may include, but are not limited to, acts of God, war, strikes, labor disputes, cyber-attacks, laws, regulations, government orders, or any other force majeure event.

10.15 Independent Contractor. Azteca Systems is and at all times will be an independent contractor. Nothing in this Agreement creates an employer/employee, principal/agent, or joint venture relationship between Azteca Systems and the Licensee. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

10.16 Entire Agreement. This Agreement, including its incorporated documents, addendums, and exhibits constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous license agreements, understandings, and arrangements between the parties relating to such subject matter. Additional or conflicting terms set forth in any purchase orders, invoices, or other standard form documents exchanged during the ordering process, other than product descriptions, quantities, pricing, and delivery instructions, are void and of no effect. Any modification(s) or amendment(s) to this Agreement must be in writing and signed by each party or as otherwise provided in Addendum #1.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and made effective by their respective authorized representatives.

AZTECA SYSTEMS, LLC

CITY OF KILLEEN, TX – (LICENSEE)

By: _____

By: _____

Name: Brian L. Haslam

Name: _____

Title: President - CEO

Title: _____

Date: ____/____/____

Date: ____/____/____

ADDENDUM #1

PRODUCT LICENSING

1. Licensed Software:

Server AMS Essentials Enterprise License Agreement (ELA), Includes Unlimited Quantities of the Identified Products:
Office

Additional Software Products & Licenses & Annual Renewals: Additional Software Products & Licenses may be added to this Agreement as well as annual renewals of this Agreement with either an acknowledgement of an official Cityworks quote signed by Licensee and additional fees, if necessary or applicable being paid, or receipt of Purchase Order from Licensee in response to an official Cityworks quote and additional fees, if applicable, being paid.

2. Notices & Licensee Information: Until or unless otherwise modified, all notices relevant to this agreement shall be sent to the following address:

Azteca Systems, LLC 11075 South State, Suite 24 Sandy, Utah 84070	City of Killeen 101 N College Street Killeen, TX 76541
	Attn: Willie Resto
	E-mail: wresto@killeentexas.gov
	Phone: 254.501.7649

3. Effective Date of Software (Date Software made available)

MM/DD/YYYY

03/08/2022

4. Schedule of Payments and/or Fees under Agreement

Annual Period	Date From/To (mm/dd/yyyy)	Amount
Period 1	03/08/2022 – 03/07/2023	\$60,000.00
Period 2	03/08/2023 – 03/07/2024	\$71,750.00
Period 3	03/08/2024 – 03/07/2025	\$73,500.00

5. Additional Items (If Any):

a. If Licensee is receiving an Online product, the following apply:

- i. **CWOL – Cityworks Online:** Cityworks Online (CWOL) – is a Cityworks Online hosted services subscription for the right to access and use the Online Services for the products identified

hereinabove. CWOL is a highly scalable hosted services product offering.

- ii. **CWOL** is hosted on Azteca Systems' servers and completely scaled, managed, updated, backed up, and maintained by Azteca Systems. Because Azteca Systems controls the update schedule, users are not responsible for upgrading, managing, or patching the system themselves.
- b. Annual fee herein is based on a 100,001 - 150,000 population range.

ADDENDUM #2

STANDARD MAINTENANCE AND SUPPORT

Standard Maintenance and Support Addendum provisions are between the Licensee and Azteca Systems, LLC ("Azteca Systems" or "Azteca"). Maintenance and support are provided subject to the terms and conditions of the signed Software License and Maintenance Agreement, and which is incorporated by reference.

1. **MAINTENANCE & SUPPORT:** Azteca Systems will provide maintenance and support services to Licensee for qualifying Products during the applicable Term for such Products provided the applicable license and maintenance fees have been paid for the times and periods and amounts specified in Addendum #1. Maintenance and Support services consist of the following benefits: maintenance items (provided on a when-and-if available basis) which may include subsequent version releases of the licensed software, service packs, upgrades and updates, and technical support.

- 1.1. Azteca Systems will ensure upward compatibility for the licensed software applications within a reasonable timeframe for minor Esri® ArcGIS and Cityworks supported database revisions. Azteca Systems will not ensure upward compatibility for licensed software applications when there are major Esri ArcGIS revisions (for example, from rev 10.x to rev 11.x), however Azteca Systems will make all reasonable efforts to provide upward compatibility.

- 1.2. Azteca Systems shall, without additional charge (except as allowed for in paragraph 3.4), during the term of this Agreement provide the following:

- a. **Software Updates.** Software Updates includes upgrades and service packs which are a collection of files that enhance or correct the licensed software, and which will be available for Licensee to download during the Maintenance Term/Period. Updates and upgrades may also include new versions;
 - b. Provide Telephone Support, Email Support, Web Support, during normal business hours, 8 AM to 5 PM Mountain Time, Monday through Friday (excepting Holidays) and after hour emergency support line, and other benefits deemed appropriate by Azteca Systems (as set forth in Section 2 below); and
 - c. Implement and maintain a means of secure, remote direct network access (VPN, Web-access, etc.) to the Licensee's systems in order to perform thorough remote diagnostics.

- 1.3 The following items, among others, however, are specifically excluded as support services under this Addendum:

- a. Support for applying or installing upgrades and service packs (except for Online Products);
 - b. Assistance with questions related to third-party software, computer hardware, networking, and other similar items that are not provided by Azteca;
 - c. Assistance with computer operating system questions not directly pertinent to the licensed software;
 - d. Licensee Data debugging and/or correcting;
 - e. Services necessitated as a result of any cause other than authorized ordinary and proper use by the Licensee of the licensed software, including but not limited to neglect, abuse, unauthorized modifications, and/or unauthorized updates;
 - f. Consulting regarding customizations created to function with the licensed software unless the customization is identified and listed as licensed software in Addendum #1;
 - g. Assistance with applications which are not part of a standard life cycle, such as preview, beta, or candidate releases; and
 - h. Questions such as configuration, implementation, and walk-throughs.

- 1.4 Support Periods are renewable unless terminated as provided in Section 3 below.

- 1.5. Technical support provided pursuant these maintenance provisions shall be performed in a professional and workmanlike manner. Azteca Systems will use commercially reasonable efforts to provide corrections to a

technical issue or provide a workaround, but Azteca Systems cannot guarantee that all technical issues can be fixed or resolved.

1.6. **Authorized Callers.** Licensee may designate a limited number of authorized callers per software product listed in Addendum #1. Licensee may replace Authorized Callers at any time by notifying Azteca Systems Support services. Authorized callers may be designated in this Addendum #2 or by email. Azteca may limit the total number of authorized callers as may be reasonably necessary and may request an updated list of authorized callers.

1.7. **Cityworks Online Support and Customer Portal.** Azteca has created a self-help support website center for Authorized Callers to submit technical issues, chat with technical specialists, track technical support incidents through the 'MyCityworks' portal, and view technical articles, updated product documentation, blogs, links to forums, and technology announcements. The support and care website can be found at <http://www.mycityworks.com>.

1.8. **Additional Support Items.**

- a. On a when-and-if available basis, updates to the licensed software (Addendum #1) means subsequent releases of the program which Azteca generally makes available to its customers who are under an active Software License and Maintenance Agreement for which fees have been paid for the relevant support period.
- b. Occasionally, Azteca changes the name of its licensed software as part of its ongoing process to improve and increase the functionality of the software. In the event the software licensed or listed in Addendum #1 changes in name, and/or improvements are made, Azteca will provide software with functionality that is similar to or with substantially the same or greater functionality of the originally licensed software, provided all current license or maintenance fees have been paid.
- c. Updates may not always include any release, option, or future program that Azteca licenses separately. Updates are provided on a when-and-if available basis as determined by Azteca Systems. Azteca Systems is under no obligation to develop any future programs or functionality. Any updates made available will be made available to you for download. Customer is responsible for copying, downloading, and installing the updates.

2. PROCEDURES FOR ACCESSING SUPPORT

2.1. All problem categories from routine, non-critical and critical, that occur during normal business hours shall procedurally occur as follows: 1) Licensee's system administration staff as first line of support, and then 2) Azteca Systems staff as the second line of support. Azteca Systems will make all reasonable efforts to acknowledge all requests for support during normal business hours within four (4) hours.

2.2. Prior to calling Azteca Systems for support services, the Licensee will first attempt to isolate any problems that occur within the Licensee's System. The Licensee will try to reduce the problem down to a specific software or system component. If it is determined that the problem is the Cityworks Software component, Licensee will first try and resolve the problem without Azteca Systems' involvement. If Licensee cannot resolve the problem or isolate the problem, Licensee may contact Azteca Systems via telephone, chat, or self-service portal. In each case, Cityworks technical support will log the information and provide an answer to the question, a resolution to the problem, or submit a verified bug to the development group. Any support request that is not quickly resolved will be assigned to a technical support representative. Phone calls and chat requests are accepted during normal business hours as outlined on the Contact Support page of MyCityworks.com. Voicemails and requests submitted via the self-service portal outside of the posted business hours will be responded to on a first come, first served basis the next business day.

2.3. For critical problems that occur outside of Azteca Systems' normal business hours (8 AM to 5 PM, Mountain Time) and cannot be isolated and resolved by the Licensee, Azteca Systems will provide an after-hours phone number that will forward the call to the currently assigned Azteca Systems support representative.

Azteca Systems will make all reasonable efforts to acknowledge and respond to the request for support for critical problems that occur outside of normal business hours within four (4) hours of receipt of the call from a designated and authorized Licensee representative. Critical problems are defined as problems that cause several users to be unable to perform their duties. For routine and non-critical problems, Licensee will submit support requests during normal business hours as outlined in 2.2 above.

2.4. After a Technical Support Incident is logged, Azteca Systems will use commercially reasonable efforts to provide corrections to a technical issue or provide a work around. While it is Azteca's goal to provide an acceptable solution to technical issues, Azteca cannot guarantee that all technical issues can be fixed or resolved.

2.5. Azteca will use all reasonable efforts to utilize remote support-type services. However, in the event Licensee and Azteca Systems agree it becomes necessary for Azteca Systems to be on-site to provide support for the covered Software, the parties by mutual negotiation, shall develop a separate agreement that will govern the terms and conditions for any on-site work or services.

3. CHARGES/FEEES

3.1. License, Maintenance, and Support Services herein are included in the payment of annual fees as set forth in Addendum #1 and shall be paid by Licensee. The annual fee for each twelve (12) month period is set forth in Addendum #1 and shall be paid prior to the start for each License and Maintenance Period unless otherwise specified. The annual fee for successive Terms/Periods (twelve-month periods) commencing upon the anniversary of the first maintenance period, shall become due prior to the end of the preceding paid-up Maintenance Period.

3.2. Upon sixty (60) days written notice, the fee for the License and Maintenance Periods listed in Addendum #1 subsequent to year one (1) of the Maintenance Period, may be adjusted by Azteca Systems to reflect increases in costs of providing the services; provided, however, that the fee shall not increase by more than the CPI from the previous annual fee. "CPI" shall mean for all Urban Consumers, the U.S. City Average, for all items, 1982-84=100 (the "CPI-U"), as published by the Bureau of Labor Statistics, U.S. Department of Labor. Azteca Systems will notify Licensee of the new pricing no later than sixty (60) days prior to the annual renewal date of the year preceding the year for which such adjusted pricing applies.

3.3. **Maintenance Expiration.** Azteca Systems will send Licensee a notice of expiration approximately sixty (60) days before the Maintenance term expires. If Azteca Systems does not receive a purchase order prior to the expiration date, Azteca will send the notification to Licensee upon expiration of the Maintenance term. All other Maintenance benefits and Support services will end with the expiration of the Maintenance term.

3.4. **Reinstatement Fee for Lapsed Maintenance.** Azteca Systems will reinstate Maintenance if Licensee sends a purchase order or payment within thirty (30) days of the expiration date. If Licensee does not renew Maintenance within thirty (30) days of the expiration date but at a later date wants to reinstate Maintenance, Maintenance fees will include the Maintenance fees that Licensee would have paid since the expiration date.

4. MANAGED CLOUD AND ONLINE SERVICES

4.1. **Prohibited Uses.** Licensee shall not provide Customer Content or otherwise access or use Cloud Services in a manner that:

- a. Creates or transmits spam, spoofings, phishing emails, or offensive or defamatory material; or stalks or makes threats of physical harm;
- b. Stores or transmits any Malicious Code;
- c. Violates any law or regulation;
- d. Infringes or misappropriates the rights of any third party;

- e. Probes, scans, or tests the vulnerability of Cloud Services or breaches any security or authentication measures used by Cloud Services without written approval from Azteca Systems product security officer; or
- f. Benchmarks the availability, performance, or functionality of Cloud Services for competitive purposes.

4.2. **Service Interruption.** System failures or other events beyond Azteca's reasonable control may interrupt Customer's access to Cloud Services. Azteca Systems may not be able to provide advance notice of such interruptions.

4.3. **Licensee Content.**

- a. Licensee grants Azteca Systems and its subcontractors a nonexclusive, nontransferable, worldwide right to host, run, modify, and reproduce Licensee Content as needed to provide Cloud Services to Licensee. Azteca Systems will not access, use, or disclose Customer Content without Customer's written permission except as reasonably necessary to support Customer's use of Cloud Services. Except for the limited rights granted to Azteca Systems under this Agreement, Customer retains all its rights, title, and interest in the Customer Content.
- b. If Customer accesses Cloud Services with an application provided by a third party, Azteca Systems may disclose Customer Content to such third party as necessary to enable interoperation between the application, Cloud Services, and Customer Content.
- c. Azteca Systems may disclose Customer Content if required to do so by law or regulation or by order of a court or other government body, in which case Azteca Systems will reasonably attempt to limit the scope of disclosure.
- d. When Customer's use of Cloud Services ends, Azteca Systems will either:
 - 1. Make Customer Content available to Customer for download for a period of thirty (30) days unless Customer requests a shorter window of availability or Azteca Systems is legally prohibited from doing so; or
 - 2. Download all Customer Content in Azteca Systems' possession to a medium of Customer's choosing and deliver such Customer Content to Customer.

Azteca Systems will have no further obligations to store or return Customer Content at the conclusion of the Cloud Services.

4.4. **Removal of Customer Content.** Azteca Systems may remove or delete Customer Content if there is reason to believe that uploading Customer Content to or using it with Cloud Services materially violates this Agreement. If reasonable under these circumstances, Azteca Systems will notify Customer before removing Customer Content. Azteca Systems will respond to any Digital Millennium Copyright Act takedown notices in accordance with Azteca Systems copyright policy, available at www.cityworks.com/legal.

4.5. **Service Suspension.** Azteca Systems may suspend access to Cloud or Online Services (i) if Customer materially breaches this Agreement and fails to timely cure the breach, (ii) if Azteca Systems reasonably believes that Customer's use of Cloud Services will subject Azteca Systems to immediate liability or adversely affect the integrity, functionality, or usability of the Cloud Services, (iii) for scheduled maintenance, (iv) to enjoin a threat or attack on Cloud Services, or (v) if Cloud Services become prohibited by law or regulated to a degree that continuing to provide them would impose a commercial hardship. When feasible, Azteca Systems will notify Customer of any Cloud Services suspension beforehand and give Customer reasonable opportunity to take remedial action.

Azteca Systems is not responsible for any damages, liabilities, or losses that may result from any interruption or suspension of Cloud Services or removal of Customer's content as described above.

4.6. **Notice to Azteca Systems.** Licensee will promptly notify Azteca Systems if Customer becomes aware of any unauthorized use of Customer's subscription or any other breach of security regarding Cloud Services.

4.7. **Security Breach Notification.** Azteca Systems will promptly notify Customer if Azteca Systems becomes aware of any actual unauthorized disclosure, access, or use of Customer Data ("Security Breach"). The notification will be sent using the contact information on file with Azteca Systems at the time of the Security Breach and will include information related to the cause of the Security Breach (if known) and steps Azteca Systems has or will take to mitigate the risk of a similar Security Breach from occurring in the future. To the extent that the Security Breach was caused by any act or omission of Azteca Systems, Azteca Systems agrees to reasonably cooperate with Customer in investigating the Security Breach and provide information and documents reasonably requested by Customer to the extent such information and documents can aid Customer in investigating the Security Breach. If the Security Breach was not caused by an act or omission of Azteca Systems, Customer may request reasonable assistance from Azteca Systems subject to the availability of Azteca Systems' resources and at Azteca Systems' standard hourly rates

5. MISCELLANEOUS

5.1. **Data Confidentiality Statement.** Azteca Systems will take reasonable measures to ensure that any Licensee data and/or confidential information provided to Azteca Systems is not inappropriately accessed or distributed to any third-party. Data provided to Azteca Systems by the Licensee may be loaded onto Azteca Systems servers or employee computers for the purpose of testing the Cityworks Software, database structure, or database values, and related Esri® software to resolve database or software performance issues, software enhancements, and software defects. At no time will the data be distributed to individuals or organizations who are not Azteca Systems employees without first receiving written approval from Licensee. If requested by the Licensee, and once the testing has been completed, Azteca Systems will delete all data provided by the Licensee.

5.2. **No Implied Waivers.** No failure or delay by Azteca Systems or Licensee in enforcing any right or remedy under this Agreement shall be construed as a waiver of any future or other exercise of such right or remedy by Azteca Systems.

5.3. Azteca Systems will use commercially reasonable efforts to ensure that Azteca Systems Products and Offerings will not transmit any Malicious Code to Licensee. Azteca Systems is not responsible for Malicious Code that Licensee introduces to Azteca Systems Products or Offerings or that is introduced through Third-Party Content. Malicious Code means software viruses; worms, time bombs, Trojan horses; or any other computer code, files, denial of service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

ADDENDUM #3

THIRD-PARTY CONSULTANT/CONTRACTOR ACKNOWLEDGMENT

If Licensee engages any third party or contractor (Third Party) and desires to grant access to use the Licensed Software, the access may be granted subject to the following terms conditions and provisions:

1. Access and use of the Licensed Products by Third Party is solely for Licensee's benefit;
2. Third Party (or, if applicable, its employee) shall be considered the Authorized User for purposes of the applicable license type, and all use shall be in accordance with the terms and conditions of the Cityworks Software License and Maintenance Agreement with Licensee;
3. Before accessing the Licensed Products, Third Party agrees that (i) the software shall be used solely in accordance with the terms of this Agreement, and (ii) said contractor shall be liable to Azteca Systems for any breach by it of this Agreement;
4. Licensee hereby agrees and acknowledges that Licensee will be responsible for all use by Third Party with respect to the use of the Licensed Products;
5. Upon expiration or termination of this Agreement, the rights of usage of Third Party shall immediately terminated;
6. Use of the Products by Third Party will be governed by the terms of this Agreement, and will require that Licensee purchase the appropriate license for each user utilized by Third Party; and
7. Licensee will ensure that Third-Party Contractor agrees to comply with and does comply with the terms of this Agreement on the same basis as the terms apply to Licensee.

The rights granted under Third-Party Contractor Addendum, do not modify the license or increase the number of licenses granted under this Agreement. Third Party, by their signature below, acknowledges that it has a copy of the License Agreement and agrees to the terms herein. Licensee shall provide a signed copy of this Addendum to Azteca Systems at contracts@cityworks.com.

Third Party (Print): _____

Licensee: City of Killeen, TX

By: _____
Third Party/Contractor Authorized Signature

Title: _____

Date: _____

Third Party Information

Address	
City, State, Zip	
Contact Name	
Phone Number	
Email	



Contract Verification

Texas law provides that a governmental entity may not enter into certain contracts for goods and services with a company unless the company provides written verification regarding aspects of the company's business dealings.

- Texas Government Code, Chapter 2271 – the company must verify that it does not boycott Israel and will not boycott Israel during the term of the contract. *Boycott Israel is defined in Government Code Chapter 808.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not boycott energy companies and will not boycott energy companies during the term of the contract. *Boycott energy company is defined in Government Code Chapter 809.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Verification is not required from a sole source provider. *Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.*

Affected by the above statutes are contracts 1) with a company with ten (10) or more full-time employees, and 2) valued at \$100,000 or more to be paid wholly or partly from public funds. A contract with a sole proprietorship is not included.

By signing below, I verify that the company listed below does not boycott Israel, does not boycott energy companies and does not discriminate against firearms entities or firearm trade associations and will not do so during the term of the contract entered into with the City of Killeen. I further certify that I am authorized by the company listed below to make this verification.

DocuSigned by:

Brian L. Haslam

Signature

Brian L. Haslam

Printed Name

12/20/2021

Date

Azteca Systems, LLC

Company Name

President

Title

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

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

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2022-839230

Date Filed:
01/11/2022

Date Acknowledged:

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

Azteca Systems, LLC
Sandy, UT United States

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

City of Killeen

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

Cityworks License Agreement
Cityworks AMS Software

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 Daniel O. Duffin, and my date of birth is 06/18/1964.

My address is 11075 S. State, Suite 24, Sandy, Utah, 84070, USA.
(street) (city) (state) (zip code) (country)

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

Executed in Salt Lake County County, State of Utah, on the 11th day of January, 2022.
(month) (year)


Signature of authorized agent of contracting business entity
(Declarant)



AZTECA ENTERPRISE LICENSE AGREEMENT (ELA)

RS-22-031

March 1, 2022

Background

2

- ❑ The CityWorks asset management system (AMS) is the City's current work order system which has been used by Public Works since 2007
- ❑ CityWorks AMS utilizes the GIS database systems for managing an inventory of geographically distributed assets
- ❑ GIS assets tracked include roadways, bridges, traffic control, parks and park amenities, facilities, trees, surface water systems, water and wastewater systems
- ❑ Allows for unlimited use of the software

Enterprise License Agreement

3

- Cost for the Enterprise Licensing Agreement
 - ▣ \$60,000 for current year
 - ▣ \$71,750 for 2nd year
 - ▣ \$73,500 for 3rd year

Alternatives

4

- Do not enter into an Enterprise License Agreement for unlimited licensing
- Enter into an Enterprise License Agreement
 - ▣ \$60,000 for current year
 - ▣ \$71,750 for 2nd year
 - ▣ \$73,500 for 3rd year

Recommendation

5

- Staff recommends the City Council approve the purchase of the Azteca Cityworks Enterprise License Agreement and authorize the City Manager, or designee, be expressly authorized to execute any and all change orders set within the amounts set by state and local law.



City of Killeen

Legislation Details

File #:	RS-22-032	Version:	1	Name:	WS Young-Nolan Rd Intersection HSIP Grant - AFA
Type:	Resolution	Status:		Status:	Resolutions
File created:	2/7/2022	In control:		In control:	City Council
On agenda:	3/8/2022	Final action:		Final action:	
Title:	Consider a memorandum/resolution authorizing the City Manager to enter into an Advance Funding Agreement with the Texas Department of Transportation for the WS Young and Little Nolan Road Traffic Signal HSIP Grant Project.				
Sponsors:	Development Services, Finance Department, City Attorney Department				
Indexes:					
Code sections:					
Attachments:	Staff Report Project Budget Agreement Presentation				

Date	Ver.	Action By	Action	Result
3/1/2022	1	City Council Workshop		



STAFF REPORT

DATE: March 1, 2022

TO: Kent Cagle, City Manager

FROM: Andrew Zagars, City Engineer

SUBJECT: Authorize the City Manager to enter into an Advance Funding Agreement with the Texas Department of Transportation for the WS Young Drive and Little Nolan Road Traffic Signal HSIP Grant Project.

BACKGROUND AND FINDINGS:

On August 12, 2020, the Texas Department of Transportation (TxDOT) held a statewide call for safety improvement projects on and off the state highway system and encouraged the participation of cities and counties. The purpose of the Highway Safety Improvement Program (HSIP) is to provide funds for eligible construction costs for the road safety projects in an effort to facilitate a significant reduction in traffic fatalities and incapacitating injuries on all public roads.

On September 28, 2020, the City of Killeen Engineering Division submitted an application for the HSIP by proposing a project at the intersection of WS Young Dr. and Little Nolan Rd. On April 12, 2021, TxDOT notified the City of the project's qualification and selection of the project to the HSIP. Since receiving the notification, the City has moved forward with the design of the project in order to keep the project moving forward and on schedule as TXDOT worked to draft an Advance Funding Agreement (AFA) for the federal funding.

Prior to the expenditure of HSIP funds for construction, the City is required to enter into an AFA, attached hereto and incorporated herein. Funding for off-system projects such as WS Young Drive and Little Nolan Road, non-state roads, typically requires a contribution of 10 percent of the total construction costs and 100 percent of all costs that exceed the available HSIP program dollars. For this project, TXDOT will fund 100 percent of all construction costs up to the approved amount of \$322,700. The City is responsible for the design of the project, utility relocations, and any right-of-way needed for the project. In addition, any cost overruns above the approved amount will be the responsibility of the City to fund.

The City included this project in the adopted Capital Improvement Project List in 2021 with funding for the project prior to the award of the grant. These funds will be used for the portion of the project that the City is responsible for.

THE ALTERNATIVES CONSIDERED:

Alternative 1 - Do not approve entering into this agreement. Doing so will forfeit the Federal funding for this project and having TXDOT construct the new signal. This would require the

City to fully fund and construct the project as previously proposed in the Capital Improvement Plan.

Alternative 2 - Authorize the City Manager to enter into an AFA with TXDOT to accept the federal funding and allow TXDOT to construct a new signal at the intersection of WS Young Drive and Little Nolan Road.

Which alternative is recommended? Why?

City staff recommends Alternative 2 so that the City can use federal funding for this project.

CONFORMITY TO CITY POLICY:

This item conforms to state, city, and local purchasing policies and regulations.

FINANCIAL IMPACT:

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

The City design cost for the project is \$50,500 to be spent in this current fiscal year. The City is responsible for construction costs exceeding the amount allocated by TxDOT.

Is this a one-time or recurring expenditure?

This is a one-time expenditure.

Is this expenditure budgeted?

Yes, funds are available in the Governmental CIP Fund account 349-8934-493.61-60.

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:

City staff recommends that the City Council authorize the City Manager to enter into an AFA with TxDOT for the WS Young Drive and Little Nolan Road Traffic Signal HSIP grant, and that the City Manager be further authorized to execute any and all change orders within the amounts established by state and local law.

DEPARTMENTAL CLEARANCES:

Development Services
Finance
City Attorney

ATTACHED SUPPORTING DOCUMENTS:

Project Budget
Agreement

TxDOT:				Federal Highway Administration:	
CSJ #	0909-36-182			CFDA No.	20.205
District #	09-Waco	AFA ID		CFDA Title	Highway Planning and Construction
Code Chart 64 #	44150				
Project Name	HSIP WS Young Dr at Little Nolan Rd			AFA Not Used For Research & Development	

ATTACHMENT B PROJECT BUDGET

Costs will be allocated based on 100% Federal funding and 0% Local Government funding until the federal funding reaches the maximum obligated amount. The Local Government will then be responsible for 100% of the over-run costs.

Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
Engineering (by Local Government)	\$50,500	0%	\$0	0%	\$0	100%	\$50,500
Construction (by State)	\$322,700	100%	\$322,700	0%	\$0	0%	\$0
Subtotal	\$373,200		\$322,700		\$0		\$50,500
Environmental Direct State Costs	\$322.70	100%	\$322.70	0%	\$0	0%	\$0
Right of Way Direct State Costs	\$32.27	100%	\$32.27	0%	\$0	0%	\$0
Engineering Direct State Costs	\$1,613.50	100%	\$1,613.50	0%	\$0	0%	\$0
Utility Direct State Costs	\$32.27	100%	\$32.27	0%	\$0	0%	\$0
Construction Direct State Costs	\$6,776.70	100%	\$6,776.70	0%	\$0	0%	\$0
Indirect State Costs	\$45,054.36	0%	\$0	100%	\$45,054.36	0%	\$0
TOTAL	\$425,031.06		\$329,476.70		\$45,054.36		\$50,500

Payment by the Local Government to the State before construction: \$0.00
Estimated total payment by the Local Government to the State \$0.00. This is an estimate. The final amount of Local Government participation will be based on actual costs.

TxDOT:				Federal Highway Administration:	
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Project Name	HSIP WS Young Dr at Little Nolan Rd			AFA Not Used For Research & Development	

STATE OF TEXAS §

COUNTY OF TRAVIS §

ADVANCE FUNDING AGREEMENT
For
Highway Safety Improvements Project
Off-System

THIS AGREEMENT (Agreement) is made by and between the State of Texas, acting by and through the **Texas Department of Transportation** called the "State", and the **City of Killeen**, acting by and through its duly authorized officials, called the "Local Government". The State and Local Government shall be collectively referred to as "the parties" hereinafter.

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

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

WHEREAS, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

WHEREAS, the Texas Transportation Commission passed Minute Order Number **109864** authorizing the State to undertake and complete a highway improvement or other transportation project generally described as **Traffic and Pedestrian Safety Improvements**. The portion of the project work covered by this Agreement is identified in the Agreement, Article 3, Scope of Work (Project), and

commitment to future project funding for any project elements, including construction, not specifically outlined in the Agreement. Costs not specifically identified as reimbursable under this Agreement will not be requested or reimbursed.

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution, ordinance, or commissioners court order dated **March 8, 2022**, which is attached to and made a part of this Agreement as Attachment C,

TxDOT:				Federal Highway Administration:	
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Code Chart 64 #	44150				
Project Name	HSIP WS Young Dr at Little Nolan Rd			<i>AFA Not Used For Research & Development</i>	

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

AGREEMENT

1. Responsible Parties:

For the Project covered by this Agreement, the parties shall be responsible for the following work as stated in the article of the Agreement referenced in the table below:

1.	Local Government	Utilities	Article 8
2.	Local Government	Environmental Assessment and Mitigation	Article 9
3.	Local Government	Architectural and Engineering Services	Article 11
4.	State	Construction Responsibilities	Article 12
5.	Local Government	Right of Way and Real Property	Article 14

2. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.

3. Scope of Work

The scope of work for the Project consists of Install traffic signal, safety lighting at intersection of WS Young to Little Nolan Rd.

4. Project Sources and Uses of Funds

The total estimated cost of the Project is shown in Attachment B, Project Budget (Attachment B) which is attached to and made a part of this Agreement.

- A. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled "Local Government Project Procedures and Qualification for the Texas Department of Transportation" and retains qualification in accordance with applicable TxDOT procedures. Upon request, the Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

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Project Name	HSIP WS Young Dr at Little Nolan Rd			<i>AFA Not Used For Research & Development</i>	

- B. The expected cash contributions from the federal government, the State, the Local Government, or other parties are shown in Attachment B. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission. For projects with federal funds, the State and the federal government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration (FHWA). After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- C. Attachment B shows, by major cost categories, the cost estimates and the party responsible for performing the work for each category. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- D. The State will be responsible for securing the federal and State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- E. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State and federal participation specified in Attachment B and for overruns in excess of the amount specified in Attachment B to be paid by the Local Government.
- F. The budget in Attachment B will clearly state all items subject to fixed price funding, specified percentage funding, and the periodic payment schedule, when periodic payments have been approved by the State.
- G. When the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State's written notification of additional funds being due.
- H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment B. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government's requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.
- I. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment B. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering performed or reviewed by the State for

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- the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction cost.
- J. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
 - K. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.
 - L. The State will not pay interest on any funds provided by the Local Government.
 - M. If a waiver for the collection of indirect costs for a service project has been granted under 43 TAC §15.56, the State will not charge the Local Government for the indirect costs the State incurs on the Project, unless this Agreement is terminated at the request of the Local Government prior to completion of the Project.
 - N. If the Local Government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
 - O. Where the Local Government is authorized to perform services under this Agreement and be reimbursed by the State, the Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice, in a form and containing all items required by the State, no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
 - P. Upon completion of the Project, the State will perform a final accounting of the Project costs for all items of work with specified percentage funding. Any funds due by the Local Government, the State, or the federal government for these work items will be promptly paid by the owing party.
 - Q. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
 - R. Payment under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.

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Project Name	HSIP WS Young Dr at Little Nolan Rd			<i>AFA Not Used For Research & Development</i>	

5. Termination of This Agreement

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;
- B. The Agreement is terminated by one party because of a breach, in which case any costs incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or
- D. The Agreement is terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or a more thorough definition of the Local Government's proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination; or
- E. The Project is inactive for thirty-six (36) consecutive months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this Agreement.

6. Amendments

Amendments to this Agreement due to changes in the character of the work, terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

7. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

8. Utilities

The party named in Article 1, Responsible Parties, under AGREEMENT shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or State funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is commenced.

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9. Environmental Assessment and Mitigation

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects. The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. The identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- B. The cost of any environmental problem's mitigation and remediation.
- C. Providing any public meetings or public hearings required for the environmental assessment process. Public hearings will not be held prior to the approval of the Project schematic.
- D. The preparation of the NEPA documents required for the environmental clearance of this Project.

If the Local Government is responsible for the environmental assessment and mitigation, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

10. Compliance with Accessibility Standards

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

11. Architectural and Engineering Services

The party named in Article 1, Responsible Parties, under AGREEMENT has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable State's *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. For projects on the State highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the State highway system, the design shall, at a minimum, conform to applicable American Association of State Highway and Transportation Officials (AASHTO) design standards.

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the Project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters. If the Local Government is the responsible party, the Local Government shall submit its procurement selection process for prior approval by the State. All professional services contracts must be reviewed and approved by the State prior to execution by the Local Government.

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12. Construction Responsibilities

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. Advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- B. If the State is the responsible party, the State will use its approved contract letting and award procedures to let and award the construction contract.
- C. If the Local Government is the responsible party, the Local Government shall submit its contract letting and award procedures to the State for review and approval prior to letting.
- D. If the Local Government is the responsible party, the State must concur with the low bidder selection before the Local Government can enter into a contract with the vendor.
- E. If the Local Government is the responsible party, the State must review and approve change orders.
- F. Upon completion of the Project, the party responsible for constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion and submit certification(s) sealed by a professional engineer(s) licensed in the State of Texas.
- G. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

13. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the State highway system after completion of the work if the work was on the State highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

14. Right of Way and Real Property

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the provision and acquisition of any needed right of way or real property.

The Local Government shall be responsible for the following:

- A. Right of way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be acceptable to the State before funds may be expended for the improvement of the right of way or real property.

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- B. If the Local Government is the owner of any part of the Project site under this Agreement, the Local Government shall permit the State or its authorized representative access to occupy the site to perform all activities required to execute the work.
- C. All parties to this Agreement will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.
- D. The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
- E. In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. The State will not reimburse the Local Government for any real property acquired before execution of this Agreement and the obligation of federal spending authority.
- F. The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- G. The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in calculating all determined values. Expenses incurred by the Local Government in performing this work may be

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eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.

- H. Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed eighty percent (80%) of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed eighty percent (80%) of the State's predetermined value of each parcel, or the net cost of the parcel, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to appraisers, expenses incurred in order to assure good title, and costs associated with the relocation of displaced persons and personal property as well as incidental expenses.
- I. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this Agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than 10 (ten) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. The separate agreement must be approved by the State prior to its execution. A copy of the executed agreement shall be provided to the State.

15. Insurance

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

16. Notices

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

Local Government:	State:
City of Temple ATTN: Brynn Myers, City Manager 2 N. Main St, STE. 102 Temple, TX 76501	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 th Street Austin, TX 78701

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this Agreement. Either party may change the above

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address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

17. Legal Construction

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

18. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party, and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

19. Ownership of Documents

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

20. Compliance with Laws

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

21. Sole Agreement

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

22. Cost Principles

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

23. Procurement and Property Management Standards

The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local

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Government's procurement procedures for purchases to be eligible for state or federal funds.

24. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

25. Civil Rights Compliance

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

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- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
 2. cancelling, terminating, or suspending of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

26. Pertinent Non-Discrimination Authorities

During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. 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); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).

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- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

27. **Disadvantaged Business Enterprise (DBE) Program Requirements**

If federal funds are used:

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall incorporate into its contracts with subproviders an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall submit its proposed scope of services and quantity estimates to the State to allow the State to establish a DBE goal for each Local Government contract with a subprovider. The Local Government shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-

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discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.*

28. Debarment Certifications

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

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

29. Lobbying Certification

If federal funds are used, in executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the

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extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

30. Federal Funding Accountability and Transparency Act Requirements

If federal funds are used, the following requirements apply:

- A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This Agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
 1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
 3. Report the total compensation and names of its top five executives to the State if:
 - i. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

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31. Single Audit Report

If federal funds are used:

- A. The parties shall comply with the single audit report requirements stipulated in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division by email at singleaudits@txdot.gov.
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as follows: "We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D. For each year the Project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the Agreement, unless otherwise amended or the Project has been formally closed out and no charges have been incurred within the current fiscal year.

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32. Signatory Warranty

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

Each party is signing this Agreement on the date stated under that party's signature.

THE STATE OF TEXAS

THE LOCAL GOVERNMENT

Signature

Kenneth Stewart

Typed or Printed Name

Director of Contract Services

Typed or Printed Title

Date

Signature

Typed or Printed Name

City Manager

Typed or Printed Title

Date



WS YOUNG DR. AT LITTLE NOLAN RD. ADVANCE
FUNDING AGREEMENT FOR HIGHWAY SAFETY
IMPROVEMENTS GRANT PROJECT

RS-22-032

March 1, 2022

Background

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- On August 12, 2020, TxDOT held a statewide call for safety improvement projects on and off the state highway system (HSIP) and encouraged the participation of cities and counties.
- On September 28, 2020, City of Killeen submitted an application for the HSIP by proposing a project at the intersection of WS Young Dr. and Little Nolan Rd.
- On April 12, 2021, TxDOT notified the City of the project's qualification and selection of the project to the HSIP.

Background

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- ❑ Prior to the expenditure of HSIP funds for construction, the City is required to enter into an AFA.
- ❑ TxDOT will fund 100 percent of all construction costs up to the approved amount of \$322,700.
- ❑ The City is responsible for the design of the project, utility relocations, and any right-of-way needed for the project, as well as any cost overruns above the approved amount.

Alternatives

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- Alternative 1: Authorize the City Manager to enter into an AFA with TxDOT to accept the federal funding and allow TxDOT to construct a new signal at the intersection of WS Young Drive and Little Nolan Road
- Alternative 2: Do not approve entering into this agreement. Doing so will forfeit the Federal funding for this project and having TxDOT construct the new signal. This would require the City to fully fund and construct the project as previously proposed in the Capital Improvement Plan.

Recommendation

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- City staff recommends Alternative 1: Authorize the City Manager to enter into an AFA with TxDOT to accept the federal funding and allow TxDOT to construct a new signal at the intersection of WS Young Drive and Little Nolan Road.



City of Killeen

Legislation Details

File #:	RS-22-033	Version:	1	Name:	WS Young-Little Nolan Traffic Signal Design Amend#1
Type:	Resolution	Status:		Status:	Resolutions
File created:	2/7/2022	In control:		In control:	City Council
On agenda:	3/8/2022	Final action:		Final action:	
Title:	Consider a memorandum/resolution authorizing the execution of Amendment No. 1 to the Professional Services Agreement with Kimley-Horn and Associates, Inc., in the amount of \$12,000 for the Little Nolan Rd-WS Young Traffic Signal Project.				
Sponsors:	Development Services, Finance Department, City Attorney Department				
Indexes:					
Code sections:					
Attachments:	Staff Report Agreement Amendment No. 1 Proposal Certificate of Interested Parties Presentation				

Date	Ver.	Action By	Action	Result
3/1/2022	1	City Council Workshop		



STAFF REPORT

DATE: March 1, 2022

TO: Kent Cagle, City Manager

FROM: Andrew Zagars, City Engineer

SUBJECT: Authorize the execution of Amendment No. 1 to the Professional Services Agreement with Kimley-Horn and Associates, Inc., in the amount of \$12,000 for the Little Nolan Rd-WS Young Traffic Signal Project

BACKGROUND AND FINDINGS:

Installation of a new traffic signal and associated improvements at the intersection of S. W.S. Young Drive and Little Nolan Road is one of the approved CIP Transportation projects for the current fiscal year. Traffic studies have concluded that the intersection needs traffic signals to control traffic operations and the intersection meets the warrant requirements.

The City of Killeen applied for and received approval for Federal Funding through the Highway Safety Improvement Program (HSIP) for the FY22-24 Call for Projects.

The City is responsible for all costs associated with the design of the project and any construction amounts that may occur once the Federal Funding has reached its maximum approved dollar amount for the project. TXDOT will be letting the HSIP project for construction in October 2022 and managing the construction of the project.

A Professional Services Agreement (PSA) with Kimley-Horn and Associates, Inc., for the for design and construction administrative services of the Little Nolan Rd. and S. W.S. Young Dr. Traffic Signal Project in the amount of \$38,580 was executed on Aug. 11, 2021. The consultant is requesting to amend the contract for additional design fees as the scope has changed from the original design. The proposed design has changed to the point where right-of-way will need to be acquired. Proper boundary research and surveying will need to be performed to create the appropriate documentation to file with the County. The original design contract did not include boundary research or the surveying needed for the additional work.

THE ALTERNATIVES CONSIDERED:

Alternative 1 - Do not approve this amendment. In order to meet TxDOT requirements for this project to move forward to construction and receive federal funds, all right-of-way needs to be acquired. Delaying of this amendment could jeopardize the current schedule to meet an October 2022 TXDOT construction deadline.

Alternative 2 - Amend the Agreement with Kimley-Horn and Associates, Inc. They currently have already begun the 50% engineering design and site analysis, and approving this amendment would not delay the completion of the design.

Which alternative is recommended? Why?

City staff recommends approval of **Alternative 2**. This option allows the design to continue to stay on schedule and meet the current construction timeline.

CONFORMITY TO CITY POLICY:

This item conforms to state, city, and local purchasing policies and regulations. Amendment No. 1 would bring the total contract 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 \$12,000.

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 Governmental Capital Project Fund, account 349-8934-493.61-60 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 Kimley-Horn and Associates, Inc., in the amount of \$12,000 for the Little Nolan Rd-WS Young Traffic Signal Project, and that the City Manager be 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

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 Kimley-Horn and Associates, Inc. (referred to herein as "Contractor"), collectively the "Parties". This Agreement is made this 11th day of August 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 services of Contractor to:

Provide Plans, Specifications, and Estimate (PS&E) for a new signal installation at the intersection of Little Nolan Road and WS Young Drive including design of a new channelized right turn lane (the "Project"). Included in the Scope are preparation of contract documents and construction contract administration support. Refer to Exhibit A for the scope of services to be performed.

Term of Agreement. This Agreement shall commence on the 11th day of August 2021 and terminate 300 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 of \$ 38,580.00 to be invoiced monthly at a percentage of the work completed.

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

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 general 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 are deemed to be personal and may not be transferred or assigned. Any assignments 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 any and all costs, losses and damages (including, without limitation, all fees and charges of attorneys and other professionals, and all court or dispute resolutions costs) to the extent 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 11th day of August, 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


Tony D. McIlwain,
AICP, CFM

For Kent Cagle, City Manager
City of Killeen

Digitally signed by Tony D. McIlwain, AICP, CFM
DN: cn=Tony D. McIlwain, AICP, CFM, o=City of
Killeen, ou=Planning and Development Services,
email=tmclwain@killeentexas.gov, c=US
Date: 2021.08.11 08:51:44 -05'00'

Tony D.
McIlwain,
AICP, CFM
Digitally signed by
Holly Clements
Date: 2021.08.03
12:36:27 -05'00'

Contractor



Printed: Scott R. Arnold
Title: Vice President

EXHIBIT A

SCOPE OF SERVICES

Kimley-Horn (the "Engineer") will be responsible for the proper, accurate, and adequate design and preparation of plans, specifications, and construction contract documents and for construction contract administration support for the Project. The Project generally includes Plans, Specifications, and Estimate (PS&E) for a new signal installation at Little Nolan Rd and WS Young Dr.

The above intersection is an unsignalized 4-legged intersection and operates under 'Two-Way' stop control on Little Nolan Road. The proposed signal plans will be prepared for control of all 4 legs of the intersection.

Design services related to the design and plan production for this project will be performed in accordance with the current City of Killeen Infrastructure Design and Development Standards Manual (IDDSM) and TxDOT Design and Construction Standards. Plans will be prepared on 11" x 17" sheets and use 2014 TxDOT Specifications.

This project will be developed utilizing Microstation V8i and Bentley Geopak V8i.

Due to the everchanging circumstances surrounding the COVID-19 Virus, situations may arise during the performance of this Agreement that affect availability of resources and staff of Kimley-Horn, the client, other consultants, and public agencies. There could be changes in anticipated delivery times, jurisdictional approvals, and project costs. Kimley-Horn will exercise reasonable efforts to overcome the challenges presented by current circumstances, but Kimley-Horn will not be liable to Client for any delays, expenses, losses, or damages of any kind arising out of the impact of the COVID-19 Virus.

TASK 1 PROJECT MANAGEMENT

Project management spans the entire duration of the project and involves monitoring and coordination of services provided to the City to assure timely and efficient completion of the project.

This task consists of project control and scheduling, documentation, reporting requirements, and quality control. The Engineer will conduct project review and design specific technical meetings under this subtask. The Engineer has assumed the following meetings in this scope:

- (a) One (1) 30% plan review teleconference meeting;
- (b) One (1) field review meeting for design discussion with City staff;
- (c) One (1) 90% design review teleconference

TASK 2 DATA COLLECTION AND SURVEY

A. DATA COLLECTION

The Engineer will conduct field reconnaissance to verify existing conditions at the above location.

The Engineer will coordinate with 811 utility locate services and the City of Killeen utility locate service to determine approximate locations of underground utilities and overhead power. The limits of the utility locating will be within the Right-of-Way (ROW), extending approx. 200 feet down each intersection leg (4 legs) from the center of the intersection. The Engineer will coordinate with the City to determine approximate the existing ROW boundaries.

The Engineer will rely on the City to provide GIS shapefiles showing locations of their utilities and property lines, obtain copies of utility plans in the area, obtain copies of plans for any improvements constructed in the area outside of the survey and Subsurface Utility Engineering (SUE) limits in Task 2.B.

B. SURVEY

Proposed survey includes QL“B” SUE services at the intersection of W S Young Drive and Little Nolan Drive in Killeen, Texas. The limits of the SUE investigation are shown in red in the Exhibit below:



The Engineer or its subconsultant will attempt to designate the following utilities within this area: potable water, reclaimed water, chilled water, natural gas/crude oil/refined product pipelines, communication duct banks, fiber optic, cable television, telephone, and electric. Wastewater and storm drain facilities will be inverted at manholes, and will be depicted as QL“C” information. Additionally, the Engineer or its subconsultant will attempt to designate utility service lines, however, because these lines are often non-conductive and not shown on records the Engineer

or its subconsultant cannot guarantee all service lines will be included in the final deliverables. Irrigation lines and an inventory of overhead utilities are excluded from this scope of work.

This proposal also includes one (1) QL“A” SUE test hole at a location that will be provided by the Client.

It is assumed that the QL“A” and QL“B” SUE investigations will occur concurrently in a single mobilization.

The survey of SUE field markings is also included in this scope of work. It is assumed that the Client will provide the necessary survey control information.

Any necessary Right-Of-Entry (ROE) permits or right-of-way permits will be provided by the Client prior to the start of field work.

QL“B” – Designating

Following a review of the project scope and available utility records with the project manager, the Engineer or its subconsultant field personnel will begin designating the approximate horizontal position of known subsurface utilities within the project area. A suite of geophysical equipment that includes magnetic and electromagnetic induction will be used to designate conductive utilities. Where access is available, a sonde will be inserted into non-conductive utilities to provide a medium for transmission which can then be designated using geophysical equipment. Non-conductive utilities can also be designated using other proven methods, such as rodding and probing. The Engineer or its subconsultant will make a reasonable attempt to designate Unknown utilities identified during field work; however, no guarantee is made that all Unknown utilities will be designated. Utilities will be marked and labeled to distinguish type and ownership. Field data depicting the designated utilities, as well as relevant surface features, will be produced to ensure accuracy and completeness of subsequent survey data. The Engineer or its subconsultant project manager will review the collected survey data, field data, and utility records for accuracy and completeness.

QL“A” – Locating

The Engineer or its subconsultant will utilize non-destructive vacuum excavation equipment to excavate test holes at the requested locations. To layout the test holes, the Engineer or its subconsultant will follow the QL“B” – Designating procedures described above. Once each utility is located, the Engineer or its subconsultant will record the size, type, material, and depth. Test holes will be uniquely marked. Excavations will be backfilled by mechanical means with the appropriate material, and the original surface will be restored. The Engineer assumes that flowable fill will not be required when backfilling test holes and that full-section pavement repair (including sidewalks) will not be required to restore the original pavement surface. If requested, these services can be provided at an additional cost.

The Engineer or its subconsultant will establish any necessary routine traffic control measures at no additional cost. However, if non-routine traffic control measures (lane closures, traffic detours, flagpersons, etc.) are required, this service will be invoiced as a direct expense. Due to the risk of damage, TRG will not attempt to probe or excavate test holes on AC water lines unless approval is obtained from the owner in advance. Additionally, excavation in rock, or to a depth greater than 18 feet is considered beyond the scope of this proposal. The Engineer or its subconsultant has made the following assumptions with regard to the test holes on this project:

- All test holes will be accessible to truck-mounted vacuum excavation equipment.
- Right-Of-Way (ROW) permits from the City of Killeen (COK) will not be required. If they are required, it is assumed they will be provided to the Engineer or its subconsultant at no cost.
- Designed traffic control plans will not be required.
- Non-routine traffic control measures will not be required.
- The coring of pavement will not be required.

Deliverables

The Engineer will provide the following as a final deliverable to the Client:

- A utility file in CAD format depicting all designated and located utilities. The Client will
- provide TRG with any necessary background files for use in completing the final deliverables.
- A summary sheet of all test hole coordinate data and depth information.
- 8.5" x 11" Test Hole Data Forms for all test hole locations completed. These plans will
- be signed and sealed by a Professional Engineer and delivered to the Client in electronic
- PDF form.
- 11" x 17" SUE Plan Sheets depicting all designated and located utilities. These plans
- will be signed and sealed by a Professional Engineer and delivered to the Client in
- electronic PDF form.

TASK 3 PLANS, SPECIFICATIONS & ESTIMATE

A. SIGNAL DESIGN PLANS

The Engineer will develop plans to install a new traffic signal at the intersection of Little Nolan Rd and WS Young Dr.

- (a) The signal plans will be prepared at a scale of 1"=40' and will include the following sheets:
- (i) Cover sheet including project name, location map, signature blocks, and applicable standards.
 - (ii) Existing Conditions sheet will show locations of existing traffic control devices, underground, and overhead utilities at the intersection based on the survey.
 - (iii) Signal Layout sheet will show the locations of proposed signal poles, pedestrian poles, signal heads, communication equipment, electrical conduits, ground boxes, signal cabinet, new electrical service, existing utilities, and right of way. Locations of pedestrian poles and pedestrian access ramps will be designed in conformance with ADA requirements. Due to lateral and vertical clearance required from an overhead electric line (per the State law), the Engineer will coordinate with the City before finalizing locations of signal poles, where applicable.
 - (iv) Roadway Layout sheet will show the proposed typical pavement section for the pavement widening to match the existing pavement section of W S Young, station and offset for proposed curb lines, a point table for any channelized islands, removal, and SW3P. It is not anticipated a deceleration lane for the channelized right turn will be needed and will be considered additional services.
 - (v) Signal Elevation sheet will show placement of signal heads on a mast-arm and vertical clearance required for the mast-arm.
 - (vi) Conduit Chart and Electrical Wiring sheet will show the type and number of electrical wires in each conduit run. A new electrical service will be designed to support total electrical load due to the new traffic signal and safety lighting at the intersection. The electrical service will include two separate circuits for traffic signal and illumination. At the 30% field review meeting, the Engineer will coordinate with the City and local electric service provider to determine location of new electrical service.
 - (vii) Phasing & Detection sheet will show the proposed phasing at each intersection. Phasing and signal-heads for left-turn movements will be designed in conformance with 2011 Texas MUTCD. Video detection details for each movement will also be shown.
 - (viii) Pavement Markings sheet
 - (ix) Quantities sheet will be provided for the intersection.
- (b) The Engineer will use latest TxDOT general notes issued by the Waco District or general notes provided by the City and update appropriately as required for traffic signals.

B. STANDARDS, SPECIFICATIONS, AND ESTIMATE

- (a) The Engineer will download the appropriate City and TxDOT standards from the City or State web site, as appropriate. Standards that require modification will be corrected and sealed by the Engineer. All other standards will have their title blocks filled out with the applicable project data and printed for inclusion in the final plan set.
- (b) The Engineer will provide a list of applicable special specifications for traffic signals. If needed, the Engineer will develop or modify up to four (4) unique special specifications where an existing statewide specification is unavailable.
- (c) An opinion of probable construction cost will be prepared at the 90% and prior to final PS&E submittal and supplied to the City in Microsoft Excel format.

DELIVERABLES

- 1. 30% Plans Submittal
 - (a) Existing Conditions
 - (b) Proposed Signal Layout
 - (c) Proposed Roadway Layout
 - (d) Signal Elevation
- 2. 90% Plans Submittal
 - (a) Title Sheet & Index
 - (b) General Notes
 - (c) Existing Conditions
 - (d) Proposed Signal Layout
 - (e) Proposed Roadway Layout
 - (f) Signal Elevation
 - (g) Electrical Wiring
 - (h) Phasing and Detection
 - (i) Signs and Markings
 - (j) APS Load Switch Assignment
 - (k) Estimated Quantities
 - (l) City/TxDOT Standards (including Traffic Control Plans standards)
 - (m) Opinion of Probable Construction Cost Estimate
- 3. 100% Plans Submittal
 - (a) Address any comments to plan sheets from 90% submittal
 - (b) Issue signed and sealed plan sheets
 - (c) Final cost estimate

ADDITIONAL SERVICES

Any services not specifically provided for in the above scope will be considered additional services and can be performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Project Manual;
- Bid Phase Services;
- Construction Phase Services;
- Traffic signal warrant studies;
- Updates to plans due to modification of project scopes by the Client;
- Attendance at public meetings;
- Geotechnical Engineering;
- Retaining wall design;
- Structural analysis or design; and
- Additional meetings other than those listed in the scope.

CONTRACT AMENDMENT

No. 1

Little Nolan Rd. and S. W.S. Young Dr. Traffic Signal Project

This Amendment shall be made a part of the City of Killeen Little Nolan Rd. and S. W.S. Young Dr. Traffic Signal Project Professional Services Agreement. This Contract was entered into on August 11, 2021. The change in the fee structure is as follows:

JUSTIFICATION:

On August 11, 2021, a Professional Services Agreement was executed with Kimley-Horn and Associates, Inc. for a not to exceed amount of \$38,580. The scope included engineering design service for Little Nolan Rd. and S. W.S. Young Dr. Traffic Signal Project. The consultant is asking to amend the contract for additional design fees as the scope has changed from the original design. The proposed design has changed to the point where right of way will need to be acquired. The property is already owned by the City, so proper boundary research and surveying will need to be performed to create the proper documentation to file with the County. This amendment to the existing Professional Services Agreement is for \$12,000.

Scope of Services	Phase	Present Contract Amount	Proposed Amendment	Proposed Contract Amount (Original thru Amendment)
Lump Sum fee proposed	-	\$38,580.00		\$38,580.00
Additional Services	-		\$12,000.00	\$12,000.00
Total		\$38,580.00	\$12,000.00	\$50,580.00

Kimley-Horn and Associates, Inc.

By: Scott R. Arnold

Signature: 

Title: Vice President

Date: February 16, 2022

City of Killeen

By: For Kent Cagle

Signature: _____

Title: City Manager

Date: _____

Exhibit A to Amendment Number 1,
dated February 16, 2022.

Contractor shall perform the following Additional Services:

Task 1 - Boundary Retracement

If the City has provided and directed the Contractor to use a boundary survey prepared by others, then the Contractor will retrace that boundary in the field in an effort to determine whether it is legally correct. If discrepancies or errors are found with the boundary then the Contractor will inform the City but this task does not include effort to correct the work of others.

Austin TBPELS Firm Number: 10194624

Task 2 - Right-of-Way Dedication Exhibit

The Contractor will prepare a metes and bounds description and sketch showing the location and dimensions for two proposed right-of-way dedication exhibits. Right-of-way Dedication exhibit language will either be the unaltered standard language provided by the local jurisdiction, or as agreed to by the Grantor and Grantee and provided complete to the Contractor. The City will file the document.

Austin TBPELS Firm Number: 10194624

The services in this agreement will be billed as follows:

Surveying Services

Task 1	Boundary Retracement Survey	\$	5,000	(LS+Tax)
Task 2	Separate Instrument Right-of-Way Dedication Exhibit (2)	\$	7,000	(LS+Tax)
Subtotal		\$	12,000	

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

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

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

Kimley-Horn and Associates, Inc.
Dallas, TX United States

Certificate Number:
2022-846095

Date Filed:
02/02/2022

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.

Amendment 2022-1
Little Nolan Rd. and S. W.S. Young Dr. Traffic Signal Project

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	McEntee, David	Dallas, TX United States	X	
	Lefton, Steve	Dallas, TX United States	X	
	Flanagan, Tammy	Dallas, TX United States	X	
	Cook, Richard N	Dallas, TX United States	X	

5 Check only if there is NO Interested Party.

☐**6 UNSWORN DECLARATION**

My name is SARAH MEZA, and my date of birth is 05/14/1981.

My address is 13455 NOEL ROAD, SUITE 700, DALLAS, TX, 754240, US.
(street) (city) (state) (zip code) (country)

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

Executed in DALLAS County, State of TEXAS, on the 2ND day of FEBRUARY, 2022.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)



LITTLE NOLAN RD. AND S. W.S. YOUNG DR.
TRAFFIC SIGNAL PROJECT
AMENDMENT NO.1 TO PSA

RS-22-033

March 1, 2022

Background

2

- ❑ A new traffic signal at the intersection of S. W.S. Young Drive and Little Nolan Road is one of the approved CIP Transportation projects for the current fiscal year.
- ❑ The City of Killeen applied for and received approval for Federal Funding through the Highway Safety Improvement Program (HSIP) for the FY22-24 Call for Projects.
- ❑ The City is responsible for all costs associated with the design of the project and any construction amounts above the Federal Funding approved dollar amount.
- ❑ TxDOT will bid the project in October 2022 and managing the construction of the project.

Background

3

- ❑ On August 11, 2021, a Professional Services Agreement (PSA) was executed with Kimley-Horn and Associates, Inc., for a lump sum amount of \$38,580. The scope included design and construction administrative services for the installation of a new traffic signal.
- ❑ The proposed design has changed to the point where right-of-way will need to be acquired.
- ❑ The original design contract did not include boundary research or the surveying needed.
- ❑ The proposed amendment to the existing PSA in an amount of \$12,000.

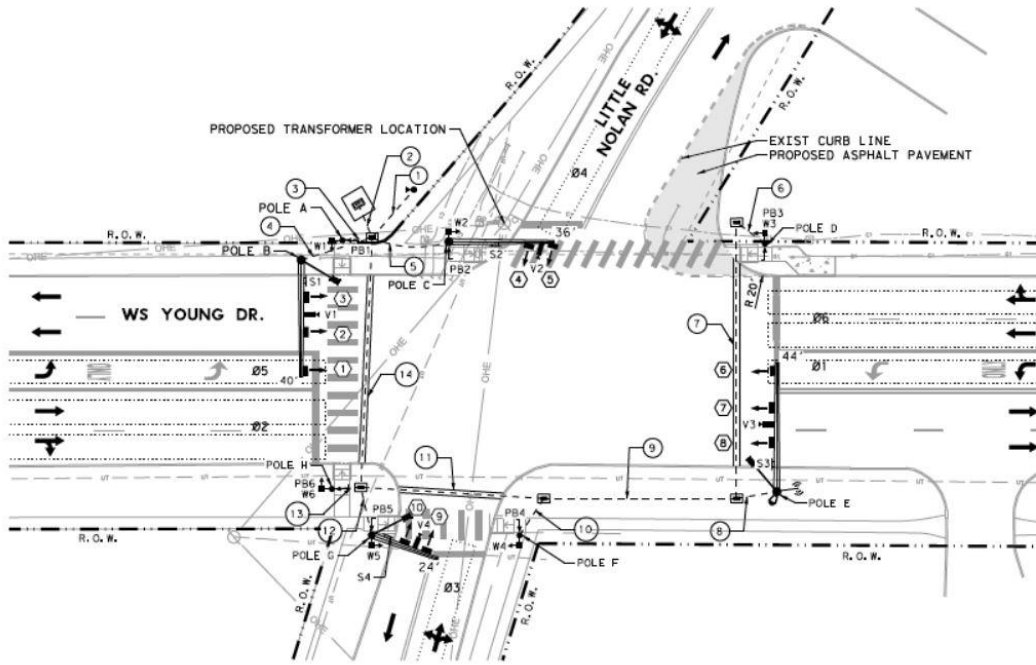


Exhibit shows proposed design of the intersection signalized.

Alternatives

5

- Do not approve this amendment. In order to meet TxDOT requirements for this project to move forward to construction and receive federal funds, all right-of-way needs to be acquired. Delaying of this amendment could jeopardize the current schedule to meet an October 2022 TxDOT construction deadline.
- Amend the Agreement with Kimley-Horn and Associates, Inc. In the amount of \$12,000 to bring the total design contract to \$50,580.

Recommendation

6

- Authorize the City Manager to execute Amendment #1 of the Professional Services Agreement with Kimley-Horn and Associates, Inc., in the amount of \$12,000 for the Little Nolan Rd. and S. W.S. Young Dr. Traffic Signal Project.



City of Killeen

Legislation Details

File #: RS-22-035 **Version:** 1 **Name:** Presiding Municipal Judge Appointment
Type: Resolution **Status:** Resolutions
File created: 2/23/2022 **In control:** City Council
On agenda: 3/8/2022 **Final action:**
Title: Consider a memorandum/resolution to appoint a Presiding Municipal Court Judge.
Sponsors: Human Resources Department
Indexes:
Code sections:
Attachments: [Staff Report](#)
[Resume](#)
[Presentation](#)

Date	Ver.	Action By	Action	Result
3/1/2022	1	City Council Workshop		



STAFF REPORT

DATE: March 1, 2022

TO: Kent Cagle, City Manager

FROM: Eva Bark, Executive Director of Human Resources

SUBJECT: Appointment of Presiding Municipal Court Judge

BACKGROUND AND FINDINGS:

On October 5, 2021, Mark Kimball submitted his letter of retirement as the Presiding Municipal Court Judge of the City of Killeen, Texas effective February 23, 2022.

Human Resources advertised the position on various outlets to include the City's website, the Texas Municipal League, Texas District and County Attorney's Association, Texas Criminal Defense Lawyers Association, Texas Municipal Court Education Center, Texas Court Clerk Association, Indeed, and State Bar of Texas websites.

The City solicited twenty-four (24) candidates. Twenty-three candidates met or exceeded the minimum qualifications for the position. On January 25, 2022, the City Council narrowed the candidates to six (6) finalists.

On February 11, 2022, each finalist interviewed with the City Council and a consensus was reached to offer the position of Presiding Municipal Court Judge to Mr. Kris Krishna. On February 22, 2022, the City Council approved the selection.

THE ALTERNATIVES CONSIDERED:

Alternatives are: (1) to not approve the appointment of Kris Krishna as the City of Killeen's Presiding Municipal Court Judge or (2) to approve the appointment Kris Krishna as the City of Killeen's Presiding Municipal Court Judge.

Which alternative is recommended? Why?

Staff recommends the second alternative, approving the appointment of Kris Krishna. Mr. Krishna brings over ten (10) years of experience in municipal and county entities. He most recently served in the Webb County District Attorney's Office as a Border Prosecutor for two and a half (2½) years. He also served as Assistant City Attorney with the City of Grand Prairie for over four (4) years and as Assistant District Attorney for Tarrant County District Attorney's office for almost four (4) years. Mr. Krishna earned his bachelor's degree in Occupational Education from Texas State University and his Juris Doctorate from Texas Southern University.

CONFORMITY TO CITY POLICY:

Section 32 of the City Charter authorizes the City Council to appoint a magistrate as a presiding judge for the court, and associate judges, as deemed necessary for the benefit and conduct of the court. Presiding Municipal Court Judge shall serve terms of four (4) years.

FINANCIAL IMPACT:

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

The annual base salary of the position is \$120,000, plus benefits. The prorated amount through the end of the fiscal year is estimated at \$73,221, salary and benefits, and funds are available in the Municipal Court budget.

Is this a one-time or recurring expenditure?

This is a recurring expenditure.

Is this expenditure budgeted?

Yes, in the General Fund Municipal Court salary and benefit accounts 010-5015-417.40-05 through 010-5015-417.40-89.

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 Council approve the appointment of Kris Krishna to the City of Killeen's position of Presiding Municipal Court Judge.

DEPARTMENTAL CLEARANCES:

City Manager
City Attorney
Finance

ATTACHED SUPPORTING DOCUMENTS:

N/A

KRIS BENN KRISHNA

EXPERIENCE

WEBB-ZAPATA COUNTIES DISTRICT ATTORNEY'S OFFICE, Laredo, TX

Border Prosecution Unit – Regional Counsel

August 2019 – Present

- Serves as a liaison between the various District Attorneys' offices in the region, the Texas Department of Public Safety ("DPS") and other criminal justice entities in the region
- Provides technical and legal assistance and training to criminal investigators from DPS and other law enforcement agencies within the region
- Prosecutes cases involving border crimes in any jurisdiction within the region and within Border Prosecution Unit counties

GRAND PRAIRIE CITY ATTORNEY'S OFFICE, Grand Prairie, TX

Assistant City Attorney – Prosecutor

February 2015 – July, 2019

- Represented the city in all municipal court matters involving citations issued by police, code and housing enforcement officers
- Researched, reviewed, and analyzed criminal statutes and case law; assists court personnel as required
- Advised police officers regarding legal issues pertaining to detection, investigation, and prosecution of criminal cases

TARRANT COUNTY DISTRICT ATTORNEY'S OFFICE, Fort Worth, TX

Assistant District Attorney – Civil

July 2014 – February 2015

- Prepared cases for involuntary mental health commitment hearings
- Initiated removal proceedings for elderly and disabled persons for Adult Protective Services
- Represented the county in occupational driver's license hearings

Assistant District Attorney - Criminal

March 2011 – June 2014

- Presented cases to Grand Jury, conducted hearings and tried over 30 Jury cases
- Interpreted and applied laws, court decisions and other legal authorities for use in preparation of cases, opinions, and briefs
- Negotiated plea agreements with opposing counsel, prepared pleadings and other legal documents in connection with trials

THURGOOD MARSHALL SCHOOL OF LAW, Houston, TX

Instructor, Academic Support

December 2009 – March 2011

- Taught Bar Essay Writing course to third-year law students
- Instructed first year law students in the specialized 1L Academic Skills Academy
- Provided counseling to all years of students

EDUCATION

TEXAS SOUTHERN UNIVERSITY, THURGOOD MARSHALL SCHOOL OF LAW, Houston, TX

Doctor of Jurisprudence, May 2009 GPA: 3.26/4.0, magna cum laude, certified in Government Law

TEXAS STATE UNIVERSITY, San Marcos, TX

Bachelor of Arts, May 2002 GPA: 3.72/4.0



APPOINTMENT OF PRESIDING MUNICIPAL COURT JUDGE

RS-22-035

March 1, 2022

Background

2

- Municipal Court Judge vacancy
- Recruitment

Candidate Information

3

- The City Council selected Kris Krishna as the Presiding Municipal Court Judge.
- Mr. Krishna earned his bachelor's of Arts from Texas State University and his Juris Doctorate from Texas Southern University.
- Mr. Krishna most recently served in the Webb County District Attorney's Office as a Border Prosecutor for two and a half (2½) years. He also served as Assistant City Attorney with the City of Grand Prairie for a little over four (4) years and as Assistant District Attorney for Tarrant County District Attorney's office for almost four (4) years.

Alternatives

4

- ❑ To not approve the City Council's appointment of Kris Krishna as the City of Killeen's Presiding Municipal Court Judge
- ❑ To approve the City Council's appointment of Kris Krishna as the City of Killeen's Presiding Municipal Court Judge

Staff Recommendation

5

Staff recommends approving the City Council's appointment of Kris Krishna as the Municipal Court Judge





City of Killeen

Legislation Details

File #: PH-22-017 **Version:** 1 **Name:** FLUM 22-08
Type: Ordinance/Public Hearing **Status:** Public Hearings
File created: 1/18/2022 **In control:** City Council
On agenda: 3/8/2022 **Final action:**
Title: HOLD a public hearing and consider an ordinance requested by Russell and Oteeka Davis (Case #FLUM 22-08) to amend the Comprehensive Plan's Future Land Use Map (FLUM) from 'Residential Mix' (R-MIX) to 'General Commercial' (GC), being approximately 0.22 acres out of the Spofford Addition, Block D, part of Lot 8. The property is addressed as 409 761st Tank Battalion Avenue, Killeen, Texas.
Sponsors: Development Services
Indexes:
Code sections:
Attachments: [Staff Report](#)
[Maps](#)
[Minutes](#)
[Ordinance](#)
[Presentation](#)

Date	Ver.	Action By	Action	Result
3/1/2022	1	City Council Workshop		



STAFF REPORT

DATE: March 1, 2022

TO: Kent Cagle, City Manager

FROM: Wallis Meshier, CNU-A, Director of Planning

SUBJECT: FLUM CASE # 22-08: 'RESIDENTIAL MIX' (R-MIX) TO 'GENERAL COMMERCIAL' (GC)

BACKGROUND AND FINDINGS:

Property Information:

Property Owner: Russell and Oteeka Davis
Current FLUM Designation: 'Residential Mix' (R-MIX)
Requested FLUM Designation: 'General Commercial' (GC)
Current Zoning: "R-3" (Multifamily Residential District)
Proposed Zoning: "B-5" (Business District)

Summary of Request:

Russell and Oteeka Davis have submitted a request to amend the Comprehensive Plan's Future Land Use Map (FLUM) from 'Residential Mix' (R-MIX) to 'General Commercial' (GC), being approximately 0.22 acres out of the Spofford Addition, Block D, part of Lot 8. If approved, the applicants intend to use the property for additional parking and vehicle storage for their existing towing and automotive business.

Zoning/Plat Case History:

The subject property was zoned "R-3" (Multi-family) on March 8, 1977 via Ordinance No. 77-13. The property was platted as part of Spofford subdivision, Block D, Lot 8 on April 26, 1951.

Character of the Area:

	Current Land Use	Zoning District	Future Land Use
North	Vacant residential lot	R-3 (Multifamily Residential)	Residential Mix (R-MIX)
East	Existing single-family home and four-plex residential	R-2 (Two-Family Residential)	Residential Mix (R-MIX)
South	Existing hotel-motel property across railroad track	B-5 (Business)	General Commercial (GC)
West	Vacant commercial lot	B-5 (Business)	Residential Mix (R-MIX)

Future Land Use Map Analysis:

This property is designated as 'Residential Mix' (R-MIX) on the Future Land Use Map (FLUM) of the Comprehensive Plan.

The 'Residential Mix' (R-MIX) designation includes areas that were allowed to develop in the past with various housing types and densities intermixed, both on the same block and across streets, often with minimal screening and/or buffering between differing residential intensities. These are auto-oriented areas and should address compatibility and screening/buffering, where possible, as redevelopment occurs.

The 'Residential Mix' (R-MIX) designation encourages the following development types:

- Mix of residential types and densities;
- Public/institutional; and
- Parks and public spaces.

If approved, the 'General Commercial' (GC) designation encourages 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/institutional; and
- Parks and public spaces.

The applicant has submitted a concurrent request to rezone the property from "R-3" (Multifamily Residential District) to "B-5" (Business District).

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 761st Tank Battalion Ave., which is classified as a 60' wide Local Street on the City of Killeen Thoroughfare Plan.

Environmental Assessment:

The property is not within any FEMA regulatory Special Flood Hazard Area (SFHA). There are no other known wetland areas on or adjacent to the property as identified on the National Wetlands Inventory.

Public Notification:

Staff mailed courtesy notices to thirty-six (36) surrounding property owners regarding this request. Of those property owners notified, fourteen (14) reside outside of Killeen.

Staff Findings:

The current zoning of the subject property is "R-3" (Multifamily Residential District). The surrounding area includes commercial and residential uses. The area to the north and west are vacant properties. To the east are existing single-family and multifamily homes. To the south, across 761st Tank Battalion Ave. and the railroad tracks is an existing hotel-motel commercial property.

THE ALTERNATIVES CONSIDERED:

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

- Disapprove the applicant's FLUM amendment request;
- Approve a more restrictive FLUM designation; or
- Approve the applicant's FLUM amendment request.

Which alternative is recommended? Why?

Staff recommends disapproval of the applicant's request to amend the FLUM as presented.

Staff finds that the 'Residential Mix' (R-MIX) designation, generally an intermix of housing types and densities both on the same block and street, is appropriate for this location since the area is primarily residential in nature.

CONFORMITY TO CITY POLICY:

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

FINANCIAL IMPACT:**What is the amount of the expenditure in the current fiscal year? For future years?**

This is not applicable.

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:

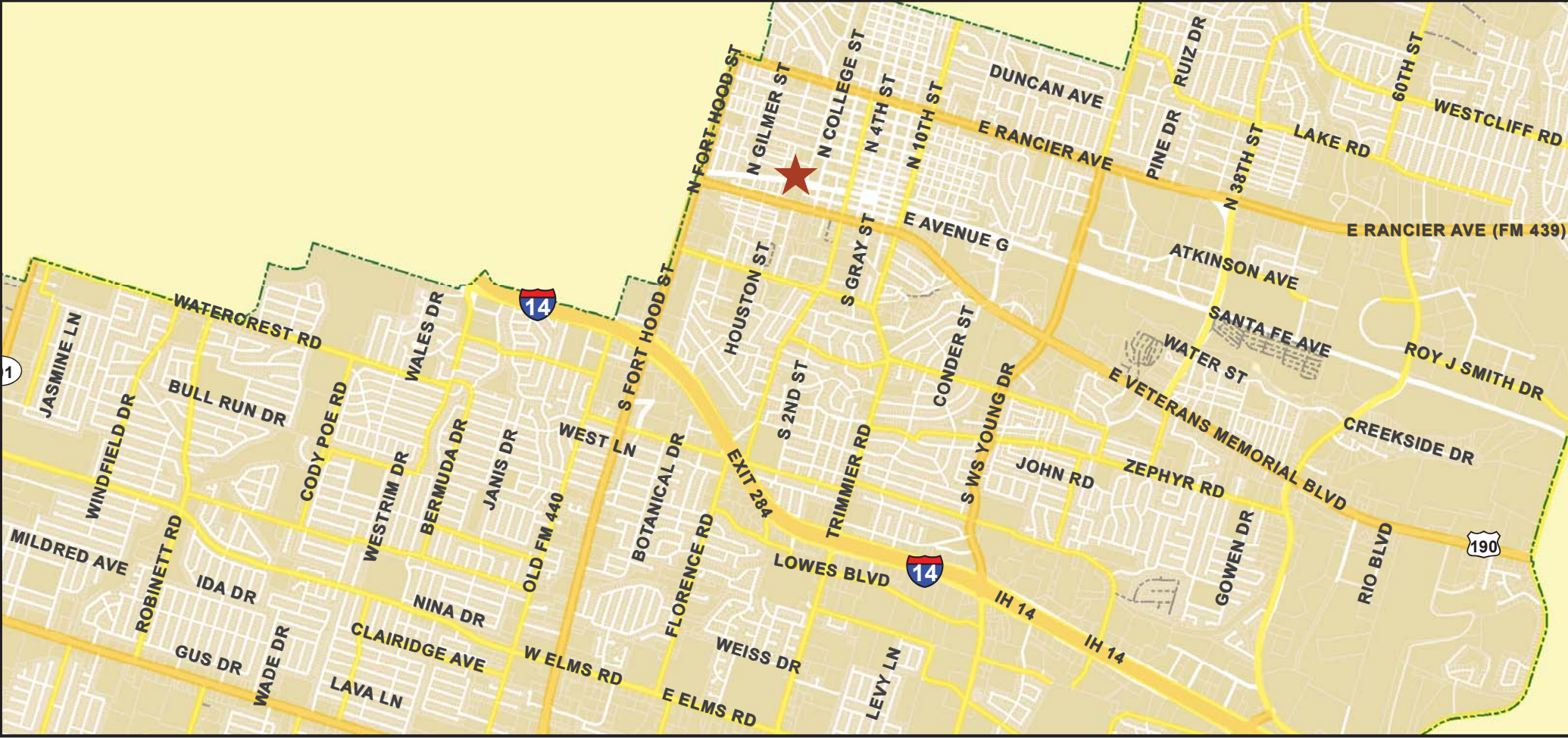
At their regular meeting on February 7, 2022, the Planning and Zoning Commission recommended approval of the applicant's request by a vote of 6 to 0.

DEPARTMENTAL CLEARANCES:

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

ATTACHED SUPPORTING DOCUMENTS:

Maps
Minutes
Ordinance



LOCATION MAP

Case: FLUM AMENDMENT 2022-08

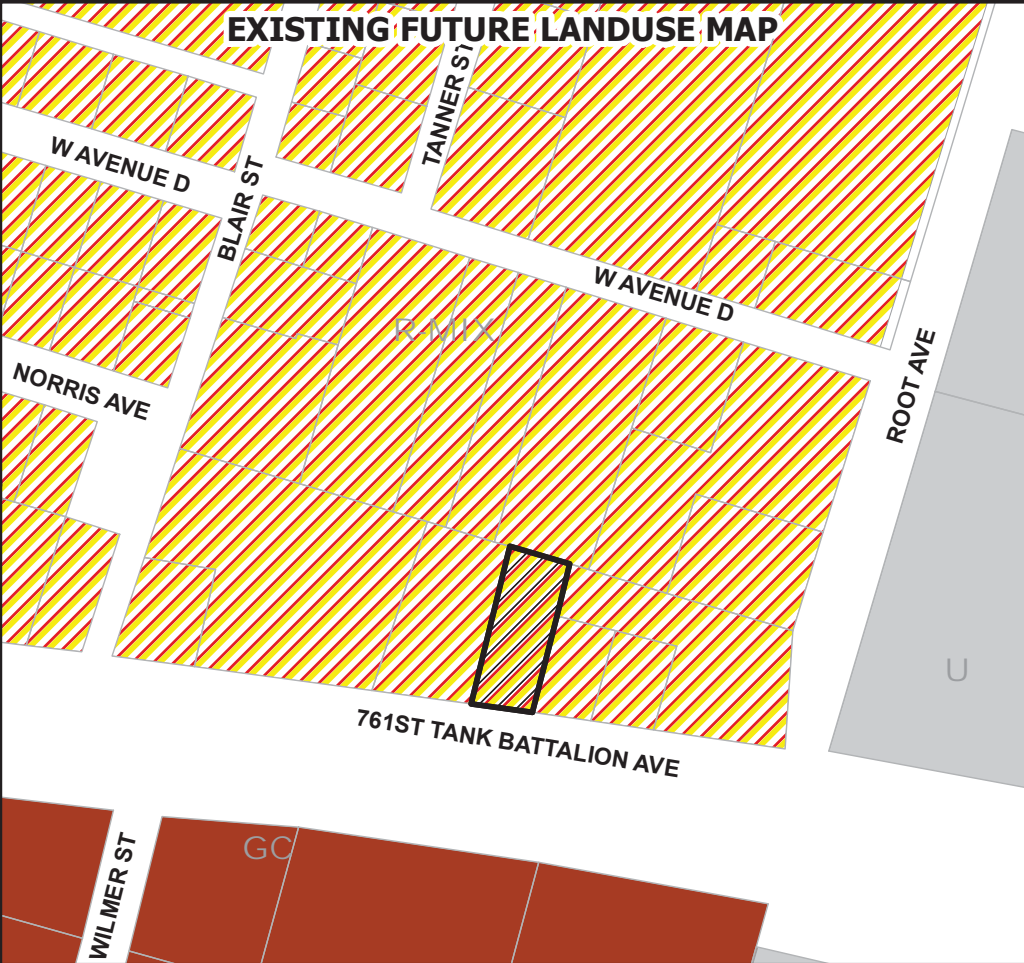
Council District: 1
FROM R-MIX TO GC
Subject Property Legal Description: SPOFFORD, BLOCK 00D, LOT PT 8, (120' X 70' X 110' X 70'), 765-87

 FLUM LOCATION

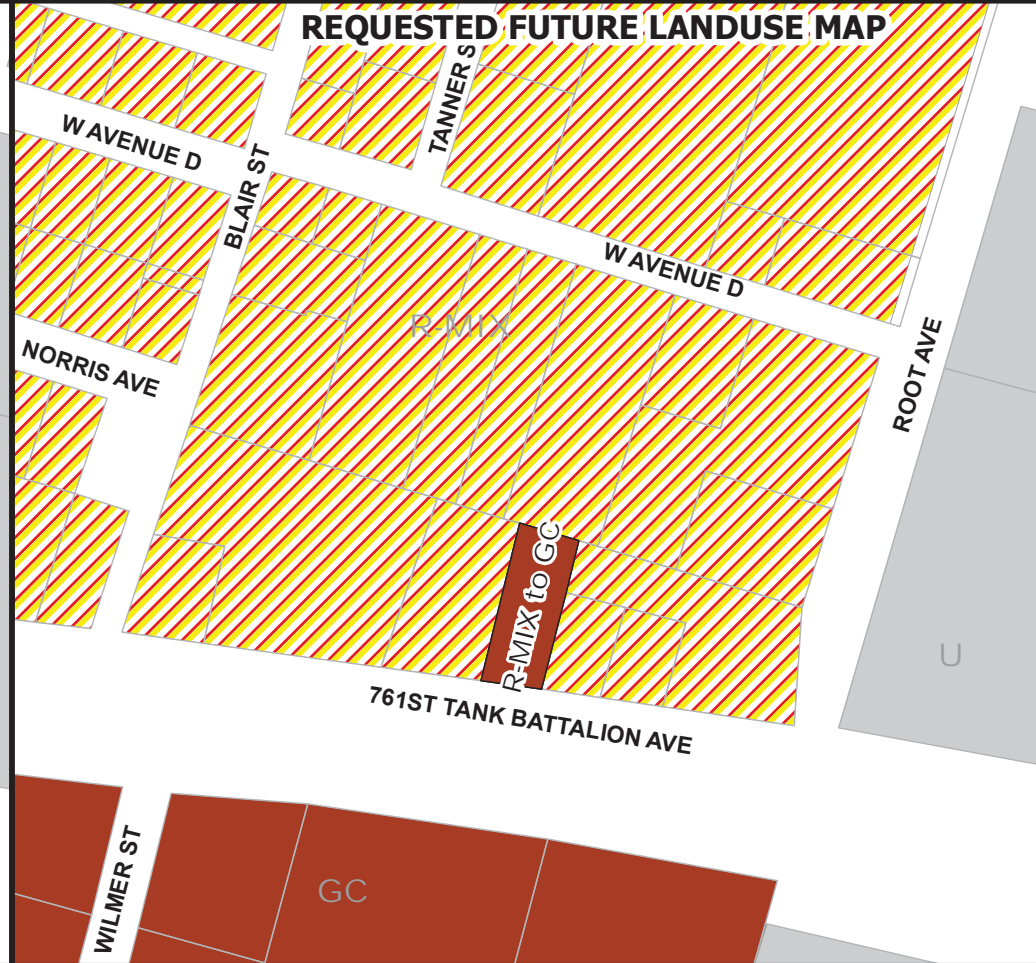


1 inch = 4,167 feet
Date: 1/18/2022

EXISTING FUTURE LANDUSE MAP



REQUESTED FUTURE LANDUSE MAP



FUTURE LAND USE MAP





Case: FLUM AMENDMENT 2022-08

Council District: 1

FROM R-MIX TO GC

Subject Property Legal Description: SPOFFORD, BLOCK 00D, LOT PT 8, (120' X 70' X 110' X 70'), 765-87

Future Land Use Legend

-  FLUM Case Location
-  Urban (U)
-  Residential Mix (R-MIX)
-  General Commercial (GC)



1 inch = 208 feet

Date: 1/18/2022

MINUTES
PLANNING AND ZONING COMMISSION MEETING
February 07, 2022

CASE #FLUM22-08
'R-MIX to 'GC'

HOLD a public hearing and consider a request submitted by Russell Davis (**Case #FLUM 22-08**), to amend the Comprehensive Plan's Future Land Use Map (FLUM) from a 'Residential Mix' (R-MIX) designation to a 'General Commercial' (GC) designation, being approximately 0.22 acres out of the Spofford Addition, Block D, part of Lot 8. The property is addressed as 409 761st Tank Battalion Avenue, Killeen, Texas.

Ms. Larsen briefed the Commission regarding the applicant's request. She stated that staff recommended disapproval, as the request is inconsistent with the predominantly residential character of the area.

The applicant, Ms. Oteeka Davis, was present to represent the case.

Chairman Latham opened the public hearing.

Ms. Michelle Lee of Killeen Engineering and Surveying spoke in favor of the FLUM amendment request.

With no one else wishing to speak, the public hearing was closed.

Commissioner Adams made a motion to approve the applicant's request. Commissioner Sabree seconded, and the motion passed by a vote of 6 to 0.

ORDINANCE _____

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN'S FUTURE LAND USE MAP TO CHANGE APPROXIMATELY 0.22 ACRES OUT OF THE SPOFFORD ADDITION, BLOCK D, PART OF LOT 8, FROM A 'RESIDENTIAL MIX' (R-MIX) TO 'GENERAL COMMERCIAL' (GC) DESIGNATION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; 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 Russell and Oteeka Davis, for a revision to the Future Land Use Map (FLUM) of the Comprehensive Plan to change the 'Residential Mix' (R-MIX) designation to a 'General Commercial' (GC) designation, said property being legally described as being approximately 0.22 acres out of the Spofford Addition, Block D, part of Lot 8; said revision having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 7th day of February 2022, 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 8th day of March 2022, 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 0.22 acres out of the Spofford Addition, Block D, part of Lot 8, be amended from a ‘Residential Mix’ (R-MIX) designation to a ‘General Commercial’ (GC) designation. The property is locally addressed as 409 761st Tank Battalion Ave, 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 8th day of March 2022, 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 22-08

Ord#: 22-____



CASE #FLUM22-08: 'R-MIX' TO 'GC'

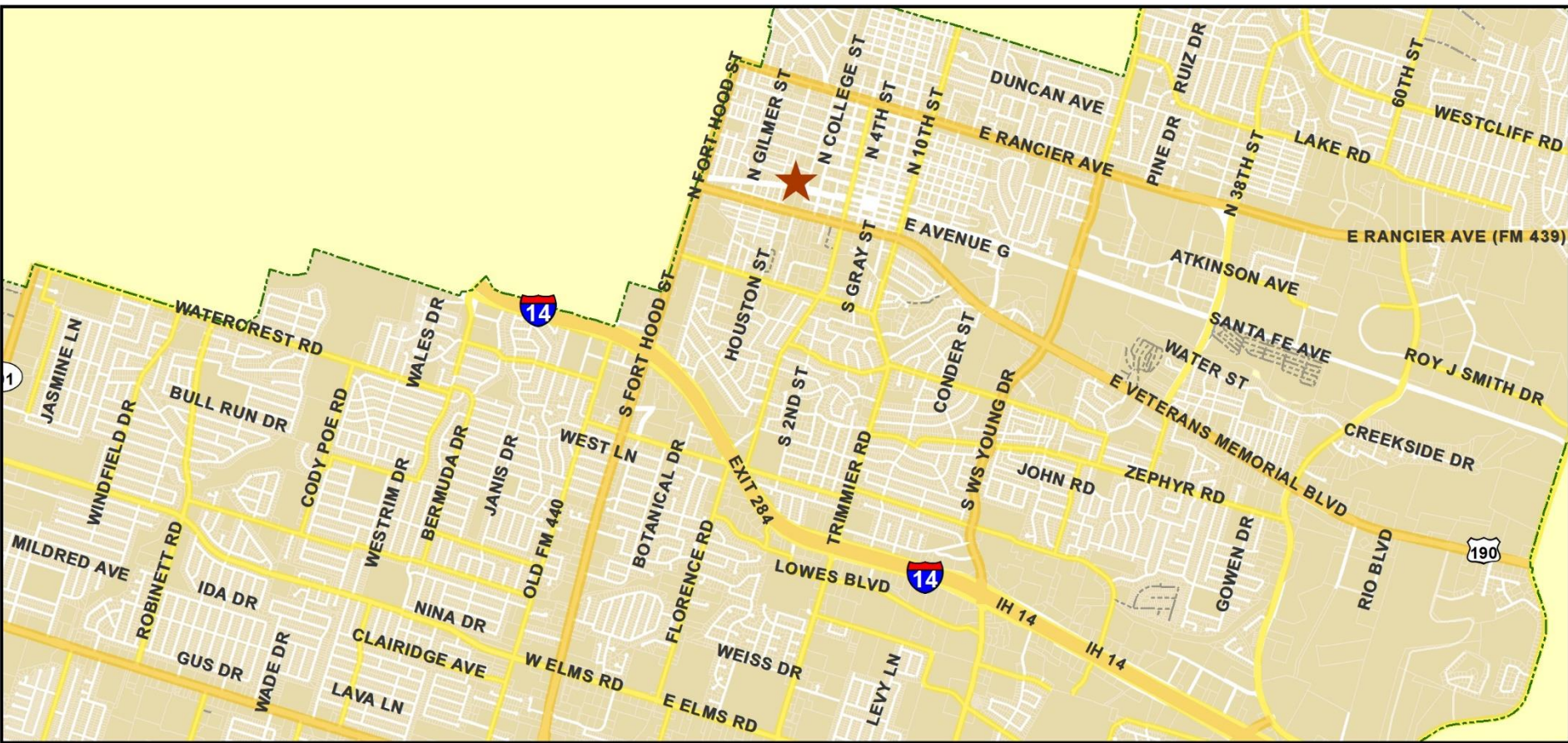
PH-22-017

March 1, 2022

Case #FLUM 22-08 – ‘R-MIX’ to ‘GC’

2

- ❑ **HOLD** a public hearing and consider a request submitted by Russell Davis (**Case #FLUM 22-08**), to amend the Comprehensive Plan’s Future Land Use Map (FLUM) from a ‘Residential Mix’ (R-MIX) designation to a ‘General Commercial’ (GC) designation, being approximately 0.22 acres out of the Spofford Addition, Block D, part of Lot 8.
- ❑ The property is addressed as 409 761st Tank Battalion Avenue, Killeen, Texas.



LOCATION MAP

Case: FLUM AMENDMENT 2022-08

Council District: 1
FROM R-MIX TO GC
Subject Property Legal Description: SPOFFORD, BLOCK 00D, LOT PT 8, (120' X 70' X 110' X 70'), 765-87



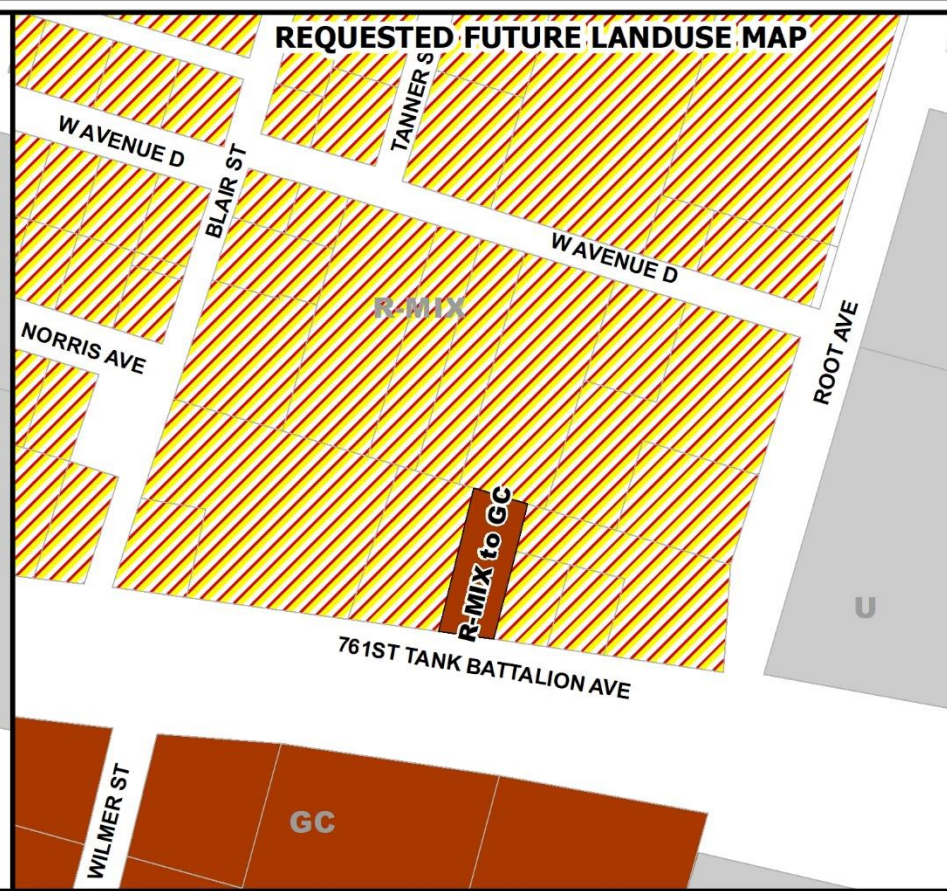
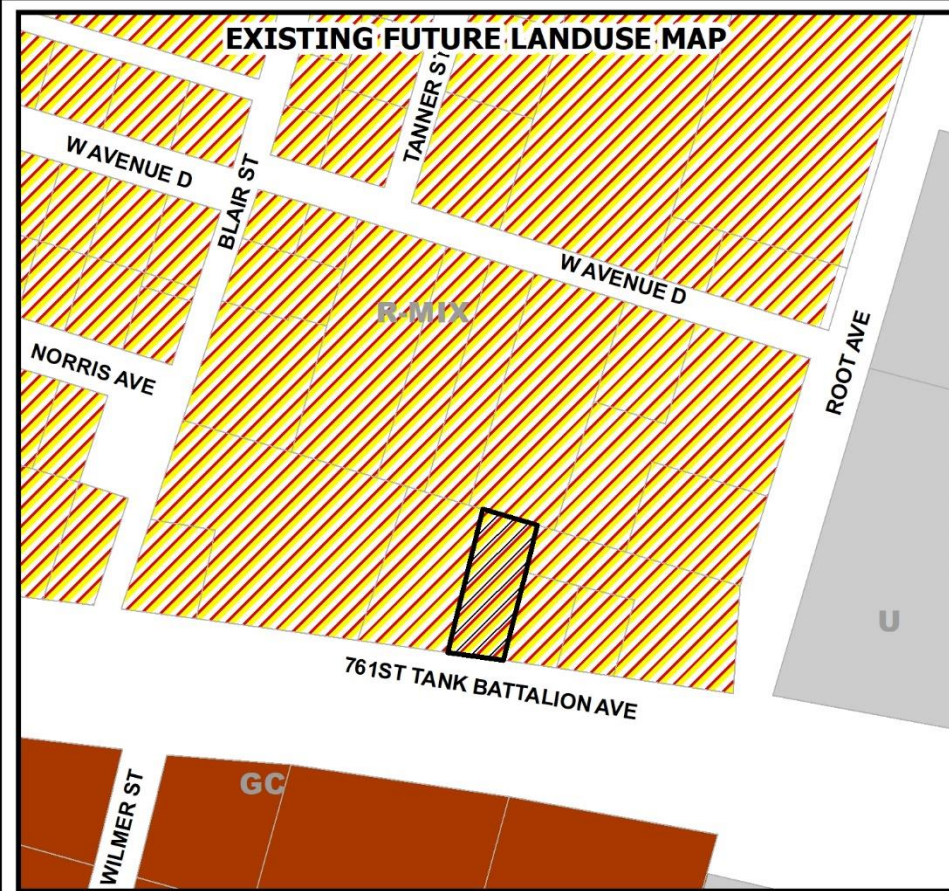
FLUM LOCATION



1 inch = 4,167 feet
Date: 1/18/2022

EXISTING FUTURE LANDUSE MAP

REQUESTED FUTURE LANDUSE MAP



FUTURE LAND USE MAP

Case: FLUM AMENDMENT 2022-08

Council District: 1

FROM R-MIX TO GC

Subject Property Legal Description: SPOFFORD, BLOCK 00D, LOT PT 8, (120' X 70' X 110' X 70'), 765-87

Future Land Use Legend

-  FLUM Case Location
-  Urban (U)
-  Residential Mix (R-MIX)
-  General Commercial (GC)



1 inch = 208 feet

Date: 1/18/2022

Case #FLUM 22-08 – ‘R-MIX’ to ‘GC’

5

- If approved, the applicant intends to use the property for additional parking and vehicle storage for their existing towing and automotive business.
- The applicant has submitted a concurrent request to rezone the property from “R-3” (Multifamily Residential District) to “B-5” (Business District).

Case #FLUM 22-08 – ‘R-MIX’ to ‘GC’

6

- The ‘Residential Mix’ (R-MIX) designation includes areas that were allowed to develop in the past with various housing types and densities intermixed, with minimal screening and/or buffering between differing residential intensities.
- The 2010 Comprehensive Plan states that compatibility and screening/buffering within the ‘R-MIX’ designation should be addressed where possible, as redevelopment occurs.

Case #FLUM 22-08 – ‘R-MIX’ to ‘GC’

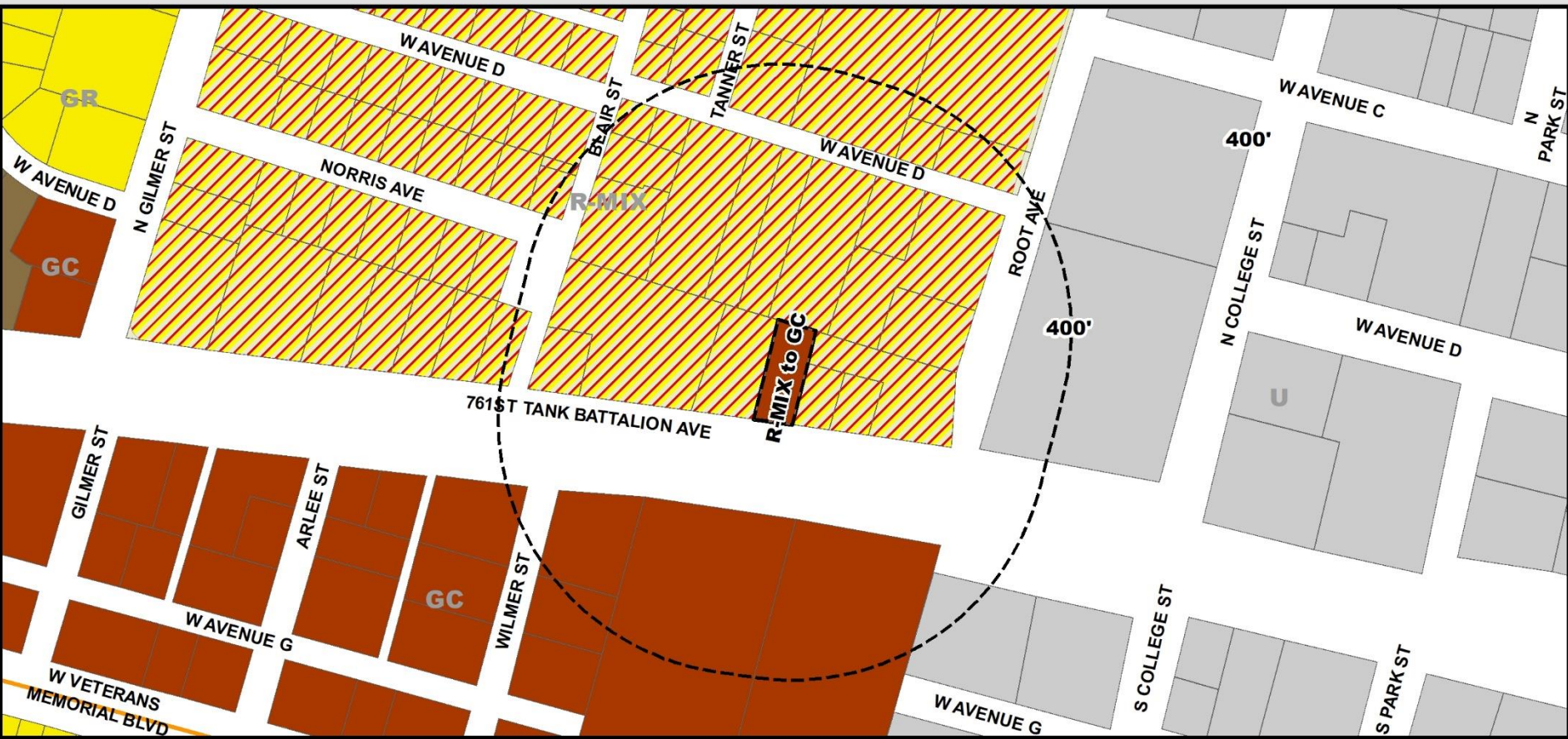
7

- If approved, the ‘General Commercial’ (GC) designation encourages 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/institutional; and
 - ▣ Parks and public spaces.

Public Notification

8

- Staff mailed courtesy notices to thirty-six (36) surrounding property owners regarding this request.
- Of those property owners notified, fourteen (14) reside outside of Killeen.



NOTIFICATION MAP

Case: FLUM AMENDMENT 2022-08

Council District: 1
FROM R-MIX TO GC
Subject Property Legal Description: SPOFFORD, BLOCK 00D, LOT PT 8, (120' X 70' X 110' X 70'), 765-87

- Legend**
- Killeen City Limits
 - Bell County Area
 - Principal Arterial, Existing
 - Urban (U)
 - Multi-Family Residential (MFR)
 - Residential Mix (R-MIX)
 - General Residential (GR)
 - General Commercial (GC)



Date: 1/18/2022

Alternatives

10

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

Staff Recommendation

11

- ❑ Staff recommends disapproval of the applicant's request to amend the FLUM as presented.
- ❑ Staff finds that the character of the area is primarily residential in nature, and that the 'Residential Mix' (R-MIX) FLUM designation is appropriate in this this location.

Commission Recommendation

12

- ❑ At their regular meeting on February 7, 2022, the Planning and Zoning Commission recommended approval of the applicant's request by a vote of 6 to 0.



City of Killeen

Legislation Details

File #:	PH-22-018	Version:	1	Name:	Zoning 22-07
Type:	Ordinance/Public Hearing		Status:	Public Hearings	
File created:	1/18/2022		In control:	City Council	
On agenda:	3/8/2022		Final action:		
Title:	HOLD a public hearing and consider an ordinance requested by Russell and Oteeka Davis, (Case #Z22-07), to rezone approximately 0.22 acres out of the Spofford Addition, Block D, part of Lot 8, from “R-3” (Multifamily Residential District) to “B-5” (Business District). The property is addressed as 409 761st Tank Battalion Avenue, Killeen, Texas.				
Sponsors:	Development Services				
Indexes:					
Code sections:					
Attachments:	Staff Report				
	Maps				
	Minutes				
	Site Photos				
	Ordinance				
	Considerations				
	Presentation				

Date	Ver.	Action By	Action	Result
3/1/2022	1	City Council Workshop		



STAFF REPORT

DATE: March 1, 2022

TO: Kent Cagle, City Manager

FROM: Wallis Meshier, CNU-A, Director of Planning

SUBJECT: ZONING CASE #22-07: "R-3" (MULTIFAMILY RESIDENTIAL DISTRICT)
TO "B-5" (BUSINESS DISTRICT)

BACKGROUND AND FINDINGS:

Property Information:

Property Owner: Russell and Oteeka Davis
Current Zoning: "R-3" (Multifamily Residential District)
Requested Zoning: "B-5" (Business District)
Current FLUM Designation: 'Residential Mix' (R-MIX)
Requested FLUM Designation: 'General Commercial' (GC)

Summary of Request:

Russell and Oteeka Davis have submitted a request to rezone approximately 0.22 acres out of the Spofford, Block D, part of Lot 8, from "R-3" (Multifamily Residential District) to "B-5" (Business District). If approved, the applicant intends to use the property for additional parking and vehicle storage for their existing towing and automotive business.

Zoning/Plat Case History:

The subject property was zoned "R-3" (Multi-family) on March 8, 1977 via Ordinance No. 77-13. The property was platted as part of Spofford subdivision, Block D, Lot 8 on April 26, 1951.

Character of the Area:

	Current Land Use	Zoning District	Future Land Use
North	Vacant residential lot	R-3 (Multifamily Residential)	Residential Mix (R-MIX)
East	Existing single-family home and four-plex residential	R-2 (Two-Family Residential)	Residential Mix (R-MIX)
South	Existing hotel-motel property	B-5 (Business)	General Commercial (GC)
West	Vacant commercial lot	B-5 (Business)	Residential Mix (R-MIX)

Future Land Use Map Analysis:

This property is designated as 'Residential Mix' (R-MIX) on the Future Land Use Map (FLUM) of the Comprehensive Plan.

The 'Residential Mix' (R-MIX) designation includes areas that were allowed to develop in the past with various housing types and densities intermixed, both on the same block and across streets, often with minimal screening and/or buffering between differing residential intensities. These are auto-oriented areas and should address compatibility and screening/buffering, where possible, as redevelopment occurs.

The 'Residential Mix' (R-MIX) designation encourages the following development types:

- Mix of residential types and densities;
- Public/institutional; and
- Parks and public spaces.

Staff finds that the request is inconsistent with the Future Land Use Map (FLUM) of the Comprehensive Plan. However, the applicant has submitted a concurrent request to amend the FLUM from a 'Residential Mix' (R-MIX) designation to a 'General Commercial' (GC) designation.

If approved, the 'General Commercial' (GC) designation encourages 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/institutional; and
- Parks and public spaces.

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 761st Tank Battalion Ave., which is classified as a 60' wide Local Street on the City of Killeen Thoroughfare Plan.

Environmental Assessment:

The property is not within any FEMA regulatory Special Flood Hazard Area (SFHA). There are no other known wetland areas on or adjacent to the property as identified on the National Wetlands Inventory.

Public Notification:

Staff notified thirty-six (36) surrounding property owners regarding this request. Of those property owners notified, twenty-one (21) reside outside of the 200-foot notification boundary required by the State, but within the 400-foot notification boundary required by Council; and fourteen (14) reside outside the city limits of Killeen. As of the date of this staff report, no written responses have been received regarding this request.

Staff Findings:

The current zoning of the subject property is "R-3" (Multifamily Residential District). The surrounding area includes commercial and residential uses. The area to the north and west are vacant properties. To the east are existing single-family and multifamily homes. To the south, across 761st Tank Battalion Ave. and the railroad tracks is an existing hotel-motel commercial property.

THE ALTERNATIVES CONSIDERED:

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

- Disapprove the applicant's request;
- Approve a more restrictive zoning designation; or
- Approve the applicant's request.

Which alternative is recommended? Why?

Staff recommends disapproval of the applicant's request to rezone the property from "R-3" (Multifamily Residential District) to "B-5" (Business District).

Staff finds that the applicant's request for "B-5" (Business District) is incompatible with the predominantly residential character of the area. Further, staff finds that the existing "R-3" (Multifamily Residential District) is appropriate in this location.

CONFORMITY TO CITY POLICY:

This zoning request conforms to the City's policy and procedures as detailed in Chapter 31 of the 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:

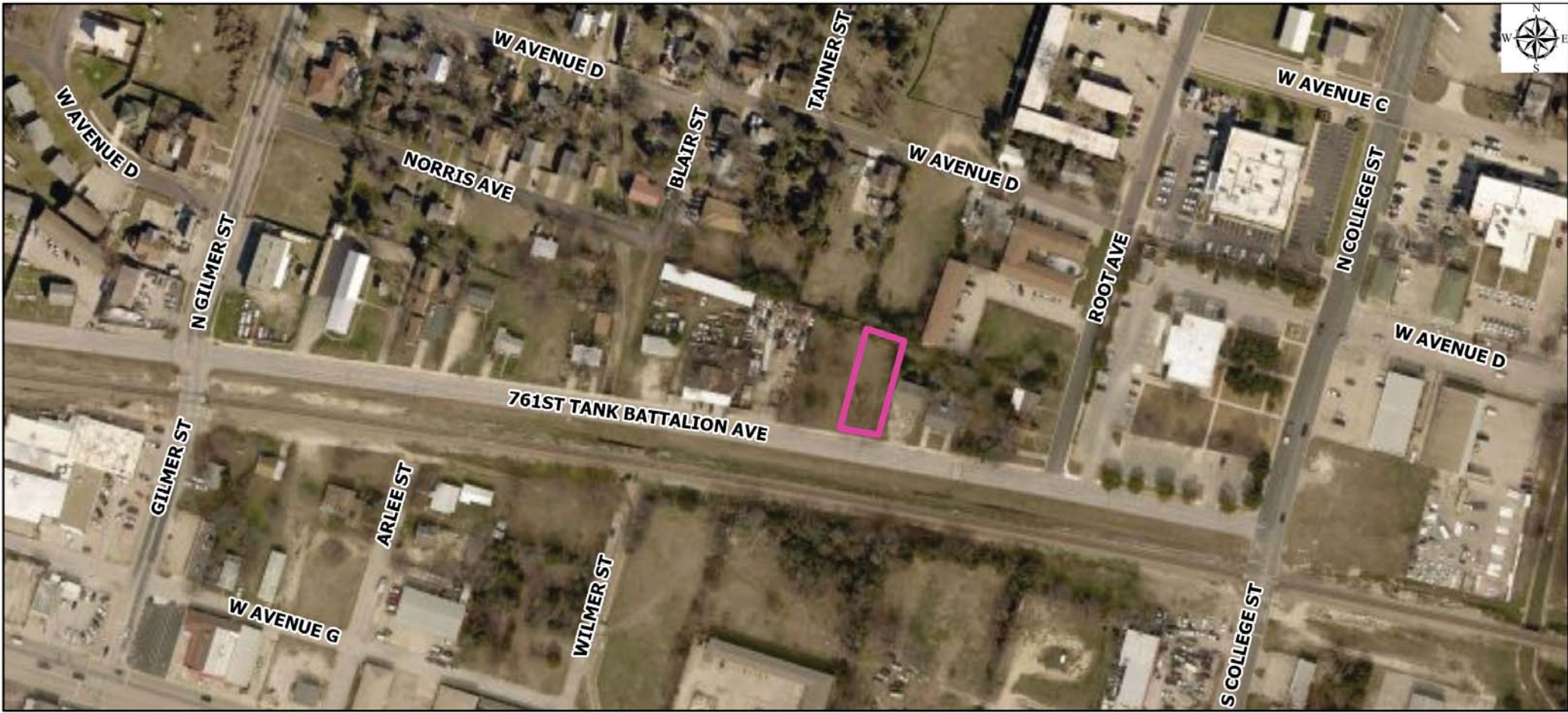
At their regular meeting on February 7, 2022, the Planning and Zoning Commission recommended approval of the applicant's request by a vote of 6 to 0.

DEPARTMENTAL CLEARANCES:

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

ATTACHED SUPPORTING DOCUMENTS:

Maps
Minutes
Site Photos
Ordinance
Considerations



Attachment #3

Council District: 1



0 150 300
Feet

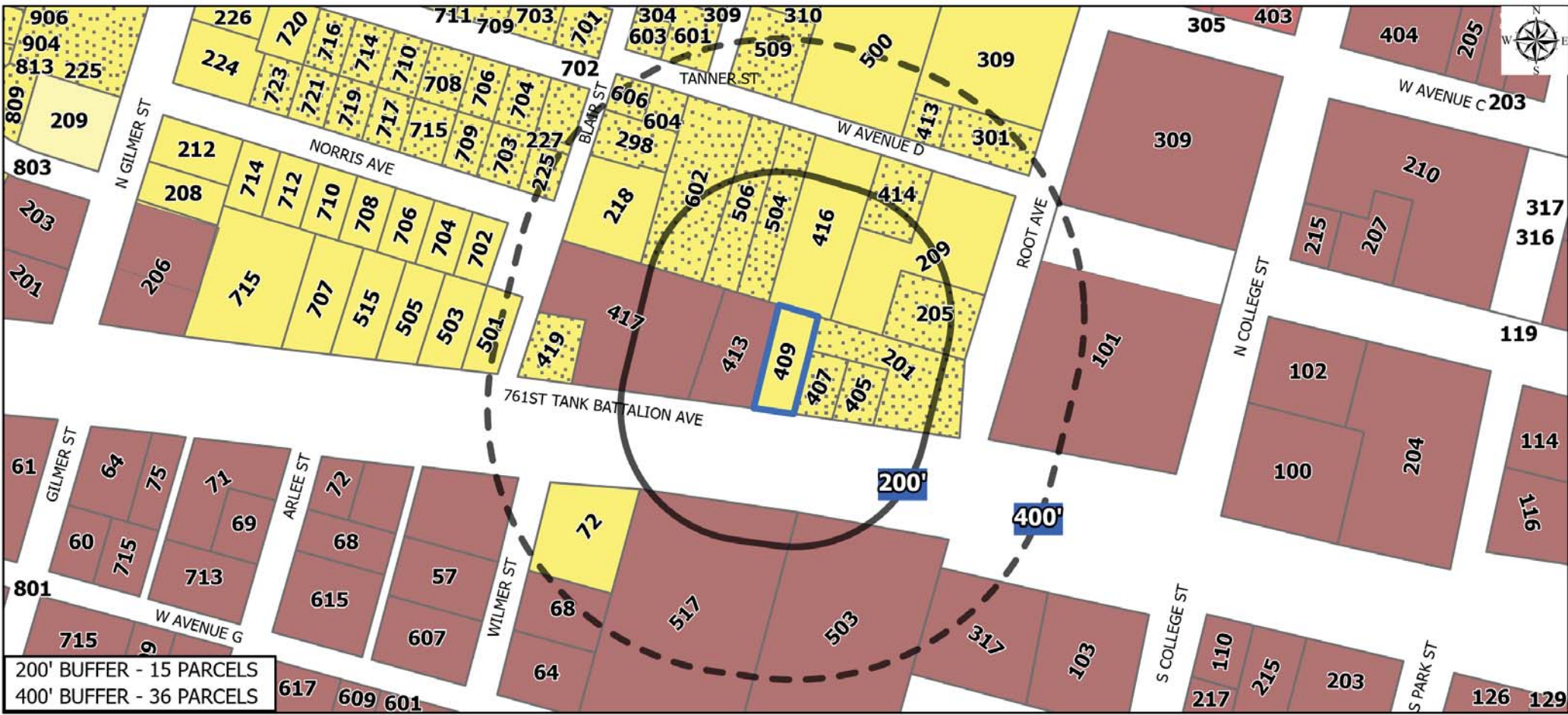
Zoning Case 2022-07

R-3 TO B-5

Subject Property Legal Description: SPOFFORD, BLOCK 00D, LOT PT 8, (120' X 70' X 110' X 70'), 765-87

Legend

-  Citylimits
-  Zoning Case 2022



Attachment #1

Council District: 1

0 150 300 Feet

Subject Property Legal Description: SPOFFORD, BLOCK 00D, LOT PT 8, (120' X 70' X 110' X 70'), 765-87

Zoning Case 2022-07

R-3 TO B-5

Legend

CurrentZoning	
B-4	R-1
B-5	R-2
	R-3



Subject Property Legal Description: SPOFFORD, BLOCK 00D, LOT PT 8, (120' X 70' X 110' X 70'), 765-87

R-3 TO B-5



MINUTES
PLANNING AND ZONING COMMISSION MEETING
February 07, 2022

CASE #Z22-07
“R-3”to “B-5”

HOLD a public hearing and consider a request submitted by Russell Davis, (**Case #Z22-07**), to rezone approximately 0.22 acres out of the Spofford Addition, Block D, part of Lot 8, from “R-3” (Multifamily Residential District) to “B-5” (Business District). The property is locally addressed as 409 761st Tank Battalion Avenue, Killeen, Texas.

Ms. Larsen briefed the Commission regarding the applicant’s request. She stated that staff recommended disapproval, as the request is inconsistent with the predominantly residential character of the area.

The applicant, Ms. Oteeka Davis, was present to represent the case.

Chairman Latham opened the public hearing.

Ms. Michelle Lee of Killeen Engineering and Surveying spoke in favor of the zoning request.

With no one else wishing to speak, the public hearing was closed.

Commissioner Adams made a motion to approve the applicant’s request. Commissioner Sabree seconded, and the motion passed by a vote of 6 to 0.

SITE PHOTOS

Case #Z22-07: "R-3" (Multifamily Residential District) to "B-5" (Business District).



View of the subject property from 761st Tank Battalion Ave:



View of the surrounding property to the east:



SITE PHOTOS

Case #Z22-07: "R-3" (Multifamily Residential District) to "B-5" (Business District).



View of the surrounding property to the west:



View of the adjacent property to the north:



ORDINANCE _____

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF APPROXIMATELY 0.22 ACRES OUT OF THE SPOFFORD ADDITION, BLOCK D, PART OF LOT 8, FROM “R-3” (MULTIFAMILY RESIDENTIAL DISTRICT) TO “B-5” (BUSINESS DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Russell and Oteeka Davis 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 0.22 acres out of the Spofford Addition, Block D, part of Lot 8, from “R-3” (Multifamily Residential District) to “B-5” (Business District), said request having been duly recommended for approval of “B-5” (Business District) by the Planning and Zoning Commission of the City of Killeen on the 7th day of February 2022, 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 8th day of March 2022, 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 0.22 acres out of the Spofford Addition, Block D, part of Lot 8, be changed from “R-3” (Multifamily Residential District) to “B-5” (Business District), said request having been duly recommended for approval of “B-5” (Business District), for the property locally addressed as 409 761st Tank Battalion Avenue, 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 8th day of March 2022, 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 #22-07

Ord. #22-____

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.



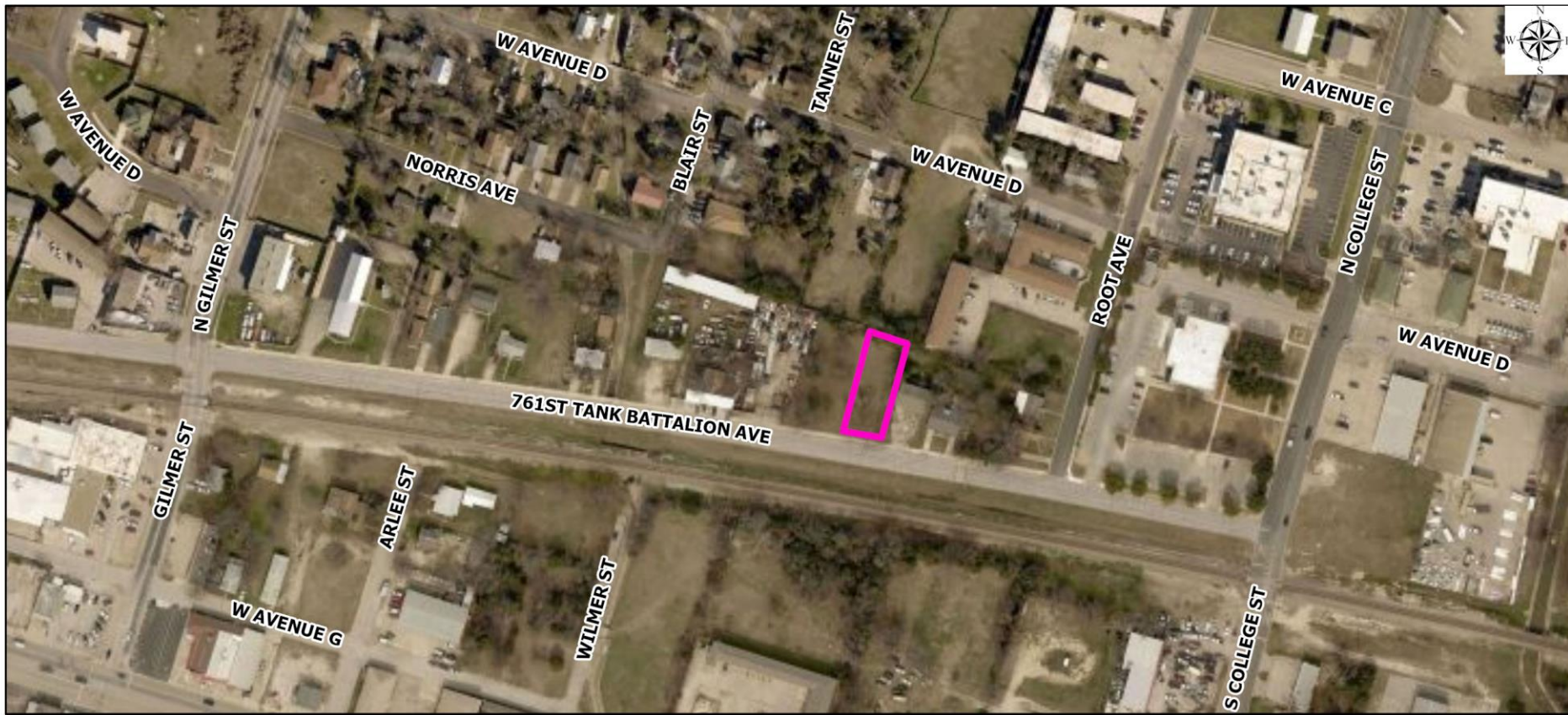
CASE #Z22-07: “R-3” TO “B-5”

PH-22-018

March 1, 2022

Case #Z22-07: “R-3” to “B-5”

- ❑ **HOLD** a public hearing and consider a request submitted by Russell Davis (**Case #Z22-07**), to rezone approximately 0.22 acres out of the Spofford Addition, Block D, part of Lot 8, from “R-3” (Multifamily Residential District) to “B-5” (Business District).
- ❑ The property is locally addressed as 409 761st Tank Battalion Avenue, Killeen, Texas.



Attachment #3

Council District: 1





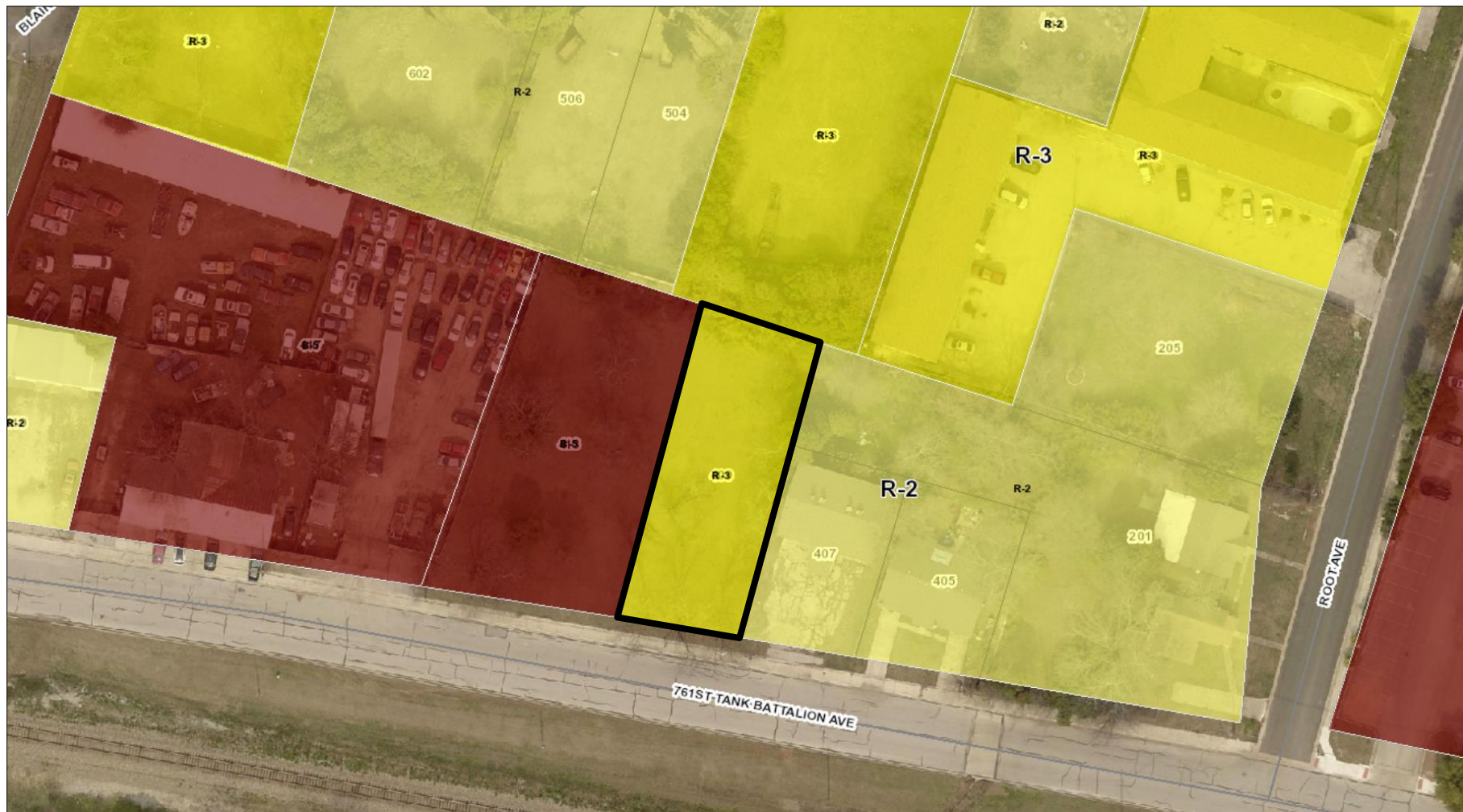
Subject Property Legal Description: SPOFFORD, BLOCK 00D, LOT PT 8, (120' X 70' X 110' X 70'), 765-87

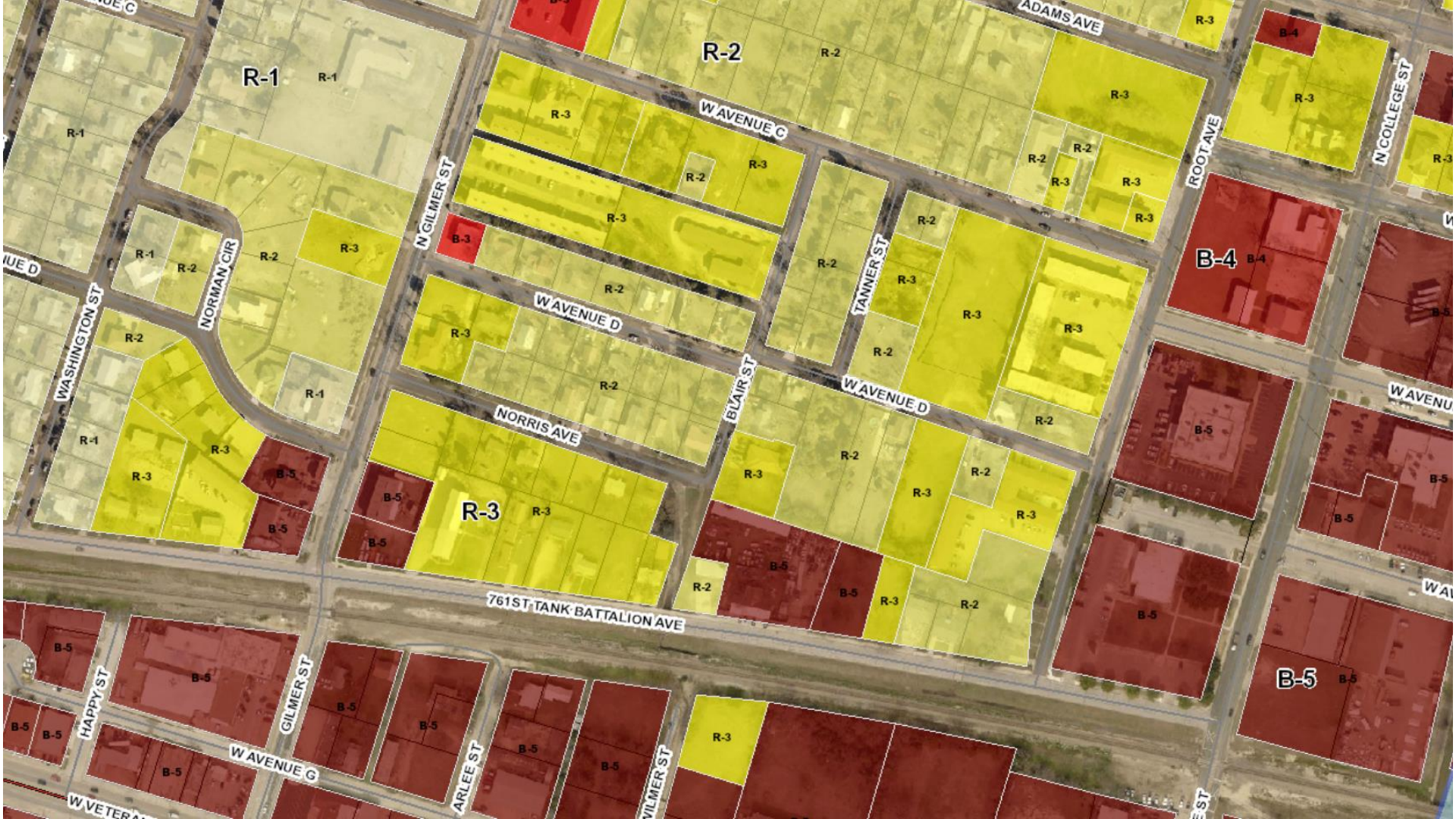
Zoning Case 2022-07

R-3 TO B-5

Legend

-  Citylimits
-  Zoning Case 2022





Case #Z22-07: “R-3” to “B-5”

7

- If approved, the applicant intends to use the property for additional parking and vehicle storage for their existing towing and automotive business.

Case #Z22-07: “R-3” to “B-5”

8

- The subject property is designated ‘Residential Mix’ (R-MIX) on the Future Land Use Map (FLUM).
- The ‘R-MIX’ designation encourages:
 - ▣ Mix of residential types and densities;
 - ▣ Public/institutional uses; and
 - ▣ Parks and public spaces.

Case #Z22-07: “R-3” to “B-5”

9

- This request is not consistent with the Future Land Use Map (FLUM). However, the applicant has submitted a concurrent FLUM amendment request from ‘Residential Mix’ (R-MIX) to ‘General Commercial’ (GC).

Case #Z22-07: “R-3” to “B-5”

10

- The property is not within any FEMA regulatory Special Flood Hazard Area (SFHA). There are no other known wetland areas on or adjacent to the property as identified on the National Wetlands Inventory.

Case #Z22-07: “R-3” to “B-5”

11

View of the subject property from 761st Tank Battalion Ave:



Case #Z22-07: “R-3” to “B-5”

12

View of the adjacent property to the east (zoned “R-2”):



Case #Z22-07: “R-3” to “B-5”

13

View of the adjacent property to the west (zoned “B-5”):



Case #Z22-07: “R-3” to “B-5”

14

View of the adjacent property to the north (zoned “R-3”):



Public Notification

15

- Staff notified thirty-six (36) surrounding property owners regarding this request.
- Of those notified, twenty-one (21) properties are located outside of the 200-foot notification boundary required by the State, but within the 400-foot notification boundary required by Council; and fourteen (14) property owners reside outside of Killeen.
- To date, staff has received no written responses regarding this request.



200' BUFFER - 15 PARCELS
400' BUFFER - 36 PARCELS

Attachment #4
Zoning Map
Council District: 1
Subject Property Legal Description: SPOFFORD, BLOCK 00D, LOT PT 8, (120' X 70' X 110' X 70'), 765-87

Zoning Case 2022-07
R-3 TO B-5



Alternatives

17

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

Staff Findings

18

- Staff finds that the applicant's request for "B-5" (Business District) is incompatible with the adjacent residential property to the north and east of the subject property.
- Staff finds that the existing towing business is not in keeping with the predominantly residential character of the area.
- Staff finds that the exiting "R-3" (Multifamily Residential District) is consistent with the adjacent land uses and 'Residential Mix' FLUM designation.

Staff Recommendation

19

- Therefore, staff recommends disapproval of the applicant's request to rezone the property from "R-3" (Multifamily Residential District) to "B-5" (Business District).

Commission Recommendation

20

- At their regular meeting on February 7, 2022, the Planning and Zoning Commission recommended approval of the applicant's request by a vote of 6 to 0.



City of Killeen

Legislation Details

File #:	PH-22-019	Version:	1	Name:	Zoning 22-08
Type:	Ordinance/Public Hearing		Status:	Public Hearings	
File created:	1/18/2022		In control:	City Council	
On agenda:	3/8/2022		Final action:		
Title:	HOLD a public hearing and consider an ordinance requested by Magdy Abadir, on behalf of Carmen Figueroa (Case #Z22-08), to rezone approximately 0.776 acres out of the Kinderland Addition Phase Two, Block 01, Lot 01, from “B-DC” (Business Day Care District) to “R-1” (Single-Family Residential District). The property is located at 1303 Trimmier Road, Killeen, Texas.				
Sponsors:	Development Services				
Indexes:					
Code sections:					
Attachments:	Staff Report				
	Maps				
	Minutes				
	Ordinance				
	Site Photos				
	Considerations				
	Response				
	Presentation				

Date	Ver.	Action By	Action	Result
3/1/2022	1	City Council Workshop		



STAFF REPORT

DATE: March 1, 2022

TO: Kent Cagle, City Manager

FROM: Wallis Meshier, CNU-A, Director of Planning

SUBJECT: ZONING CASE #22-08: "B-DC" (BUSINESS DAY CARE DISTRICT) TO "R-1 (SINGLE-FAMILY RESIDENTIAL DISTRICT)

BACKGROUND AND FINDINGS:

Property Information:

Property Owner: Carmen Figueroa
Agent: Magdy Abadir
Current Zoning: "B-DC" (Business Day Care District)
Requested Zoning: "R-1" (Single-Family Residential District)
Current FLUM Designation: 'General Residential' (GR)

Summary of Request:

Magdy Abadir, on behalf of Carmen Figueroa, has submitted a request to rezone approximately 0.776 acres out of the Kinderland Addition Phase Two, Block 1, Lot 1, from "B-DC" (Business Day Care District) to "R-1" (Single-Family Residential District). If approved, the applicant intends to utilize the property for residential purposes.

Zoning/Plat Case History:

The subject property was rezoned from "R-1" (Single-Family Residential District) to "B-DC" (Business Day Care District) on June 27, 2006 via Ordinance No. 06-66. The property was platted as Kinderland Addition Phase Two, Lot 1, Block 1 on February 8, 2008.

Character of the Area:

	Current Land Use	Zoning District	Future Land Use
North	Religious Institution	B-DC (Business Day Care)	General Residential (GR)
East	Religious Institution	R-1 (Single-Family Residential)	General Commercial (GC)
South	Single-family homes	R-1 (Single-Family Residential)	General Residential (GR)
West	Vacant / Open Space / Drainage Tract	R-1 (Single-Family Residential)	General Residential (GR)

Future Land Use Map Analysis:

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

The 'General Residential' (GR) designation encompasses most existing residential areas within Killeen. It is auto-oriented character (especially where driveways and front-loading garages dominate the front yard and building facades of homes), which can be offset by "anti-monotony" architectural standards, landscaping, and limitations on "cookie cutter" subdivision layouts characterized by straight streets and uniform lot sizes and arrangement.

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
- Parks and public spaces

The request is consistent with the Future Land Use Map (FLUM) of the Comprehensive Plan.

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 Trimmier Rd., which is classified as a 110' wide Minor Arterial, and Mary Jane Drive, which is classified as 60' wide Local Street on the City of Killeen Thoroughfare Plan.

Environmental Assessment:

The property is not within any FEMA regulatory Special Flood Hazard Area (SFHA). There is an area of riverine habitat adjacent to the property as identified on the National Wetlands Inventory.

Public Notification:

Staff notified fifty-four (54) surrounding property owners regarding 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 eight (8) reside outside the city limits of Killeen.

As of the date of this report, staff has received one (1) written response in support of this request.

Staff Findings:

Staff finds that the request is consistent with FLUM designation of the Comprehensive Plan. Staff is of the determination that the applicant's request is compatible with the surrounding land uses and prevailing community character. The character of the surrounding area consists of predominantly residential and religious land uses.

THE ALTERNATIVES CONSIDERED:

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

- Disapprove the applicant's request;
- Approve a more restrictive zoning designation; or
- Approve the applicant's request.

Which alternative is recommended? Why?

Staff recommends approval of the applicant's request to rezone the property from "B-DC" (Business Day Care District) to "R-1" (Single-Family Residential District).

Staff finds that the request is consistent with FLUM designation of the Comprehensive Plan. Staff is of the determination that the applicant's request is suitable with the adjacent surrounding uses and is compatible with the 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 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 February 7, 2022, the Planning and Zoning Commission recommended approval of the applicant's request by a vote of 6 to 0.

DEPARTMENTAL CLEARANCES:

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

ATTACHED SUPPORTING DOCUMENTS:

Maps
Minutes
Ordinance
Site Photos
Considerations
Response



Subject Property Legal Description: KINDERLAND ADDITION PHASE TWO, BLOCK 001, LOT 0001, ACRES 0.776

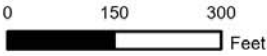
B-DC TO R-1





Attachment #3

Council District: 3

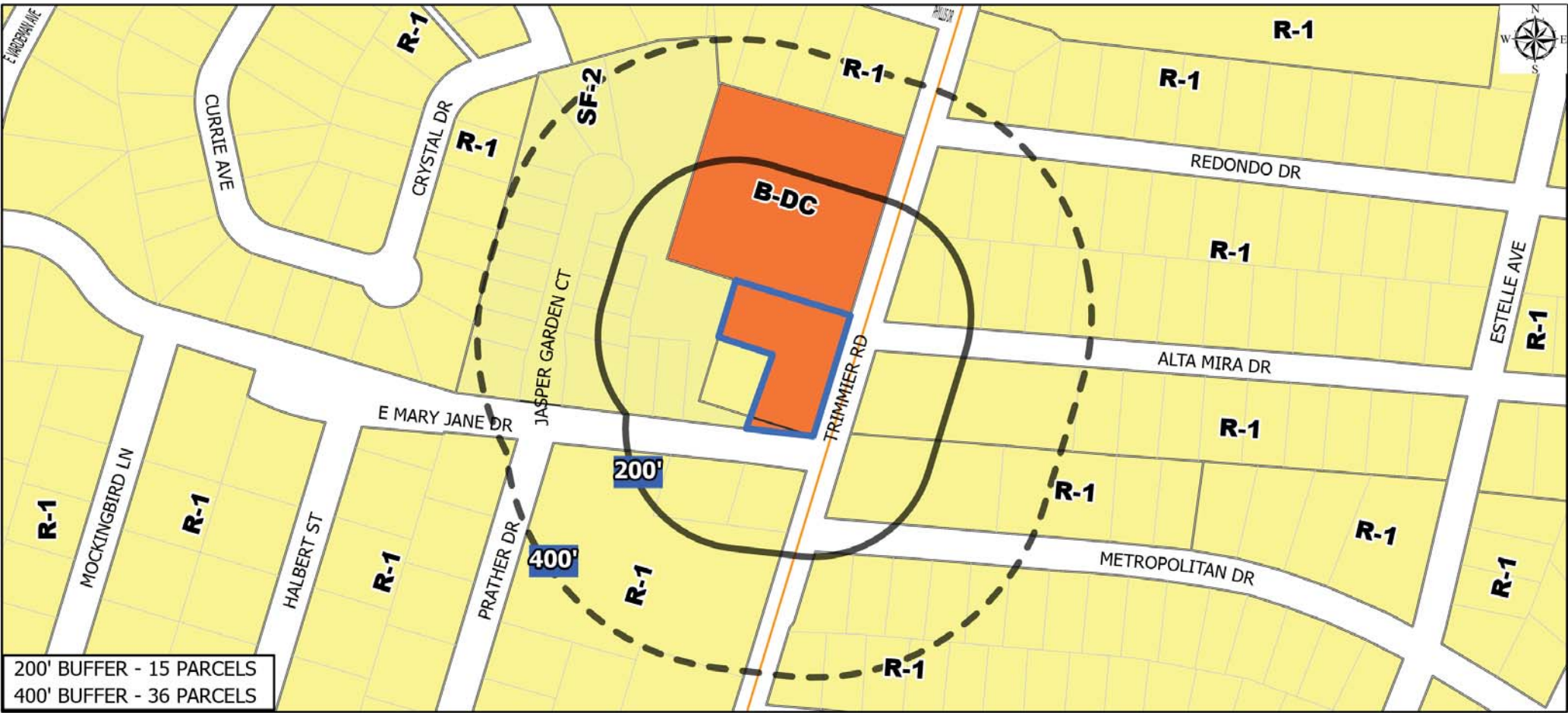


Subject Property Legal Description: KINDERLAND ADDITION PHASE TWO, BLOCK 001, LOT 0001, ACRES 0.776

Zoning Case 2022-08

B-DC TO R-1

- Legend
- Citylimits
 - Zoning Case 2022



Attachment #4

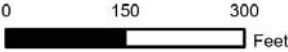
Zoning Map

Council District: 3

Subject Property Legal Description: KINDERLAND ADDITION PHASE TWO, BLOCK 001, LOT 0001, ACRES 0.776

Zoning Case 2022-08

B-DC TO R-1



MINUTES
PLANNING AND ZONING COMMISSION MEETING
February 07, 2022

CASE #Z22-08
“B-DC” to “R-1”

HOLD a public hearing and consider a request submitted by Magdy Abadir, on behalf of Carmen Figueroa (**Case #Z22-08**), to rezone approximately 0.776 acres out of the Kinderland Addition Phase Two, Block 1, Lot 1, from “B-DC” (Business Day Care District) to “R-1” (Single-Family Residential District). The property is located at 1303 Trimmier Road, Killeen, Texas.

Ms. Larsen briefed the Commission regarding the applicant’s request. She stated that staff recommended approval of the request, as it is consistent with the character of the area and the Future Land Use Map.

The applicant was not present to represent the case.

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

Commissioner Ploeckelmann made a motion to approve the applicant’s request. Commissioner Gukeisen seconded, and the motion passed by a vote of 6 to 0.

ORDINANCE _____

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF APPROXIMATELY 0.776 ACRES OUT OF THE KINDERLAND ADDITION PHASE TWO, BLOCK 1, LOT 1, FROM “B-DC” (BUSINESS DAY CARE DISTRICT) TO “R-1” (SINGLE-FAMILY RESIDENTIAL DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Magdy Abadir, on behalf of Carmen Figueroa, 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 0.776 acres out of the Kinderland Addition Phase Two, Block 1, Lot 1, from “B-DC” (Business Day Care District) to “R-1” (Single-Family Residential District), said request having been duly recommended for approval of “R-1” (Single-Family Residential District) by the Planning and Zoning Commission of the City of Killeen on the 7th day of February 2022, 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 8th day of March 2022, 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 0.776 acres out of the Kinderland Addition Phase Two, Block 1, Lot 1, be changed from “B-DC” (Business Day Care District) to “R-1” (Single-Family Residential District), said request having been duly recommended for approval of “R-1” (Single-Family Residential District), for the property locally addressed as 1303 Trimmier Rd, 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 8th day of March 2022, 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 #22-08

Ord. #22-____

SITE PHOTOS

Case #Z22-08: "B-DC" (Business Day Care District) to "R-1"
(Single-Family Residential District)



View of the subject property from Trimmier Rd:



View of the adjacent property to the north:



SITE PHOTOS

Case #Z22-08: "B-DC" (Business Day Care District) to "R-1"
(Single-Family Residential District)



View of the surrounding property to the south:



View of the adjacent property to the east:



please call (254) 501-7631. If you desire additional information relative to this matter,

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

YOUR NAME:	<i>Bob Butler</i>	PHONE NUMBER:	
CURRENT ADDRESS:	<i>1002 Redondo, Killeen</i>		<i>254 290 0468</i>
ADDRESS OF PROPERTY OWNED:	<i>1002 Redondo Dr.</i>		
COMMENTS:			
<i>I do NOT have AND objection to this</i>			
<i>Rezone Request for Single Family Construction</i>			
SIGNATURE:	<i>Bob Butler</i>	REQUEST: "B-DC" to "R-1"	SPO #Z22-08/09



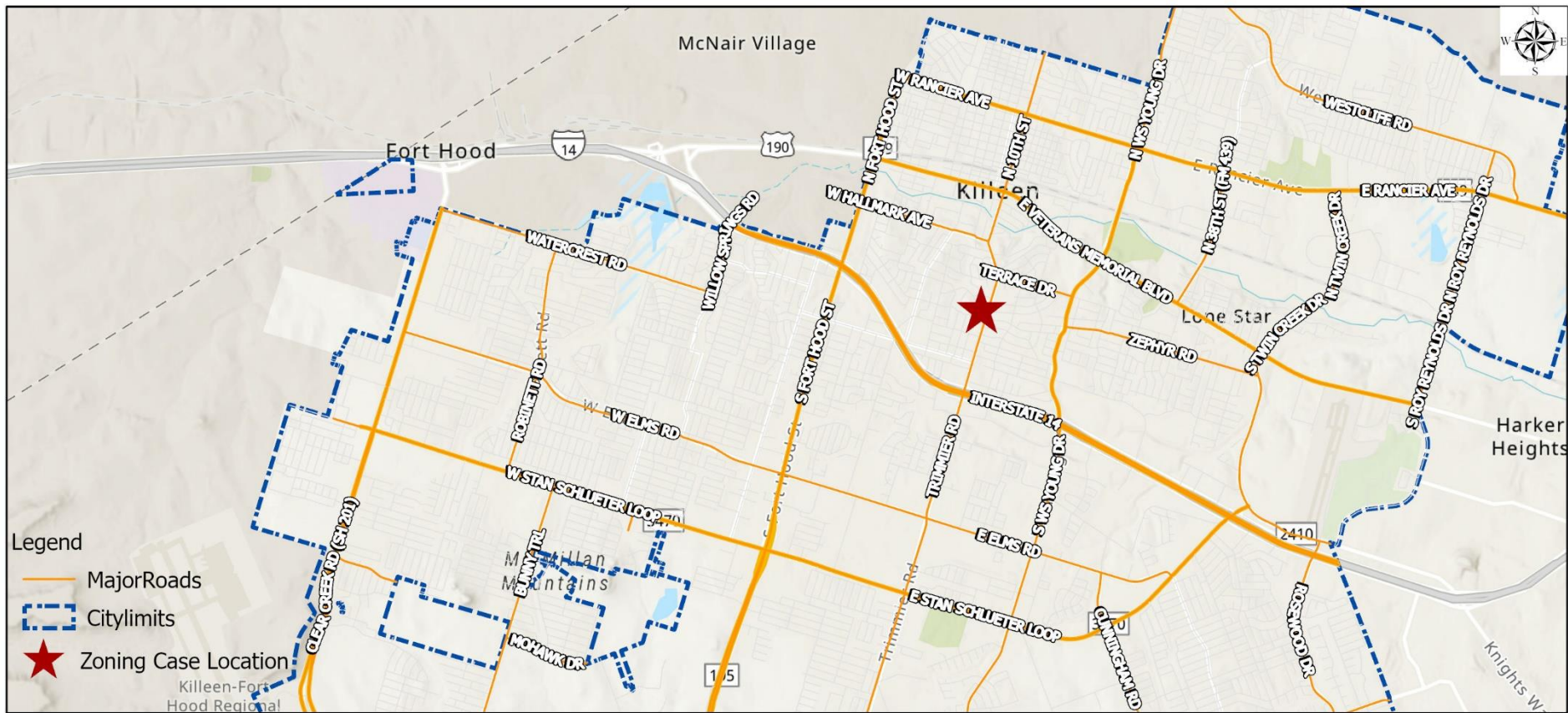
CASE #Z22-08: “B-DC” TO “R-1”

PH-22-019

March 1, 2022

Case #Z22-08: “B-DC” to “R-1”

- ❑ **HOLD** a public hearing and consider a request submitted by Magdy Abadir, on behalf of Carmen Figueroa (**Case #Z22-08**), to rezone approximately 0.776 acres out of the Kinderland Addition Phase Two, Block 1, Lot 1, from “B-DC” (Business Day Care District) to “R-1” (Single-Family Residential District).
- ❑ The property is located at 1303 Trimmier Road, Killeen, Texas.



Attachment #2

Location Map

Council District: 3

Subject Property Legal Description: KINDERLAND ADDITION PHASE TWO, BLOCK 001, LOT 0001, ACRES 0.776

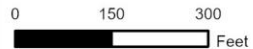
Zoning Case 2022-08

B-DC TO R-1



Attachment #3

Council District: 3



Subject Property Legal Description: KINDERLAND ADDITION PHASE TWO, BLOCK 001, LOT 0001, ACRES 0.776

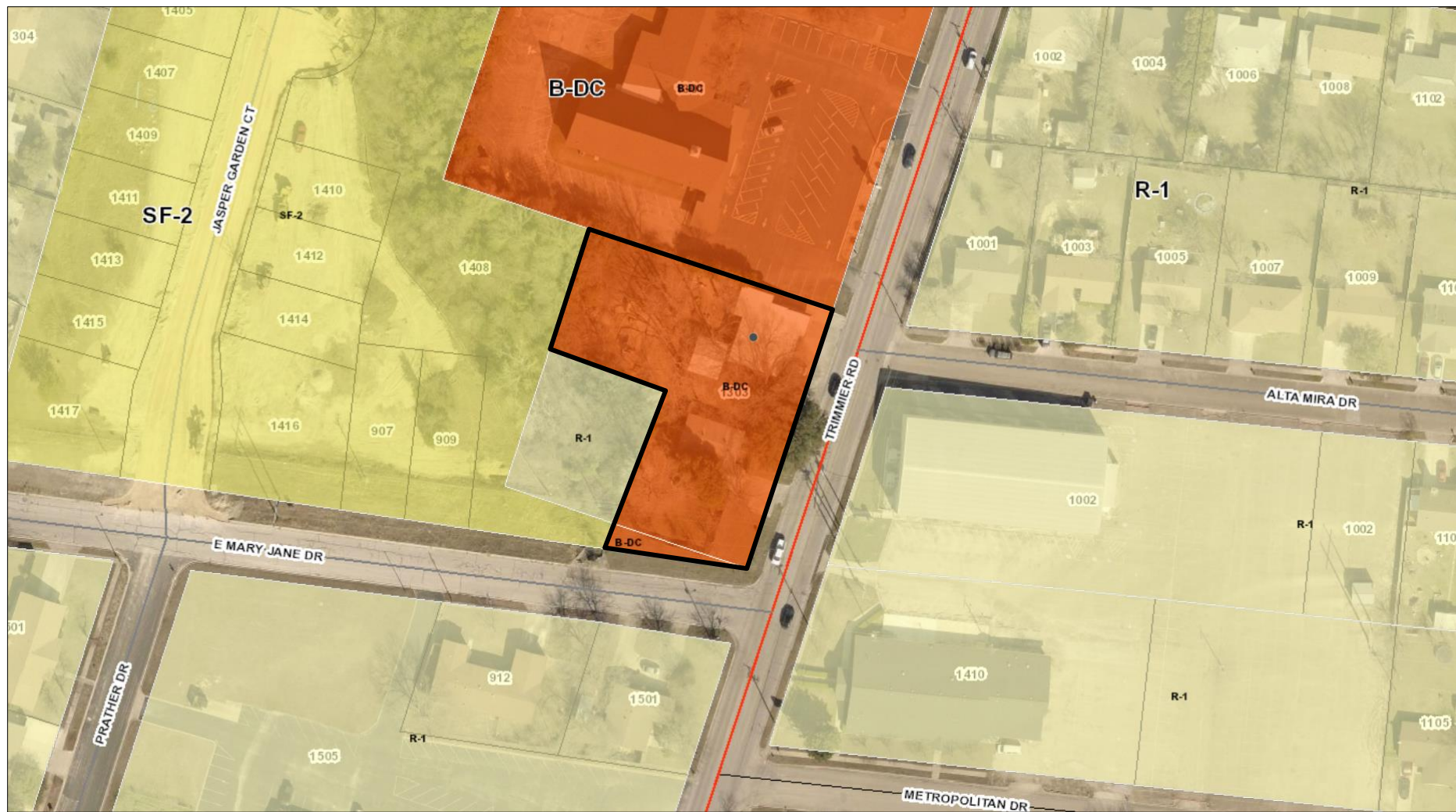
Zoning Case 2022-08

B-DC TO R-1

Legend

 Citylimits

 Zoning Case 2022



Case #Z22-08: “B-DC” to “R-1”

6

- If approved, the applicant intends to utilize the property as a single-family home.
- The subject property is designated ‘General Residential’ (GR) on the Future Land Use Map (FLUM). This request is consistent with the Future Land Use Map (FLUM).

Case #Z22-08: “B-DC” to “R-1”

7

- The property is not within any FEMA regulatory Special Flood Hazard Area (SFHA). There is an area of riverine habitat adjacent to the property as identified on the National Wetlands Inventory.

Case #Z22-08: “B-DC” to “R-1”

8

View of the subject property from Trimmier Road:



Case #Z22-08: “B-DC” to “R-1”

9

View of the adjacent property to the north (zoned “B-DC”):



Case #Z22-08: “B-DC” to “R-1”

10

View of the adjacent property to the south, across E. Mary Jane Dr. (zoned “R-1”):

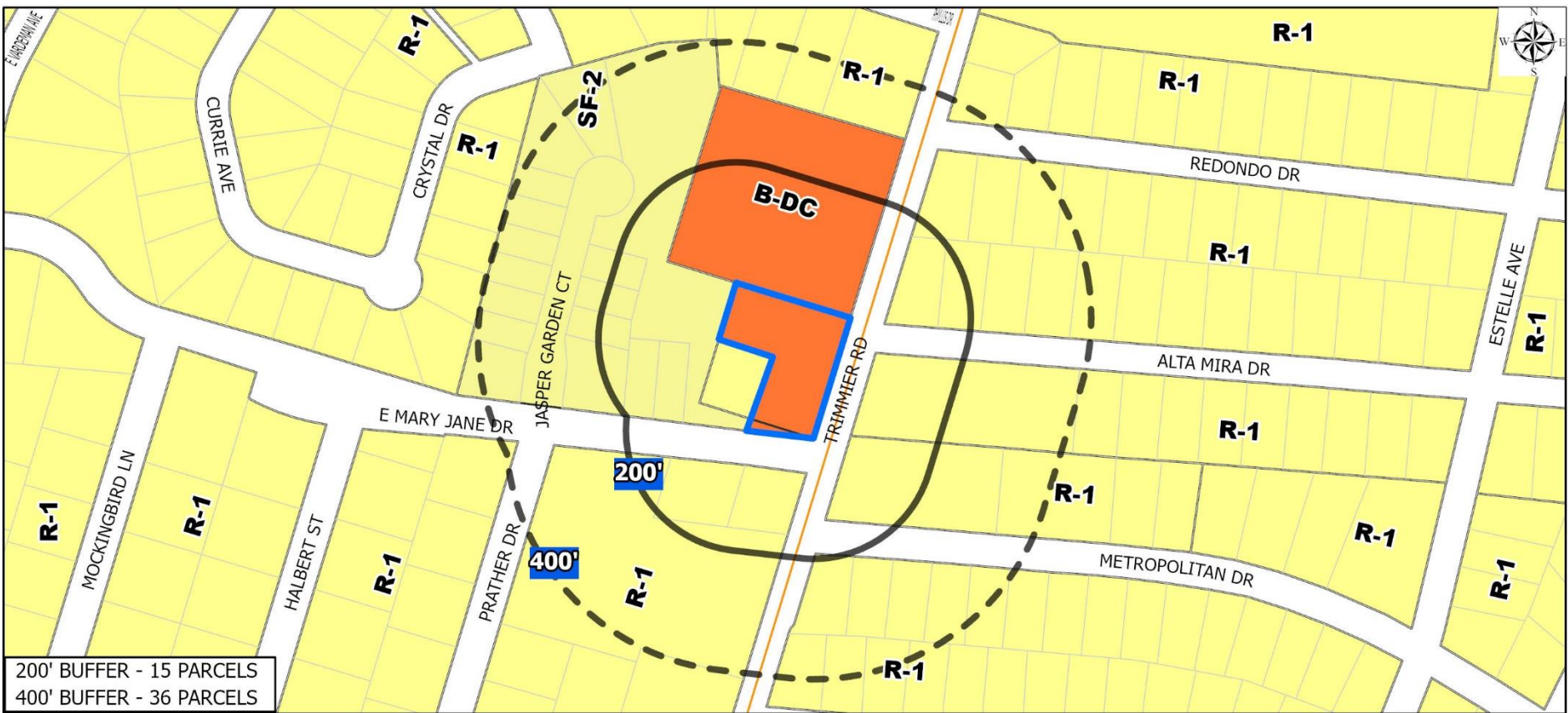


Case #Z22-08: “B-DC” to “R-1”

11

View of the adjacent property to the east. across Trimmier Rd. (zoned “R-1”):





Attachment #4

Zoning Map

Council District: 3

Subject Property Legal Description: KINDERLAND ADDITION PHASE TWO, BLOCK 001, LOT 0001, ACRES 0.776

Zoning Case 2022-08

B-DC TO R-1



Public Notification

13

- ❑ Staff notified fifty-four (54) surrounding property owners regarding this request.
- ❑ Of those notified, thirty-five (35) properties are located outside of the 200-foot notification boundary required by the State, but within the 400-foot notification boundary required by Council; and eight (8) property owners reside outside of Killeen.
- ❑ To date, staff received one (1) written response in support regarding this request.

Alternatives

14

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

Staff Findings

15

- Staff finds that the request is consistent with ‘General Residential’ (GR) FLUM designation.
- The surrounding land uses are predominantly residential and religious uses.
- Staff finds that the applicant’s request is compatible with the surrounding land uses and prevailing community character.

Staff Recommendation

16

- Therefore, staff recommends approval of the applicant's request to rezone the property from "B-DC" (Business Day Care District District) to "R-1" (Single-Family Residential District) as presented.

Staff Recommendation

17

- At their regular meeting on February 7, 2022, the Planning and Zoning Commission recommended approval of the applicant's request by a vote of 6 to 0.



City of Killeen

Legislation Details

File #:	PH-22-020	Version:	1	Name:	Zoning 22-09
Type:	Ordinance/Public Hearing	Status:		Public Hearings	
File created:	1/18/2022	In control:		City Council	
On agenda:	3/8/2022	Final action:			
Title:	HOLD a public hearing and consider an ordinance requested by Jim Wright, on behalf of Kerry Property, LLC (Case #Z22-09), to rezone a part of approximately 3.04 acres out of the Neimac Addition Phase Two Amending, Block 1, Lot 3A, from “B-3” (Local Business District) to “B-4” (Business District). The property is located at 3000 W. Stan Schlueter Loop, Suites 108-109, Killeen, Texas.				
Sponsors:	Development Services				
Indexes:					
Code sections:					
Attachments:	Staff Report Maps Site Photos Minutes Ordinance Considerations Presentation				

Date	Ver.	Action By	Action	Result
3/1/2022	1	City Council Workshop		



STAFF REPORT

DATE: March 1, 2022

TO: Kent Cagle, City Manager

FROM: Wallis Meshier, CNU-A, Director of Planning

SUBJECT: ZONING CASE #22-09: "B-3" (LOCAL BUSINESS DISTRICT) TO "B-4" (BUSINESS DISTRICT)

BACKGROUND AND FINDINGS:

Property Information:

Property Owner: Kerry Property, LLC
Agent: Jim Wright
Current Zoning: "B-3" (Local Business District)
Requested Zoning: "B-4" (Business District)
Current FLUM Designation: 'General Commercial' (GC)

Summary of Request:

Jim Wright, on behalf of Kerry Property, LLC, has submitted a request to rezone approximately three-thousand seven-hundred and five (3,705) square feet out of the Neimac Addition Phase Two Amending, Block 1, Lot 3A, from "B-3" (Local Business District) to "B-4" (Business District). If approved, the applicant intends to lease the space for use as a liquor store.

Zoning/Plat Case History:

The subject property was rezoned from "R-1" (Single-Family Residential District) to "B-3" (Local Business District) on November 10, 2009 via Ordinance No. 09-071. The property was platted as Neimac Addition Phase Two Amending, Lot 3A, Block One on September 23, 2019.

In May 2020, Chapter 31 was amended in via Ordinance No. 20-024 to make the "B-3A" (Local Business and Retail Alcohol Sales) district inactive and allow liquor stores by-right in "B-4" (Business District).

Character of the Area:

	Current Land Use	Zoning District	Future Land Use
North	Commercial properties	B-5 (Business District)	General Commercial (GC)
East	Commercial properties	B-3 (Local Business District)	General Commercial (GC)
South	Single-family homes	R-2 (Two-Family Residential)	General Residential (GR)
West	Vacant	B-3 (Local Business District)	General Commercial (GC)

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 encourages 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/institutional; and
- Parks and public spaces.

The request is consistent with the Future Land Use Map (FLUM) of the Comprehensive Plan.

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 properties is from Stan Schlueter Loop, which is classified as a 120' wide Principal Arterial on the City of Killeen Thoroughfare Plan.

Environmental Assessment:

The property is not within any FEMA regulatory Special Flood Hazard Area (SFHA). There are no other known wetland areas on or adjacent to the property as identified on the National Wetlands Inventory.

Public Notification:

Staff notified thirty (30) surrounding property owners regarding this request. Of those property owners notified, twenty-two (22) reside outside of the 200-foot notification boundary required by the State, but within the 400-foot notification boundary required by Council; and nine (9) reside outside the city limits of Killeen. As of the date of this report, no written responses have been received regarding this request.

Staff Findings:

Staff finds that the applicant's request is inconsistent with the adjacent zoning. The subject property is surrounded on all sides by property zoned "B-3" (Local Business District). Further, staff finds that there is ample property on the north side of W. Stan Schlueter Loop that is already zoned "B-5" (Business District), and which would allow a liquor store by-right. Staff finds that granting this request would constitute special dispensation for the applicant, as the rest of the parcel is zoned "B-3" (Local Business District).

THE ALTERNATIVES CONSIDERED:

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

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

Which alternative is recommended? Why?

Staff recommends disapproval of the applicant's request to rezone the property from "B-3" (Local Business District) to "B-4" (Business District).

Staff finds that the applicant's request is inconsistent with the surrounding "B-3" (Local Business District) zoning and that approving the request would constitute special dispensation for the applicant.

CONFORMITY TO CITY POLICY:

This zoning request conforms to the City's policy and procedures as detailed in Chapter 31 of the 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 February 7, 2022, the Planning and Zoning Commission recommended approval of the applicant's request by a vote of 4 to 2 with Commissioners Sabree and Ploeckelmann in opposition.

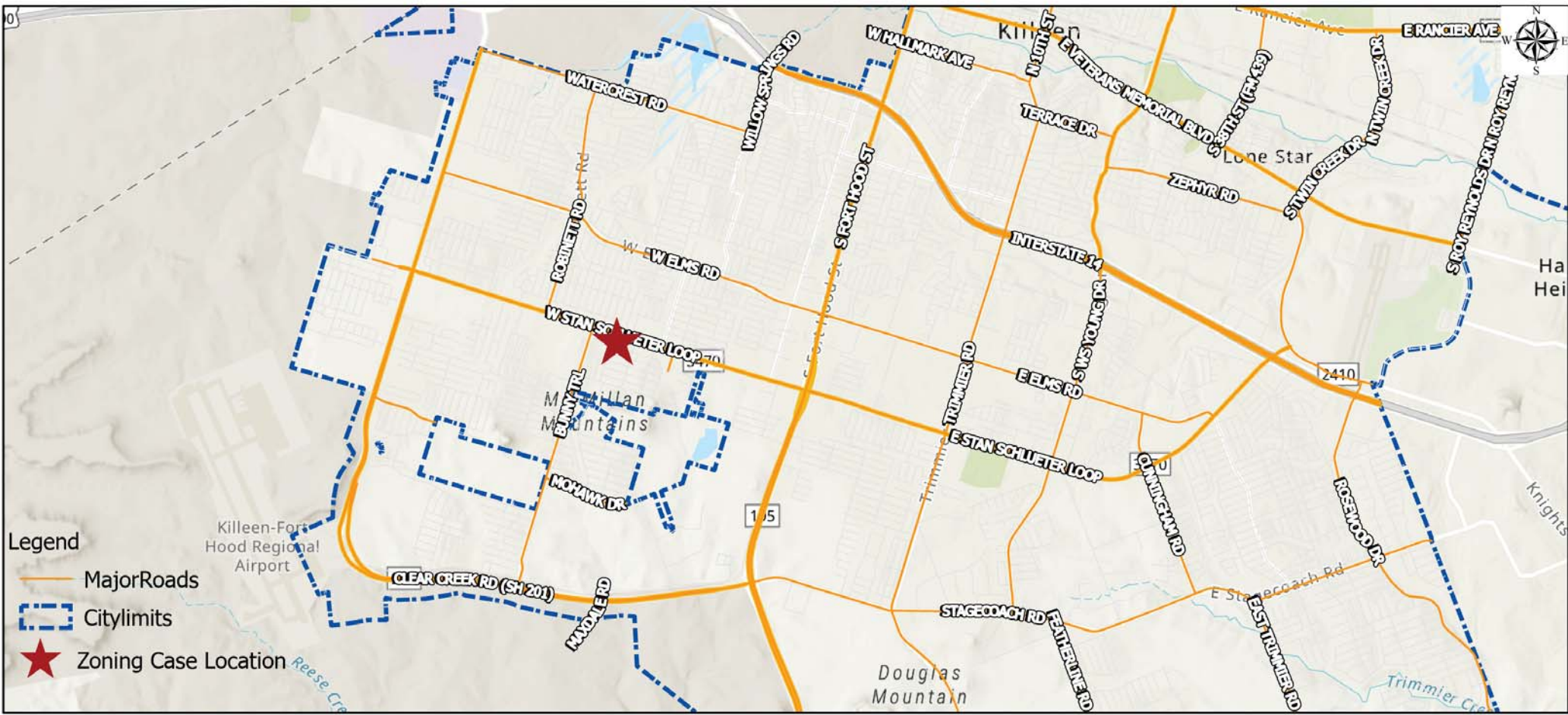
Commissioner Sabree noted concerns regarding the proximity of the property to the nearby elementary school. Commissioner Ploeckelmann noted that there are existing properties across the street that are zoned "B-5" (Business District), and which would allow a liquor store by-right.

DEPARTMENTAL CLEARANCES:

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

ATTACHED SUPPORTING DOCUMENTS:

Maps
Site Photos
Minutes
Ordinance
Considerations



Attachment #2

Location Map

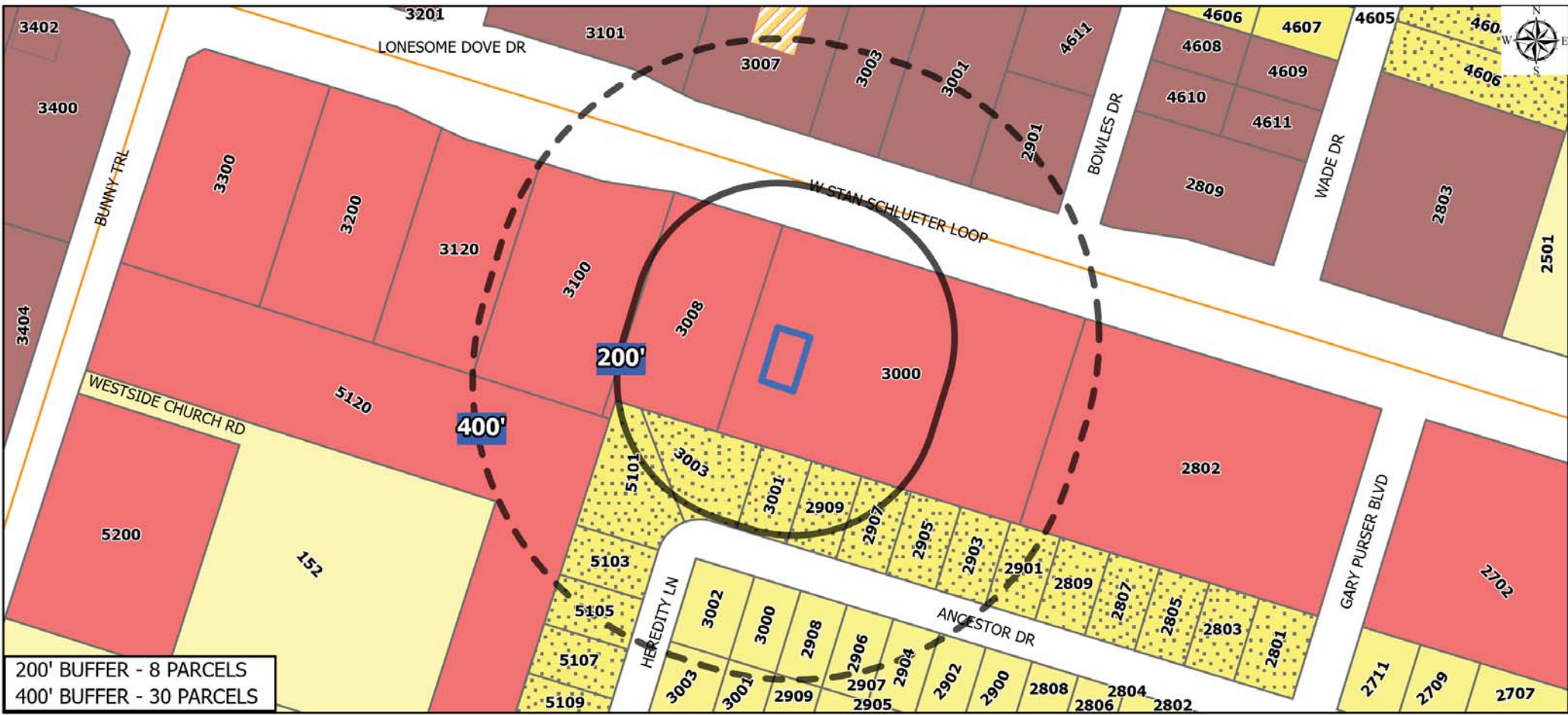
Council District: 4

Subject Property Legal Description: NEIMAC ADDITION PHASE TWO AMENDING (L3 B1), BLOCK 001, LOT 003A, ACRES 3.04

Zoning Case 2022-09

B-3 TO B-4





Attachment #1

Council District: 4

0 150 300 Feet

Subject Property Legal Description: NEIMAC ADDITION PHASE TWO AMENDING (L3 B1), BLOCK 001, LOT 003A, ACRES 3.04

Zoning Case 2022-09

B-3 TO B-4

Legend

Current Zoning	RC-1	R-3
B-3	R-1	R1-A
B-5	R-2	



Attachment #3

Council District: 4



0 150 300
Feet

Zoning Case 2022-089

B-3 TO B-4

Subject Property Legal Description: NEIMAC ADDITION PHASE TWO AMENDING (L3 B1), BLOCK 001, LOT 003A, ACRES 3.04

Legend

-  Citylimits
-  Zoning Case 2022

SITE PHOTOS

Case #Z22-09: "B-3" (Local Business District) to "B-4" (Business District).



View of the subject property looking south:



View of the surrounding property to the east:



SITE PHOTOS

Case #Z22-09: "B-3" (Local Business District) to "B-4" (Business District).



View of the surrounding property to the west:



View of the surrounding property to the north (across W Stan Schlueter Lp):



MINUTES
PLANNING AND ZONING COMMISSION MEETING
February 07, 2022

CASE #Z22-09
“B-3” to “B-4”

HOLD a public hearing and consider a request submitted by Jim Wright, on behalf of Kerry Property, LLC (**Case #Z22-09**), to rezone a part of approximately 3.04 acres out of the Neimac Addition Phase Two Amending, Block 1, Lot 3A, from “B-3” (Local Business District) to “B-4” (Business District). The property is located at 3000 W. Stan Schlueter Loop, Suite 109, Killeen, Texas.

Ms. Larsen briefed the Commission regarding the applicant’s request. She stated that, if approved, the applicant intends to lease the space for use as a liquor store. Ms. Larsen also stated that staff recommended disapproval of the request, as it is inconsistent with the surrounding zoning.

The applicant, Mr. Jim Wright, was present to represent the case.

Chairman Latham opened the public hearing.

Ms. Michelle Lee of Killeen Engineering and Surveying spoke in favor of the request.

Mr. Gorge Meza of Quintero Engineering spoke in favor of the request.

With no one else wishing to speak, the public hearing was closed.

Chairman Latham stated for the record that he supported the request.

Commissioner Adams made a motion to approve the applicant’s request. Commissioner Minor seconded, and the motion passed by a vote of 4 to 2 with Commissioners Sabree and Ploeckelmann in opposition.

Commissioner Sabree noted concerns regarding the proximity of the request to a neighboring school. Commissioner Ploeckelmann noted that there are properties across the street that are zoned for use as a liquor store.

ORDINANCE _____

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF A PART OF APPROXIMATELY 3.04 ACRES OUT OF THE NEIMAC ADDITION PHASE TWO AMENDING, BLOCK 1, LOT 3A, FROM “B-3” (LOCAL BUSINESS DISTRICT) TO “B-4” (BUSINESS DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Jim Wright, on behalf of Kerry Property, LLC, 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 a part of approximately 3.04 acres out of the Neimac Addition Phase Two Amending, Block 1, Lot 3A, from “B-3” (Local Business District) to “B-4” (Business District), said request having been duly recommended for approval of “B-4” (Business District) by the Planning and Zoning Commission of the City of Killeen on the 7th day of February 2022, 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 8th day of March 2022, 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 three-thousand seven-hundred and five (3,705) square feet out of an approximately 3.04 acre tract out of the Neimac Addition Phase Two Amending, Block 1, Lot 3A, be changed from “B-3” (Local Business District) to “B-4” (Business District), said request having been duly recommended for approval

of “B-4” (Business District), for the property locally addressed as 3000 W Stan Schlueter Loop, Suites 108-109, 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 8th day of March 2022, 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 #22-09

Ord. #22-____



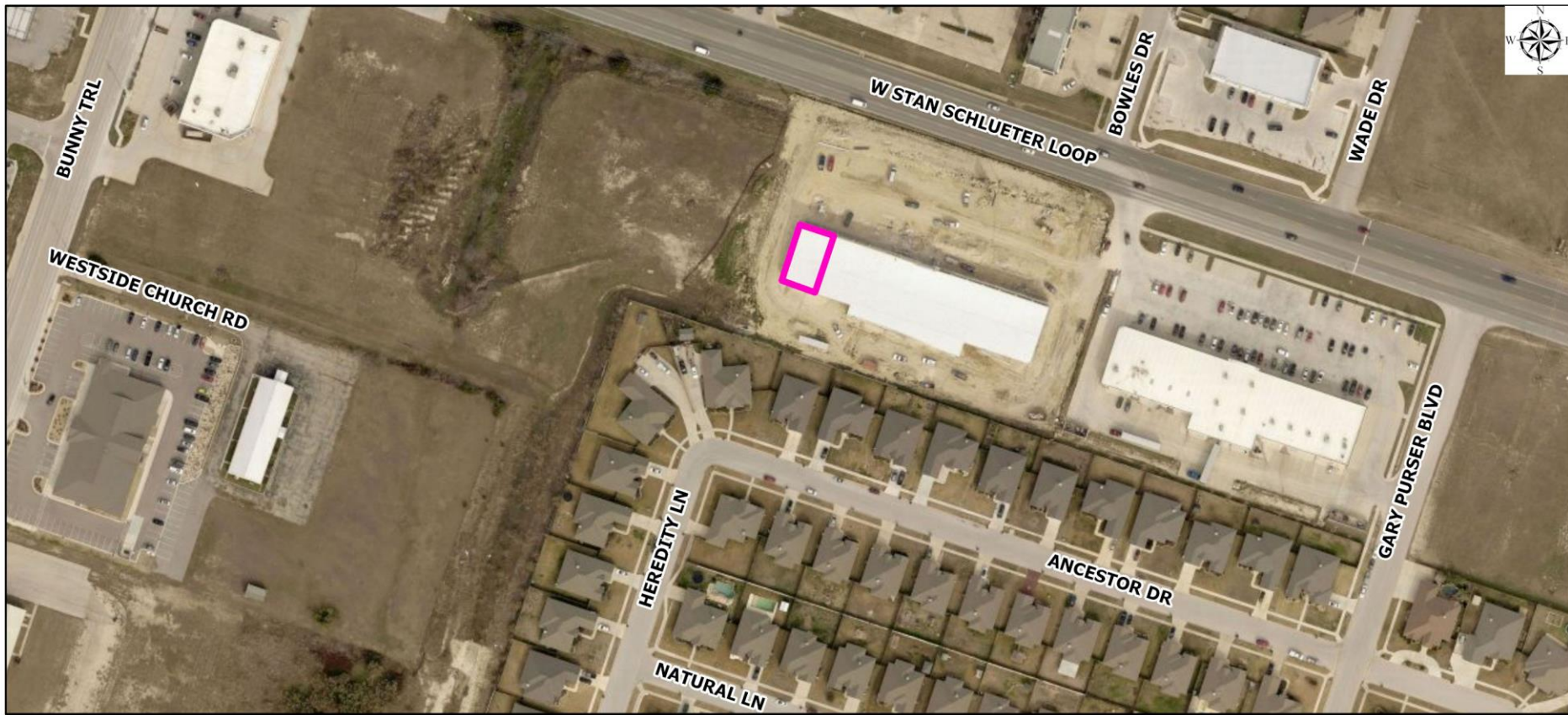
CASE #Z22-09: “B-3” TO “B-4”

PH-22-020

March 1, 2022

Case #Z22-09: “B-3” to “B-4”

- ❑ **HOLD** a public hearing and consider a request submitted by Jim Wright, on behalf of Kerry Property, LLC (**Case #Z22-09**), to rezone a part of approximately 3.04 acres out of the Neimac Addition Phase Two Amending, Block 1, Lot 3A, from “B-3” (Local Business District) to “B-4” (Business District).
- ❑ The property is located at 3000 W. Stan Schlueter Loop, Suites 108 - 109, Killeen, Texas.



Attachment #3

Council District: 4





Subject Property Legal Description: NEIMAC ADDITION PHASE TWO AMENDING (L3 B1), BLOCK 001, LOT 003A, ACRES 3.04

Zoning Case 2022-09

B-3 TO B-4

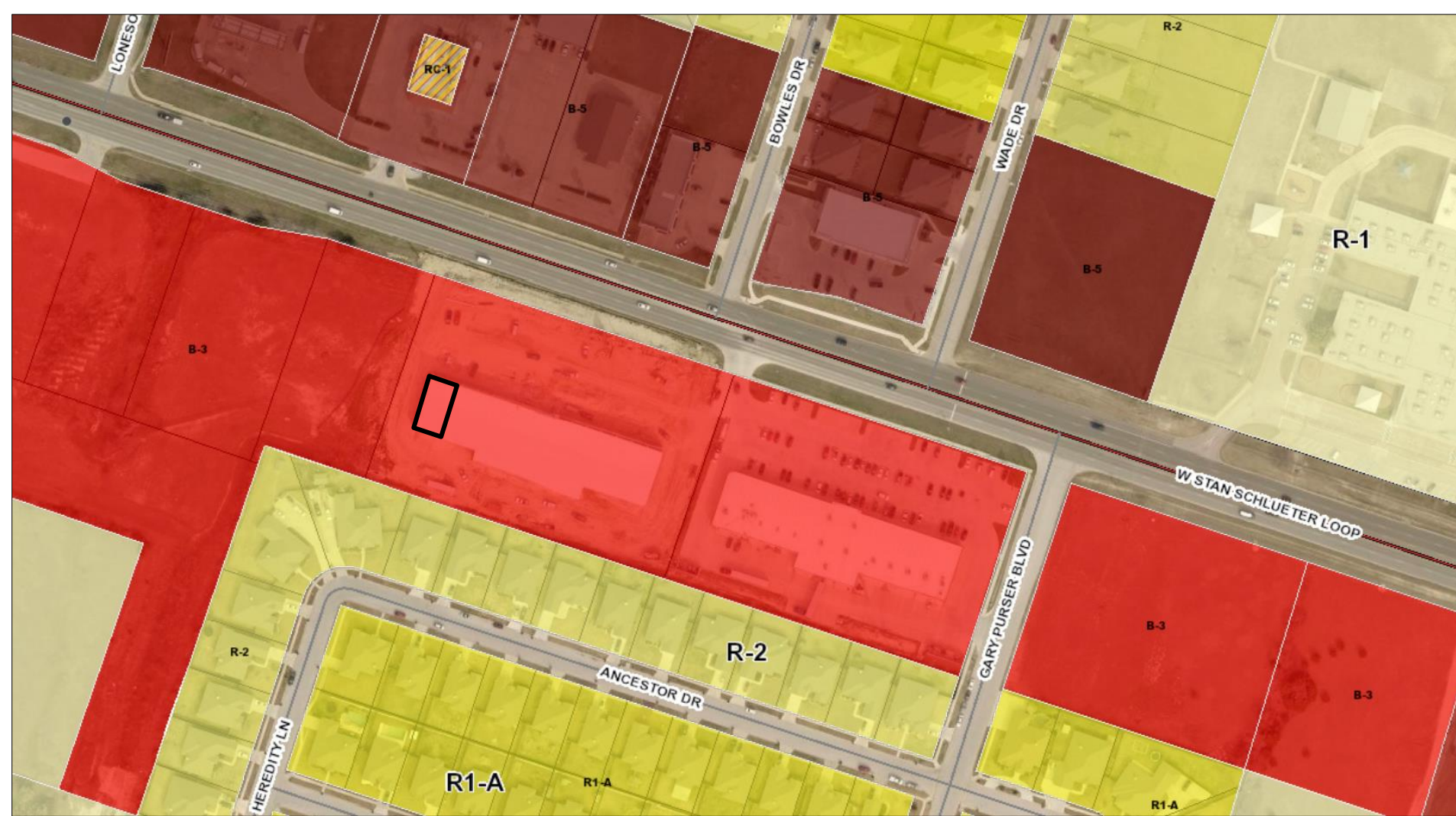
Legend

-  Citylimits
-  Zoning Case 2022

Case #Z22-09: “B-3” to “B-4”

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- If approved, the applicant intends to lease the space for use as a liquor store.
- The subject property is designated ‘General Commercial’ (GC) on the Future Land Use Map (FLUM).
- This request is consistent with the Future Land Use Map (FLUM) designation..



Case #Z22-09: “B-3” to “B-4”

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- The property is not within any FEMA regulatory Special Flood Hazard Area (SFHA). There are no other known wetland areas on or adjacent to the property as identified on the National Wetlands Inventory.

Case #Z22-09: “B-3” to “B-4”

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View of the subject property looking south:



Case #Z22-09: “B-3” to “B-4”

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View of the adjacent property to the east (zoned “B-3”):



Case #Z22-09: “B-3” to “B-4”

10

View of the adjacent property to the west (zoned “B-3”):



Case #Z22-09: “B-3” to “B-4”

11

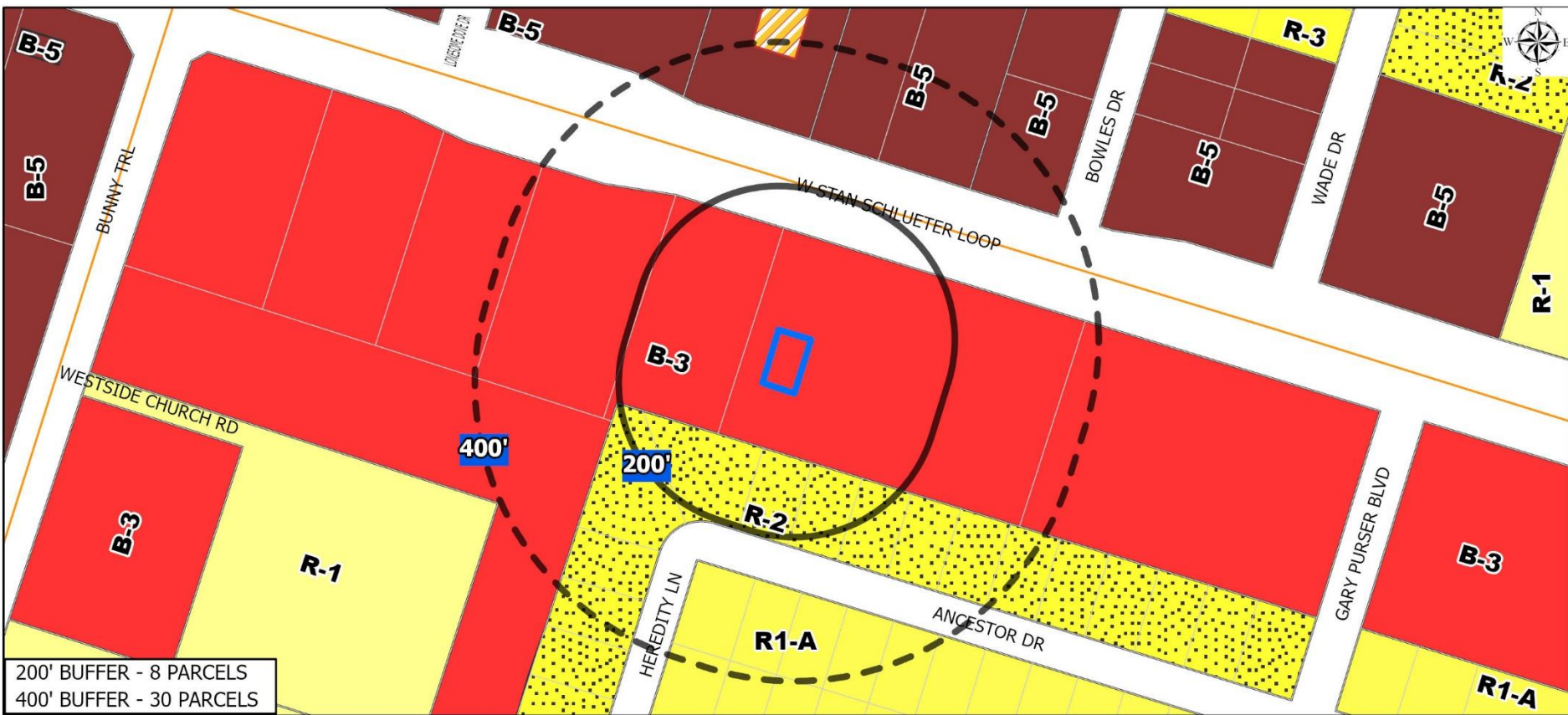
View of the property to the north, across W. Stan Schlueter Loop (zoned “B-5”):



Public Notification

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- Staff notified thirty (30) surrounding property owners regarding this request.
- Of those notified, twenty-two (22) properties are located outside of the 200-foot notification boundary required by the State, but within the 400-foot notification boundary required by Council; and nine (9) property owners reside outside of Killeen.
- To date, staff has received no written responses regarding this request.



Attachment #4

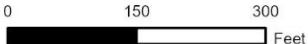
Zoning Map

Council District: 3

Subject Property Legal Description: NEIMAC ADDITION PHASE TWO AMENDING (L3 B1), BLOCK 001, LOT 003A, ACRES 3.04

Zoning Case 2022-09

B-3 TO B-4



Alternatives

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

Staff Findings

15

- The subject area is surrounded on all four sides by property zoned “B-3” (Local Business District).
- Staff finds that the applicant’s request is inconsistent with the surrounding “B-3” (Local Business District) zoning.
- Staff is of the determination that granting the request would constitute special dispensation for the applicant, as the rest of the parcel is zoned “B-3” (Local Business District).

Staff Findings

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- Staff also finds that there is sufficient property located on the north side of W. Stan Schlueter Loop that is zoned “B-5” (Business District), which would allow a liquor store by-right.

Staff Recommendation

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- Therefore, staff recommends disapproval of the applicant's request to rezone the property from "B-3" (Local Business District) to "B-4" (Business District).

Commission Recommendation

18

- At their regular meeting on February 7, 2022, the Planning and Zoning Commission recommended approval of the applicant's request by a vote of 4 to 2 with Commissioners Sabree and Ploeckelmann in opposition.
- Commissioner Sabree noted concerns regarding the proximity of the request to Willow Springs Elementary School. Commissioner Ploeckelmann noted that there are properties across the street that are zoned for use as a liquor store.