



# City of Killeen

## Agenda

### City Council Workshop

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Tuesday, January 19, 2021

5:00 PM

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

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*To mitigate the spread of COVID-19, this meeting will be available to both in-person attendance by the public and virtually.*

*Residents may watch the Council Meeting online at:*

*(<http://www.killeentexas.gov/281/Council-Live-Streaming>), via Zoom*

*(<https://tinyurl.com/yym2yfcf>) using the following credentials: Webinar ID: 913 8066 9323, Participant ID: 140844; Passcode: 603335; and on Killeen TV Channel 10. A recording of the meeting will also be posted on the City's website and the City's TV channel within 24 hours of the meeting.*

*Public comment will only be allowed during Citizen Comments and Public Hearings.*

*Citizens wishing to speak in person must register at the City Council Meeting immediately prior to the start of the meeting. Citizens attending the meeting virtually must register in advance no later than Tuesday, January 19, 2021 at 4:00 p.m. by:*

- *Submitting the online registration form found at:  
([https://zoom.us/webinar/register/WN\\_Kx1WQJpZTI-0/cnVX6U9QA](https://zoom.us/webinar/register/WN_Kx1WQJpZTI-0/cnVX6U9QA)) Registrations must be received no later than 4:00 p.m. on Tuesday, January 19, 2021.*
- *Once the registration form is received, virtual speakers will receive an email providing log on instructions to join the meeting on Tuesday.*

#### **Citizen Comments**

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

#### **Items for Discussion at Workshop**

1. [DS-21-006](#) Discuss Agenda Items for the Regular City Council Meeting of January 26, 2021
2. [DS-21-007](#) Discuss Permanent Change of City Election from May to November
3. [DS-21-008](#) Discuss Creation of Recognition Program for Citizens
4. [DS-21-009](#) Discuss Process and Timeline for Filling District 3 Vacancy

5. [DS-21-010](#) Discuss Public Facility Corporation Board Bylaws, Appointment of Officers and NRP Lease Term Sheet  
*Attachments:* [Bylaws](#)  
[Resolution](#)  
[Term Sheet](#)
6. [DS-21-011](#) City Manager Updates  
· COVID 19 Update
7. [DS-21-012](#) Conduct Annual Evaluation of City Auditor
8. [DS-21-013](#) Consultation with Attorney on Pending or Contemplated Litigation. The City Attorney Will Discuss and Provide Legal Advice Regarding Notice of an Anticipated Claim Pursuant to 42 USC 1983.

**Councilmember Requests for Future Agenda Items**

9. [RQ-21-006](#) Road Impact Fees for Residential Developments  
*Attachments:* [Request](#)
10. [RQ-21-007](#) Proactive Exploratory Committee of Stakeholders  
*Attachments:* [Request](#)

**Items for Regular City Council Meeting of January 26, 2021****Minutes**

11. [MN-21-003](#) Consider Minutes of Regular City Council Meeting of January 12, 2021.  
*Attachments:* [Minutes](#)

**Resolutions**

12. [RS-21-005](#) Consider a memorandum/resolution approving Addendum No.6 to the airline lease agreements with the Killeen Fort Hood Regional Airport.  
*Attachments:* [Staff Report](#)  
[Addendums](#)  
[Presentation](#)
13. [RS-21-006](#) Consider a memorandum/resolution approving an airport gift shop concession lease agreement with Tailwinds Concessions, Inc. at Killeen Fort Hood Regional Airport.  
*Attachments:* [Staff Report](#)  
[Agreement](#)  
[Certificate of Interested Parties](#)  
[Presentation](#)

14. [RS-21-007](#) Consider a memorandum/resolution authorizing a professional services agreement with Tanko Streetlighting, Inc. for streetlight audit and ownership support in an amount not to exceed \$196,300.  
**Attachments:** [Staff Report](#)  
[Agreement](#)  
[Certificate of Interested Parties](#)  
[Presentation](#)
15. [RS-21-008](#) Consider a memorandum/resolution authorizing a professional services agreement with Randall Scott Architects, Inc., in the amount of \$543,825 for the Killeen Community and Senior Center Project.  
**Attachments:** [Staff Report](#)  
[Conceptual Floor Plan](#)  
[Agreement](#)  
[Certificate of Interested Parties](#)  
[Presentation](#)
16. [RS-21-009](#) Consider a memorandum/resolution amending the Capital Improvements Advisory Committee Rules and Procedures.  
**Attachments:** [Staff Report](#)  
[Revised CIAC Rules and Procedures](#)  
[Presentation](#)
17. [RS-21-010](#) Consider a memorandum/resolution declaring vacancies on various citizen appointed boards and commissions and appointing members to fill the unexpired terms.  
**Attachments:** [Staff Report](#)  
[Presentation](#)
18. [RS-21-011](#) Consider a memorandum/resolution establishing a public hearing on March 9, 2021 for the Water and Wastewater Impact Fee Capital Improvement Plan and Land Use Assumptions in accordance with Texas Local Government Code Chapter 395.  
**Attachments:** [Staff Report](#)  
[Presentation](#)

## Ordinances

19. [OR-21-002](#) Consider an ordinance to amend the City of Killeen Code of Ordinances Sec. 26-107(b) to decrease the maximum spacing of street lights and Sec. 26-107(e) to include LED fixtures as an alternative option for street lighting.  
**Attachments:** [Staff Report](#)  
[Oncor Street Light Analysis](#)  
[Ordinance](#)

[Presentation](#)**Public Hearings**

20. [PH-21-007](#) HOLD a public hearing and consider an ordinance amending the FY 2021 Annual Budget of the City of Killeen to authorize the carry forward of FY 2020 expenditure budgets to the FY 2021 budget and adjust revenue and expenditure accounts in multiple operating, special revenue, internal service, and capital improvement project funds.

**Attachments:** [Staff Report](#)

[Ordinance](#)

[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 January 15, 2021.*

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*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.*

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



# City of Killeen

## Legislation Details

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**File #:** DS-21-006    **Version:** 1    **Name:** Discuss Agenda Items  
**Type:** Discussion Items    **Status:** Discussion Items  
**File created:** 1/4/2021    **In control:** City Council Workshop  
**On agenda:** 1/19/2021    **Final action:**  
**Title:** Discuss Agenda Items for the Regular City Council Meeting of January 26, 2021  
**Sponsors:** City Manager Department  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
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# City of Killeen

## Legislation Details

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**File #:** DS-21-007    **Version:** 1    **Name:** Discuss Permanent Change of City Election from May to November

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

**File created:** 1/8/2021    **In control:** City Council Workshop

**On agenda:** 1/19/2021    **Final action:**

**Title:** Discuss Permanent Change of City Election from May to November

**Sponsors:** City Council

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
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# City of Killeen

## Legislation Details

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**File #:** DS-21-008    **Version:** 1    **Name:** Discuss Creation of Recognition Program for Citizens  
**Type:** Discussion Items    **Status:** Discussion Items  
**File created:** 1/8/2021    **In control:** City Council Workshop  
**On agenda:** 1/19/2021    **Final action:**  
**Title:** Discuss Creation of Recognition Program for Citizens  
**Sponsors:** City Council  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
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# City of Killeen

## Legislation Details

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**File #:** DS-21-009    **Version:** 1    **Name:** Discuss Process and Timeline for Filling District 3 Vacancy  
**Type:** Discussion Items    **Status:** Discussion Items  
**File created:** 1/12/2021    **In control:** City Council Workshop  
**On agenda:** 1/19/2021    **Final action:**  
**Title:** Discuss Process and Timeline for Filling District 3 Vacancy  
**Sponsors:** City Council  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
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# City of Killeen

## Legislation Details

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**File #:** DS-21-010    **Version:** 1    **Name:** Public Facility Corporation  
**Type:** Discussion Items    **Status:** Discussion Items  
**File created:** 1/13/2021    **In control:** City Council Workshop  
**On agenda:** 1/19/2021    **Final action:**  
**Title:** Discuss Public Facility Corporation Board Bylaws, Appointment of Officers and NRP Lease Term Sheet  
**Sponsors:** City Attorney Department  
**Indexes:**  
**Code sections:**  
**Attachments:** [Bylaws](#)  
[Resolution](#)  
[Term Sheet](#)

Date	Ver.	Action By	Action	Result
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**BYLAWS OF**  
**KILLEEN PUBLIC FACILITY CORPORATION**

**ARTICLE I**  
**PURPOSE AND POWERS**

Section 1.1 Purpose. Killeen Public Facility Corporation (the “Corporation”) is incorporated for the purposes set forth in Article Four of its Certificate of Formation, the same to be accomplished on behalf of the City of Killeen, Texas (the “City”), as its duly constituted authority and instrumentality in accordance with the Public Facility Corporation Act, Chapter 303, Texas Local Government Code, as amended (the “Act”), and other applicable laws.

Section 1.2 Powers. In the fulfillment of its corporate purpose, the Corporation shall be governed by the Act, and shall have all the powers set forth and conferred in its Certificate of Formation, in the Act, and in other applicable law, subject to the limitations prescribed therein and herein and to the provisions thereof and hereof.

Section 1.3 Nonprofit Corporation. The Corporation shall be a public, nonprofit corporation, and no part of its net earnings remaining after payment of its obligations and expenses shall inure to the benefit of any person other than the City.

**ARTICLE II**  
**BOARD OF DIRECTORS**

Section 2.1 Powers, Number and Term of Office.

(a) The property and affairs of the Corporation shall be managed and controlled by a Board of Directors (the “Board”). Subject to the restrictions imposed by law, the Act, the Certificate of Formation, and these Bylaws, the Board shall exercise all of the powers of the Corporation.

(b) The Board shall consist entirely of the Mayor and the members of the City Council of the City (the “Governing Body”) except as provided in Section 5.4 herein.

(c) The directors constituting the initial Board shall be those directors named in the Certificate of Formation. Successor directors shall have the qualifications and shall be appointed to the terms set forth in the Certificate of Formation.

(d) Any director may be removed from office by the Governing Body under the same terms, conditions and procedures as members of the Governing Body.

Section 2.2 Additional Powers. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board may exercise all such powers of the Corporation and do all lawful acts and things as are not by statute, other law, or by these Bylaws prohibited. Without prejudice to such general powers and other powers conferred by statute, other law, and by these Bylaws, it is hereby expressly declared the Board shall have the powers set forth in Chapter 303.041 of the Act, as amended.

### Section 2.3 Meetings of Directors.

(a) The directors may hold their meetings at such place or places as the Board may from time to time determine; however, in the absence of any such determination by the Board, the meetings shall be held at the principal office of the Corporation as specified in Section 5.1(a) of these Bylaws. The Corporation shall also conduct at least one annual regular meeting of the Corporation on June 1 of each year, or within the next thirty days thereafter. Special meetings of the Board shall be held whenever called by the president, by the secretary, by a majority of the directors, or by a majority of the Governing Body.

(b) Subject to Section 2.4, the secretary shall give notice to each director of each special meeting in person or by mail, telephone or telegraph, at least two hours before the meeting. Unless otherwise indicated in the notice thereof, any and all matters pertaining to the purposes of the Corporation may be considered and acted upon at a special meeting. At any meeting at which every director shall be present, even though without any notice (except as required by Section 2.4), any matter pertaining to the purpose of the Corporation may be considered and acted upon consistent with applicable law.

(c) Subject to Section 2.4, whenever any notice is required to be given to the Board, said notice shall be deemed to be sufficient if given by depositing the same in the United States mail in a sealed postpaid wrapper addressed to the person entitled thereto at his or her post office address as it appears on the books of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except attendance of a director at a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the Board need be specified in the notice to directors or waiver of notice of such meeting, unless required by the Board. A waiver of notice in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 2.4 Open Meetings Act/Public Information Act. All meetings of the Board shall be called, convened, held, and conducted, and notice shall be given to the public, in accordance with the Texas Open Meetings Act, Chapter 551, Texas Government Code, as amended. The Corporation is subject to the Texas Public Information Act, Chapter 552, Texas Government Code, as amended.

Section 2.5 Quorum. A majority of the full Board shall constitute a quorum to conduct official business of the Corporation. The act of a majority of the Board present at a meeting at which a quorum is in attendance shall constitute the act of the Board and of the Corporation, unless the act of a greater number is required by law.

### Section 2.6 Conduct of Business.

(a) At the meetings of the Board, matters pertaining to the business of the Corporation shall be considered in accordance with rules of procedure as from time to time prescribed by the Board.

(b) At all meetings of the Board, the president shall preside. In the absence of the president, the vice president shall preside. In the absence of both the president and vice- president, a member of the Board selected by the members present, shall preside.

(c) The secretary of the Corporation shall act as secretary of all meetings of the Board, but in the absence of the secretary, the presiding officer may appoint any person to act as secretary of the meeting. The president, treasurer, secretary, and any assistant secretary may, at the option of the Board, be employees of the City.

Section 2.7 Committees of the Board. The Board may designate two or more directors to constitute an official committee of the Board to exercise such authority, as approved by resolution of the Board. It is provided, however, that all final, official actions of the Corporation may be exercised only by the Board. Each committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded in books kept for that purpose in the principal office of the Corporation and any such meetings must be conducted in accordance with the provisions of the Texas Open Meetings Act, as amended, Chapter 551, Texas Government Code, if applicable.

Section 2.8 Compensation of Directors. Directors shall not receive any salary or compensation for their services as directors. However, they shall be reimbursed for their actual expenses incurred in the performance of their official duties as directors.

### **ARTICLE III OFFICERS**

#### **Section 3.1 Titles and Terms of Office.**

(a) The officers of the Corporation shall be a president, a vice president and a secretary, and such other officers as the Board may from time to time elect. One person may hold more than one office, except that the president shall not hold the office of secretary and the president, vice president, or secretary shall not hold the office of assistant secretary. Officers shall serve for two year terms or until his or her successor is elected or appointed. Notwithstanding the foregoing, all officers of the Corporation, except the Executive Director, Secretary, Assistant Secretary and Treasurer, shall be members of the Board. Upon the expiration of the terms, each officer shall have the right to be reappointed or reelected.

(b) All officers shall be subject to removal from office at any time by a vote of a majority of the Governing Body.

(c) A vacancy in any office shall be filled by a vote of a majority of the Board.

Section 3.2 Powers and Duties of the President. The president shall be the chief operating executive officer of the Corporation, and, subject to the authority of the Board, the president shall be in general charge of the properties and affairs of the Corporation, and execute all contracts, conveyances, franchises, deeds, assignments, mortgages, leases, notes and other instruments in the name of the Corporation. The President shall preside over the meetings of the Corporation.

Section 3.3 Vice President. The vice president shall have such powers and duties as may be prescribed by the Board and shall exercise the powers of the president during that officer's absence or inability to act, in their respective order. Any action taken by the vice president in the performance of the duties of the president shall be conclusive evidence of the absence or inability to act of the president at the time such action was taken.

Section 3.4 Treasurer. The treasurer shall be the chief fiscal officer of the Corporation, and shall have the responsibility to see to the handling, custody, and security of all funds and securities of the Corporation in accordance with these Bylaws. When necessary or proper, the treasurer may endorse and sign, on behalf of the Corporation, for collection or issuance, checks, notes, and other obligations in or drawn upon such bank, banks or depositories as shall be designated by the Board consistent with these Bylaws. The treasurer shall see to the entry in the books of the Corporation full and accurate accounts of all money received and paid out on account of the Corporation. The treasurer shall, at the expense of the Corporation, give such bond for the faithful discharge of his or her duties in such form, and amount as the Board may require. All check writing authority will follow all applicable City policies concerning authorizations, signatures and disbursements.

Section 3.5 Secretary. The secretary shall keep the minutes of all meetings of the Board and books provided for that purpose, shall give and serve all notices, may sign with the president in the name of the Corporation, and/or attest the signature thereto, all contracts, conveyances, franchises, deeds, assignments, mortgages, notes and other instruments of the Corporation, shall have charge of the corporate books, records, documents and instruments, except the books of account and financial records and securities, and such other books and papers as the Board may direct, all of which shall at all reasonable times be open to public inspection upon application at the office of the Corporation during business hours, and shall in general perform all duties incident to the office of secretary subject to the control of the Board.

Section 3.6 Compensation. Officers who are members of the Board shall not receive any salary or compensation for their services, except that they shall be reimbursed for the actual expenses incurred in the performance of their official duties as officers.

## **ARTICLE IV FUNCTIONAL CORPORATE DUTIES AND REQUIREMENTS**

### **Section 4.1 Books, Records, Audits.**

(a) The Corporation shall keep and properly maintain in accordance with generally accepted accounting principles, complete books, records, accounts, and financial statements pertaining to its corporate funds, activities, and affairs.

(b) At the direction of the Governing Body, the books, records, accounts, and financial statements of the Corporation may be maintained for the Corporation by the accountants, staff and personnel of the City.

(c) The Corporation, or the City if the option of subsection (b) is selected, shall cause its books, records, accounts, and financial statements to be studied at least once each fiscal year

by an outside, independent auditing and accounting firm selected by the Governing Body and approved by the Board. Such an audit shall be at the expense of the Corporation and shall be delivered to the Governing Body within 150 days of the end of the fiscal year of the Corporation.

(d) All books and records of the Corporation may be inspected by any director or his or her agent or attorney for any purpose at any reasonable time and at all times the Governing Body shall have access to the books, records, and financial statements of the Corporation.

**Section 4.2     Deposit and Investment of Corporation Funds.**

(a) Subject to the requirements of contracts, loan agreements, indentures or other agreements, all other money of the Corporation, if any, shall be deposited, secured, and/or invested in the manner provided for the deposit, security, and/or investment of the public funds of the City. The Board shall designate the accounts and depositories to be created and designated for such purposes, and the methods of withdrawal of funds therefrom for use by and for the purposes of the corporation upon the signature of its treasurer and such other persons as the Board designates.

**Section 4.3     Expenditure of Corporate Money.** The proceeds from the investment of funds of the Corporation, the proceeds from the sale of property, revenues generated by and payable to the Corporation pursuant to the Act or any other source of revenues that are payable to the Corporation may be expended by the Corporation for any of the purposes authorized by the Act, and expenditures of money may be used for the purpose of financing or otherwise providing for the acquisition, construction, rehabilitation, renovation, repair, equipping, furnishing and placement in service of public facilities of the City under the terms of the Act.

**Section 4.4     Issuance of Obligations.** No bonds, notes or other debt shall be authorized or sold and delivered by the Corporation.

**ARTICLE V  
MISCELLANEOUS PROVISIONS**

**Section 5.1     Principal Office.**

(a) The principal office and the registered office of the Corporation shall be the registered office of the Corporation located at [101 N. College Street, Killeen, Texas 76541] as specified in the Certificate of Formation.

(b) The Corporation shall have and shall continually designate a registered agent at its office, as required by the Act.

**Section 5.2     Fiscal Year.** The fiscal year of the Corporation shall be the same as the fiscal year of the City.

**Section 5.3     Seal.** No seal of the Corporation shall be required.

**Section 5.4     Resignations.** Any member of the Governing Body who does not wish to serve on the Board as a director or officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time is specified, at the time

of its receipt by the president or secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

The Mayor of the City may appoint a successor to fill such vacancy. Any successor appointed by the Mayor shall be approved by a majority vote of the Governing Body.

Section 5.5 Approval or Advice and Consent of the Governing Body. To the extent that these Bylaws refer to any approval by the City or refer to advice and consent by the Governing Body, such advice and consent shall be evidenced by a certified copy of a resolution, order, or motion duly adopted by the Governing Body.

Section 5.6 Services of City Staff and Officers. To the extent possible, the Corporation shall utilize the services and the staff employees of the City.

Section 5.7 Indemnification of Directors, Officers and Employees.

(a) The Corporation is, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practices and Remedies Code) a governmental unit and its actions are governmental functions.

(b) As provided in Chapter 303.037 of the Act, the Corporation shall indemnify each and every member of the Board, its officers and its employees and each member of the Board and each employee of the City, to the fullest extent permitted by law, against any and all liability or expense, including attorney's fees, incurred by any of such persons by reason of any actions or omissions that may arise out of the sanctions and activities of the Corporation. The legal counsel for the Corporation is authorized to provide a defense for members of the Board, officers, and employees of the Corporation.

## **ARTICLE VI**

### **EFFECTIVE DATE, AMENDMENTS, MISCELLANEOUS**

Section 6.1 Effective Date. These Bylaws shall become effective upon the occurrence of the following events:

- (1) the approval of these Bylaws by the Governing Body, which approval may be granted prior to the creation of the Corporation; and
- (2) the adoption of these Bylaws by the Board.

Section 6.2 Amendments to Certificate of Formation and Bylaws. The Certificate of Formation of the Corporation and these Bylaws may be amended only in the manner provided in the Certificate of Formation and the Act.

Section 6.3 Interpretation of Bylaws. These Bylaws shall be liberally construed to effectuate the purposes set forth herein. If any word, phrase, clause, sentence, paragraph, section or other part of these Bylaws, or the application thereof to any person or circumstances, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of

these Bylaws and the application of such word, phrase, clause, sentence, paragraph, section or other part of these Bylaws to any other person or circumstance shall not be affected thereby.

Section 6.4 Dissolution. Upon the dissolution of the Corporation after payment of all obligations of the Corporation in accordance with the Act and the Certificate of Formation, all remaining assets of the Corporation shall be transferred to the City.

\* \* \*

## CERTIFICATE FOR RESOLUTION

The undersigned officer of the Killeen Public Facility Corporation, a Texas nonprofit corporation created pursuant to the laws of the State of Texas ("KPFC") hereby certifies as follows:

1. In accordance with its bylaws, the Board of Directors of KPFC (the "Board") held a meeting on January 26, 2021, (the "Meeting") of the duly constituted officers and members of the Board, at which a duly constituted quorum was present. Whereupon among other business transacted at the Meeting, a written

RESOLUTION AUTHORIZING NORTH KILLEEN APARTMENTS TRANSACTION WITH THE NRP GROUP, INCLUDING THE EXECUTION OF ALL DOCUMENTATION NECESSARY TO CARRY OUT THE TRANSACTION; AUTHORIZING THE PURCHASE OF THE LAND FOR THE TRANSACTION AND THE LEASE OF SUCH LAND FOR THE TRANSACTION; AND AUTHORIZING THE CREATION OF KPFC NORTH KILLEEN, LLC AND ITS ADMISSION AS A MEMBER OR PARTNER OF THE EQUITY PARTNERSHIP; AND AUTHORIZING KILLEEN PUBLIC FACILITY CORPORATION TO SERVE AS THE GENERAL CONTRACTOR; AND OTHER MATTERS IN CONNECTION THEREWITH

(the "Resolution") was duly introduced for the consideration of the Board and discussed. It was then duly moved and seconded that the Resolution be adopted; and, after due discussion, said motion, carrying with it the adoption of the Resolution, prevailed and carried by a majority vote of the Board.

2. A true, full, and correct copy of the Resolution adopted at the Meeting is attached to and follows this Certificate; the Resolution has been duly recorded in the Board's minutes of the Meeting; each of the officers and members of the Board was duly and sufficiently notified officially and personally, in advance, of the time, place, and purpose of the Meeting; and the Meeting was held and conducted in accordance with the Bylaws of KPFC.

SIGNED January 26, 2021.

\_\_\_\_\_, Assistant Secretary

## RESOLUTION

RESOLUTION AUTHORIZING NORTH KILLEEN APARTMENTS TRANSACTION WITH THE NRP GROUP, INCLUDING THE EXECUTION OF ALL DOCUMENTATION NECESSARY TO CARRY OUT THE TRANSACTION; AUTHORIZING THE PURCHASE OF THE LAND FOR THE TRANSACTION AND THE LEASE OF SUCH LAND FOR THE TRANSACTION; AND AUTHORIZING THE CREATION OF KPFC NORTH KILLEEN, LLC AND ITS ADMISSION AS A MEMBER OR PARTNER OF THE EQUITY PARTNERSHIP; AND AUTHORIZING KILLEEN PUBLIC FACILITY CORPORATION TO SERVE AS THE GENERAL CONTRACTOR; AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the NRP Group, its affiliates and investors intend to form a Texas limited partnership (the “Partnership”) to acquire, finance and construct an approximately 368-unit multifamily housing facility (the “Housing Facility”) to be located on 22.2 acres at the southwest corner of WS Young and Veterans Boulevard, Killeen, Texas (the “Land,” together with the Housing Facility, the “Project”);

WHEREAS, at the request of the Partnership, Killeen Public Facility Corporation (“KPFC”) has agreed to (i) serve as the sole member of KPFC North Killeen, LLC (the “Limited Partner”), a limited liability company which will be one of the limited partners of the Partnership in connection with the Project, (ii) acquire the Land and lease it to the Partnership or a subsidiary entity pursuant to a Ground Lease (the “Ground Lease”), and (iii) serve as the general contractor for the Project with an affiliate of NRP serving as the sub-general contractor;

WHEREAS, NRP and KPFC have negotiated a Term Sheet containing the pertinent business terms of their agreement (the “Term Sheet”), a copy of which is attached hereto;

WHEREAS, under the Term Sheet, KPFC will enter into a Development Agreement, causing NRP or its affiliate to finance and construct the Project, a Lease Agreement, under which the Partnership or its subsidiary will operate the Project, and a Regulatory Agreement, ensuring that 50% of the units will be available to tenants whose income is less than 80% of the area median income;

WHEREAS, in connection with the financing of the Project, KPFC will execute a joinder pledging the Land to the Partnership’s loan;

WHEREAS, the Partnership will contribute approximately \$18,000,000 of equity to the construction of the Project (the “Equity Financing”);

WHEREAS, in connection with the Equity Financing, the Limited Partner, will be required to enter into certain agreements, including but not limited to an Amended and Restated Agreement of Limited Partnership, and including the documents attached as exhibits thereto, and closing certificates (collectively, the “Equity Documents”);

WHEREAS, the Board has determined that it is in the public interest and to the benefit of the citizens and residents of Killeen for the various entities to enter into the transactions described above so that the Partnership may construct the Project;

WHEREAS, this Board of Directors has reviewed the foregoing and determined that the action herein authorized is in furtherance of the public purposes of KPFC;

BE IT THEREFORE RESOLVED BY THE BOARD OF DIRECTORS OF THE KILLEEN PUBLIC FACILITY CORPORATION, THAT:

Section 1. The contemplated transaction and Project, and the Term Sheet containing the business terms with NRP, its affiliates and investors, are hereby authorized and approved.

Section 2. The City Manager, acting as the Assistant Secretary of KPFC is hereby authorized to execute any and all documentation required for the Project, including, but not limited to the Development Agreement, Lease, Regulatory Agreement, Joinder, Construction Contract and Subcontract and the Equity Documents, and all other documents relating to the Project, to which the Limited Partner, and/or KPFC is a party.

Section 3. The purchase of the Land, the lease of the Land, the creation of the Limited Partner by KPFC, and the role of KPFC as the general contractor for the Project are approved and the City Manager acting as the Assistant Secretary of KPFC is hereby authorized to execute the documents required to be executed by KPFC in order to effect such transactions.

Section 4. The City Manager acting as the Assistant Secretary of KPFC is authorized to negotiate and approve such changes in, or additions to, the terms of any of the documents, including amendments, renewals, and extensions, as such officer shall deem necessary or appropriate upon the advice of counsel to KPFC, and approval of the terms of any of the documents by such officer and this Board shall be conclusively evidenced by the execution and delivery of such documents.

Section 5. The officers of this Board, or any of them, are authorized to take any and all action necessary to carry out and consummate the transactions described in or contemplated by the documents approved hereby or otherwise to give effect to the actions authorized hereby and the intent hereof.

Section 6. The officers of this Board hereby approve the selection of Bracewell LLP as counsel to the Limited Partner and KPFC for this transaction.

Section 7. If any section, paragraph, clause, or provisions of this Resolution shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution.

Section 8. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Board.

Section 9. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 10. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 11. This Resolution shall be in force and effect from and after its passage.

**TERM SHEET FOR THE DEVELOPMENT OF  
KILLEEN APARTMENTS  
IN THE CITY OF KILLEEN, TEXAS**

**January \_\_\_\_, 2021**

This Term Sheet addresses the terms for the development and financing of the Property (hereafter defined). This Term Sheet is not meant to be an exhaustive document and will be replaced and superseded by definitive documentation. No legally binding obligations on either party will be created, implied or inferred until documents in final form are executed and delivered by all parties in a form acceptable to each party, in each party's sole and absolute discretion. This Term Sheet replaces all previous understandings and agreements, written or oral, with respect to the Property.

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The Project will be owned by a public facility corporation formed by The City of Killeen specifically for this Project, the "PFC". Approximately 25.7 acres of land will be owned by an affiliate of NRP and will be conveyed to the PFC. The PFC will at Closing pay that NRP affiliate for approximately 25.7 acres of land and simultaneously enter into a lease with the Tenant for 22.2 acres of land (the "Land"), who will make a Prepaid Rent Prepayment to the PFC of an equal amount. PFC will retain 3.5 acres of land free and clear. Tenant will be responsible for the costs of the Improvements. The Land and Improvements will be leased to Tenant on a long term lease. The PFC and a NRP affiliate will be limited partners of Tenant.

**Adaptable Units:**

The Tenant shall construct the project such that all ground floor units (other than units that are allocated as Accessible Units as defined by the 2018 International Building Code, January 2020, Fourth Edition) as Adaptable Dwelling Units. "Adaptable Dwelling Units" means a ground floor dwelling unit constructed and equipped so grab bars may be added to the walls of one of the showers or bathtubs to accommodate the needs of any future residents or occupants with different types or degrees of disabilities. Residents or occupants with a disability, as defined by the Fair Housing Act, of an Adaptable Dwelling Unit may request a reasonable modification for the installation of grab bars in their respective Adaptable Dwelling Unit. The costs of the reasonable modification of adding grab bars to the walls of one of the showers or bathtubs in an Adaptable Dwelling Unit for residents or occupants with a disability shall be borne by the Tenant.

**Assumed Debt Service:**

At the initial Capital Event, the hypothetical equal monthly payments of principal and interest that would be owed by the Tenant to a lender, assuming (irrespective of whether the Tenant has actually incurred any indebtedness and the actual terms of any such indebtedness) that Tenant borrowed seventy percent (70%) of the most recent purchase price for the direct or indirect transfer of the entire Lease to a party that

is not an Affiliate of the Tenant (including any indirect transfer of the Lease effected by means of the direct or indirect sale of all of the equity interest in the Tenant), at a rate of interest equal to the Ten Year Treasury Rate plus three hundred (300) basis points, determined on the date of transfer and with a thirty (30) year level debt service amortization. All calculations of the Assumed Debt Service shall be made by Tenant, shall be reasonable and shall be on the same basis as all reporting provided to Tenant's owners except as provided in this Lease.

**Available Cash:**

For the applicable period, all cash proceeds realized and received by Tenant from operations (other than (i) receipts of capital contributions to Tenant, (ii) proceeds from loans to or refinancing by Tenant, (iii) proceeds from any direct or indirect sale or assignment of the Lease occurring after an election to effect a PFC Withdrawal, as hereafter defined, or (iv) proceeds from any insurance or from any condemnations) less (a) all operating costs and expenses of Tenant (and its affiliates to the extent relating to the Project), other than any expense not involving a cash expenditure (such as any amount charged for amortization or depreciation) or expenses paid to a related party; (b) the Assumed Debt Service; (c) all sums expended by Tenant (and its affiliates to the extent relating to the Project) for capital expenditures for the Project; and (d) cash reserves for working capital, capital expenditures, expenses, liabilities and other purposes as determined by Tenant after consideration of Tenant's financial position. Any of the costs, expenses and reserves contemplated in the foregoing clauses (a) through (d) may at the election of Tenant (and in such manner as Tenant shall reasonably approve) be carried forward and applied against future periods to the extent in excess of the aggregate amount of Available Cash for any current period. Available Cash must be calculated and accounted for consistently with the calculations of and accounting for distributions to Tenant's partners or owners. Notwithstanding the foregoing, prior to the first sale of the Project, when using the defined term Available Cash for Partnership Distributions, actual debt service shall be deducted from cash proceeds in lieu of the Assumed Debt Service.

**Net Available Cash From Sale:** The Sale Price actually paid at a Capital Event, less the debt repaid or assumed at the Capital Event and less expenses paid in connection with the Capital Event.

**Capital Event:**

A sale of the Project (including any proposed assignment of the entire Lease) to a third party for consideration or of all of the interests in the Tenant Partnership to a third party for consideration.

<b>City:</b>	City of Killeen, Texas.
<b>Closing Date:</b>	The date of closing for all financing for the Project.
<b>Construction:</b>	Tenant will contract with the PFC, as General Contractor, to construct the Improvements; and the PFC will enter into a Master Sub-Contract with NRP Contractors II LLC, an affiliate of NRP (“ <b>NRP Contractors</b> ”), to construct the Improvements. NRP Contractors will receive a Contractor Fee of 5%, and any construction contract with NRP Contractors will also include a contractor’s contingency of 3% solely for the use of NRP Contractors. NRP Contractors will provide construction completion guarantees necessary to satisfy any lenders and Equity Contribution Partners for the Project on terms acceptable to NRP Contractors in its sole discretion. The PFC, as General Contractor, shall be indemnified to the fullest extent permitted by applicable law by each of the Tenant and NRP Contractors, and the indemnification shall be reflected in the construction contract documentation.
<b>Commercial Property:</b>	Approximately 3.5 acres of land at the corner of Terrace Dr. and WS Young, to be platted as a separate lot that will not be subject to the Lease. Developer reserves the right to record a restrictive covenant acceptable to the PFC at Closing prohibiting noxious uses on the property to ensure compatible land uses with the Project.
<b>Developer:</b>	NRP Lone Star Development, LLC, or another affiliate of NRP.
<b>Development Agreement:</b>	Developer, the PFC and Tenant will enter into a development agreement (“ <b>Development Agreement</b> ”) in a form acceptable to the parties of the contract, in accordance with the terms set forth herein.
<b>Developer Fee:</b>	Developer is to receive a Developer Fee in connection with the development of the Project in an amount equal to three and one-half percent (3.50%) of the total development costs of the Project. It is anticipated thirty percent (30%) of the Developer Fee will be earned and paid at the construction loan closing. Fifty percent (50%) of the Developer Fee will be earned and paid monthly out of the loan proceeds as part of the monthly construction loan process and the final twenty percent (20%) will be earned and paid upon issuance of the final certificate of occupancy for the Project. The timing and amount of the payment shall be subject to the lender and Equity Partner’s consent.
<b>Equity Contribution Partners:</b>	The entity or entities which are selected by NRP to contribute common equity (cash or property) to the Equity Partner and to be admitted as a limited partner to the Equity Partner, one of which will be NRP Partner. Such interest may receive a hurdle return for all or a portion of its equity contribution.

<b>Equity Partner:</b>	A Texas limited partnership, the sole general partner of which will be NRP Manager, and whose limited partners will be NRP Partner (which will contribute the Land Contribution and some cash in accordance with the Project Budget) and the Equity Contribution Partners (which will contribute cash in accordance with the Project Budget) and the PFC or one of its affiliates.
<b>Governing Law:</b>	State of Texas.
<b>Guarantees:</b>	Certain financial obligations will be guaranteed by NRP Contractors or an affiliate on terms to be negotiated by NRP and lenders and the Equity Contribution Partners. The PFC will not be required to provide any financial guarantees with respect to financing or construction of the Project.
<b>Housing Vouchers:</b>	The Project will accept vouchers under the Housing Choice Voucher Program provided that the value of such voucher shall not be included in the prospective tenant's income for purposes of determining whether or not such tenant qualifies as low income. Any tenant utilizing a voucher will be charged a rent equal to a comparable unit in the project being leased to low income tenants not utilizing the voucher program.
<b>Sale Price:</b>	The sales price received by the Tenant Partnership for the sale of the Leasehold Estate.
<b>Hypothetical Distribution:</b>	The distribution (or proceeds) that the PFC would receive from a sale if consummated by Tenant at the Sale Price pursuant to the payment waterfall as set forth in the Tenant's partnership agreement.
<b>Improvements:</b>	Approximately 368 units of multifamily residential housing in the Project, together with all onsite and offsite infrastructure improvements for the Project, pursuant to Plans and Specifications developed by Developer, and will include a pool, fitness center, clubhouse space, internet café, dog park, and other Class-A multifamily amenities appropriate for the Project as determined by Tenant Partnership. The overall quality of the development and the tenant finish out will be substantially similar to NRP's Lucent Apartments in Austin, Texas, except the Project shall use stone or brick for a minimum of 10% of the total exterior façade of all buildings combined and stucco for a minimum of 20% of the total exterior façade of all buildings combined. No building shall have less than 20% of its exterior façade as masonry (combination of brick, stone, and stucco).
<b>Lease:</b>	Lease between the PFC, as landlord, and Tenant, pursuant to which the PFC leases each phase of the Property to the Tenant for a term of 75 years (the " <b>Lease</b> "). So long as Tenant is not in default under the Lease, Tenant will be permitted under the Lease to assign its interest in the Lease without the requirement of any consent from Landlord. Landlord will not be permitted to assign its interests under the Lease in

any manner which jeopardizes the availability of exemption of the Project from ad valorem taxation or to the extent as may be prohibited in any loan documents with the lenders or any agreement between the Tenant and the Equity Contribution Partner. The rent will be (1) prepaid rent at closing equivalent to the amount paid by the PFC for the Land and (2) \$1 per year (in the absence of a foreclosure or PFC Withdrawal).

The Lease will provide that for any year the Tenant wishes to obtain a property tax exemption, it will set aside or rent 50% of the units to tenants whose income is 80% of the AMI (the "Affordable Units"), which will not be adjusted for household size, such AMI shall have a floor no lower than the AMI at Closing. NRP will lease such Affordable Units at a rate of 30% rent to income, with no adjustment for utility allowance.

**Ad Valorem  
Tax Exception:**

The PFC shall be responsible for obtaining a 100% property tax exemption for the Project and Lease. The PFC shall apply for, and use good faith efforts to obtain prior to closing, a predetermination letter from the appraisal district indicating that the Project will be exempt. Upon Closing, the PFC will apply for the formal tax exemption. Pursuant to the Lease, if the ad valorem tax exemption with respect to the Project is lost ("Loss of Tax Status Event") for any reason at any time during the Term of the Lease, then the PFC, as Landlord, will convey the Project to Tenant (fee ownership of the Project, free and clear) and the Lease will terminate and the PFC will assign the Tenant its interest in the Tenant and no further distributions shall be made to the PFC in accordance with the "Distribution" section below. In the event of a Loss of Tax Status Event, prior to the transfers discussed in the prior sentence, the PFC and the Tenant shall use reasonable efforts to modify the structure to allow the ad valorem tax exemption to continue.

**Management:**

NRP Management LLC, an affiliate of NRP Group ("**NRP Manager**"), will be designated the property manager for the Project and will manage the leasing and operations of the Project. NRP Management will receive a base Management Fee as follows:

Commencing with the end of the first complete calendar month after the first employee of NRP or any affiliate commences work on site at the Project (provided such date is typical for when a management company would commence work on promotional and/or leasing activities at similar project), the greater of (i) \$35 per unit per month or (ii) \$11,000 per month; and

Commencing with substantial completion of the first residential building, the greater of (i) \$35 per unit per month or (ii) 3% multiplied

by the effective gross income of the Project as outlined in the Management Agreement; but in no event less than \$11,000 per month.

NRP Manager shall receive a set up fee, payable no later than the first (1<sup>st</sup>) annual anniversary of the Closing Date. NRP Manager shall further receive a property lease up fee, payable upon stabilization of the project. The amounts of such fees shall be determined by the Equity Partner and NRP based on market conditions.

**Marketing:** Developer agrees to include in all public marketing materials and websites for the Project a reference to the affordability provisions and voucher acceptance.

**Miscellaneous Expenses:** Tenant Partnership will be responsible for and will include in the Project Budget all legal fees of the PFC actually incurred in connection with the preparation, negotiation and execution of the Organization Documents, all reasonable out-of-pocket expenses, including, without limitation, all business, financial, collateral due diligence expenses, and, to the extent provided herein, all appraisal fees and all examination fees.

**Net Cash Flow Rent:** None, unless lender forecloses on the leasehold estate or there is a PFC Withdrawal, then such rent shall be set in an amount equal to the Post Withdrawal Percentage multiplied by the Available Cash for the one year period prior to the initial sale and shall thereafter be adjusted annually by the annual percentage adjustment to the AMI for Bell County capped at 3% per year. For example, if AMI for Bell County increases in Year 2 of the payment of Net Cash Flow Rent by 2%, then Net Cash Flow Rent shall increase by 2% in that year.

**NRP:** NRP Properties LLC, an Ohio limited liability company, or its affiliates.

**NRP Partner:** An affiliate of NRP, which will be a limited partner of the Equity Partner, which in turn will be a limited partner of the Tenant Partnership.

**Other Terms:** Tenant Partnership's organization documents will contain such usual and customary terms for limited partnership formed for the acquisition, financing, ownership, development, management, leasing and sale of the Project, including, without limitation, provisions for limitation on transfer of partnership interests, delivery of periodic financial and other reports necessary for securities laws disclaimers, accredited investor representations and compliance under the Development Agreement.

**Parkland Fee:** At Closing, the Project will pay a one time fee of \$82,000 to the City of Killeen Recreation Services Department to be used for improvements in Conder Park.

**Partnership Distributions:** Available Cash from a sale or refinancing will be distributed by the Tenant Partnership to the Partners in the following order and priority:

First to any Equity Contribution Partner until it has received at least the hurdle rate (negotiated with the third party providing equity) described below on its invested capital;

Second to the payment of then any priority capital advance(s) (to fund required cash not otherwise available), pro rata in accordance with the then outstanding principal balance of such priority capital advances, if more than one, in each case, first to the payment of then current interest which is expected to be approximately 10%, then to the payment of accrued and unpaid interest, and then to the return of then outstanding principal balance;

Third, to the Equity Contribution Partners until such time as such Partner's unreturned common contribution (that is a return of capital, as defined in the Tenant Partnership agreement) is reduced to zero;

Thereafter, the PFC will receive 15%, and NRP and the Equity Contribution Partners will receive the balance.

Available Cash from operating cash flow will be distributed by the Tenant Partnership to the Partners in the following order and priority:

First to any Equity Contribution Partner until it has received at least the hurdle rate (negotiated with the third party providing equity) described below on its invested capital;

Second to the payment of then any priority capital advance(s) (to fund required cash not otherwise available), pro rata in accordance with the then outstanding principal balance of such priority capital advances, if more than one, in each case, first to the payment of then current interest which is expected to be approximately 10%, then to the payment of accrued and unpaid interest, and then to the return of then outstanding principal balance;

Thereafter The PFC will receive 15%, and NRP and the Equity Contribution Partners will receive the balance.

NRP anticipates that the "hurdle rate" will be approximately 10% internal rate of return (per annum compounded monthly based on actual days elapsed and a 360-day year) on initial capital, however, this shall be subject to final negotiations with the Equity Partner.

<b>PFC Structuring Fee:</b>	The PFC, or one of its affiliates, will receive a structuring fee equal to \$350,000 at the Closing of the Project in return for providing the organizational structure described in this Term Sheet, which allows the Project to be sales tax exempt during the construction of the Project, and to be and remain 100% property tax exempt (including the Property and the Project Improvements) throughout the duration of the Lease. In addition to the Structuring Fee, the PFC will own the Commercial Property with no lease encumbering.
<b>Plans and Specifications:</b>	The PFC, Tenant Partnership, Lenders, and Equity Contribution Partner will have the right to review and approve the Plans and Specifications for Project once they are materially completed, the approval of which will not be unreasonably withheld or delayed. Once they have approved the conceptual and/or schematic design for the Project, it may not object to such design Plans and Specifications, unless the subsequent Plans and Specifications materially and adversely affects the design character or value of the Project.
<b>Post-Withdrawal Percentage:</b>	A percentage calculated upon the consummation of the initial Capital Event in connection with which the PFC effected a PFC Withdrawal, or any foreclosure of the Leasehold Estate (if that occurs before the initial Capital Event), if any, which percentage shall be equal to the quotient of the Hypothetical Distribution if the PFC had not effected such PFC Withdrawal, divided by the Net Available Cash from Sale; <u>provided, however</u> , that (A) if, after giving effect to all distributions and other payments of proceeds in respect of such Initial Capital Event, all of the partners of the Partnership have received an ROI (as defined in the Limited Partnership Agreement) with respect to their common contributions (as defined in the Limited Partnership Agreement) of at least 1.5, then the Post-Withdrawal Percentage shall not be less than ten percent (10%), and (B) if, after giving effect to all distributions and other payments of proceeds in respect of such Initial Capital Event, any of the partners of the Partnership have received an ROI with respect to their common contributions of less than 1.5, then the Cash Flow Rent shall be zero (0) until the five (5) year anniversary of the consummation of such Initial Capital Event and ten percent (10%) of the Available Cash in such 5 <sup>th</sup> year and thereafter adjusted by the agreed CPI for all periods thereafter.
<b>Equity Contribution Partner:</b>	The entity selected by NRP to provide the limited partner capital for the Project in the form of common equity and to be admitted as a limited partner to the Equity Partner or another entity in the chain of ownership.

**Project:** The Project will be the Land and Improvements, to be developed by Developer.

**Project Budget:** The Project Budget will be finalized and approved by all parties to the transaction prior to Closing, and will include the proposed sources of funds that will be needed to develop, construct and operate the Project, and the uses on which the funds will be spent. Sources of revenue include, without limitation, rental income, capital contributions and other revenues. Project uses include all reasonable and necessary direct and hard costs incurred in connection with the Project.

**Project Financing:** The PFC will provide the leasehold estate for the Project to the Tenant Partnership pursuant to a Lease Agreement. The Lease Agreement will be prepared once the Lenders are identified and will include commercially reasonable provisions required by the Lenders, which may include a requirement the PFC subordinate its interests in the Project, including the leasehold and fee interests in the Project.

#### Loans

For the Project, Developer will obtain a senior loan from a senior lender to the Tenant for approximately the amount shown in the Project Budget for development of the Project to be secured by a first-lien deed of trust on the Tenant's leasehold interest in the Project, and if required, a lien on the PFC's fee interest in the Project. Developer may also obtain subordinated loans (which may be structured as mezzanine financing) from a subordinate lender for approximately the amount shown in the Project Budget which may be secured by a second-lien deed of trust on the Tenant Leasehold interest, a lien on the PFC's fee interest in the Project or partnership interest in the Tenant or Equity Contribution Partner.

All financings and guarantees must be acceptable to Developer and the Tenant Partnership in their sole and absolute discretion.

#### Equity

Developer will obtain one or more Equity Contribution Partners who will invest approximately the amount shown in the Project Budget. One of the Equity Contribution Partners will be NRP Partner (which will make a contribution of the Land at the Agreed Value and a contribution of cash as provided for in the Project Budget). Contributions from the Equity Contribution Partners will be contributed to the Equity Partnership, (which will be contributed by the Equity Partnership to the Tenant for approximately the amounts shown in the Project Budget). The Equity Partner will be paid from Cash Flow and will at all times be subordinate to the Loans. The Equity Contribution Partners and NRP will receive a return hurdle which is expected to be approximately 10% on their initial contributions and

will be repaid their investment from a Capital Event before any “Promote”. Accordingly, Cash Flow splits will adjust after the payment of the hurdle returns.

- Project Term:** The “**Project Term**” is from commencement of Project for a period of 75 years after closing.
- Property:** Approximately 25.77+/- (less the Commercial Property) acres for the Project to be built and operated as proposed by this Term Sheet, located in Killeen, Bell County, Texas, and shown on the parcel map attached as Exhibit A hereto.
- PFC:** The Public Facility Corporation created by the City of Killeen.
- Sale:** Upon the first Capital Event, the PFC shall begin receiving Net Cash Flow Rent.
- Sales Commission:** The PFC shall receive \$250,000 at the closing of the initial sale of the leasehold interest.
- Sales Tax:** The PFC will as General Contractor (which it will subcontract to NRP Contractors) be responsible to for the purchase of materials for the construction of the Project so that the purchases will be exempt from all sales and use taxes pursuant to Applicable Law.
- Tenant:** [Name to be determined], will be a single purpose Texas or Delaware limited partnership, the sole General Partner of which will be NRP Manager, LLC, a Florida limited liability company (or an affiliate), and the Limited Partners of which will be the Equity Partner and the PFC.

This instrument may be executed in several counterparts, each of which will be deemed an original and all of which will constitute one and the same instrument, and will become effective when counterparts have been signed by each of the parties and delivered to the other party; it being understood that all parties need not sign the same counterpart. The exchange of copies hereof and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, will constitute effective execution and delivery hereof as to the parties and may be used in lieu of the original document for all purposes. Signatures of the parties transmitted by any of the foregoing methods will be deemed to be their original signatures for all purposes.

*Signature Pages Follow*

NRP:

NRP Properties LLC, an Ohio limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PFC:

Killeen PFC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
Property



# City of Killeen

## Legislation Details

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**File #:** DS-21-011    **Version:** 1    **Name:** City Manager Updates  
**Type:** Discussion Items    **Status:** Discussion Items  
**File created:** 1/4/2021    **In control:** City Council Workshop  
**On agenda:** 1/19/2021    **Final action:**  
**Title:** City Manager Updates  
· COVID 19 Update  
**Sponsors:** City Manager Department  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
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# City of Killeen

## Legislation Details

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**File #:** DS-21-012    **Version:** 1    **Name:** Annual Evaluation of City Auditor  
**Type:** Discussion Items    **Status:** Discussion Items  
**File created:** 1/4/2021    **In control:** City Council Workshop  
**On agenda:** 1/19/2021    **Final action:**  
**Title:** Conduct Annual Evaluation of City Auditor  
**Sponsors:** City Auditor, Human Resources Department  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
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# City of Killeen

## Legislation Details

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**File #:** DS-21-013    **Version:** 1    **Name:** Consultation with Attorney  
**Type:** Discussion Items    **Status:** Discussion Items  
**File created:** 1/14/2021    **In control:** City Council Workshop  
**On agenda:** 1/19/2021    **Final action:**  
**Title:** Consultation with Attorney on Pending or Contemplated Litigation. The City Attorney Will Discuss and Provide Legal Advice Regarding Notice of an Anticipated Claim Pursuant to 42 USC 1983.  
**Sponsors:** City Attorney Department  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
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# City of Killeen

## Legislation Details

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**File #:** RQ-21-006    **Version:** 1    **Name:** Future Agenda Items Requests  
**Type:** Future Agenda Requests    **Status:** Future Agenda Items  
**File created:** 1/4/2021    **In control:** City Council Workshop  
**On agenda:** 1/19/2021    **Final action:**  
**Title:** Road Impact Fees for Residential Developments  
**Sponsors:** City Council  
**Indexes:**  
**Code sections:**  
**Attachments:** [Request](#)

Date	Ver.	Action By	Action	Result
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## ATTACHMENT A

### REQUEST TO PLACE ITEM ON THE AGENDA (Per Section 1-20 of Governing Standards and Expectations)

Requestor(s): Councilman Steve Harris

Date: 28 December 2020

Problem/Issue/Idea Name for Agenda:

Road Impact Fees For Residential Developments

#### **Description of Problem/Issue/Idea:**

With current unforeseen variables affecting our city's financial stability, it is imperative that the city council and staff explore new ways to, not just generate, but also preserve monies in our general fund to be used for efforts that allow us to provide our citizens with a better quality of life in all areas of city responsibilities. The implementation of a Road Impact Fee, ONLY for residential developments will assist in this endeavor.

With Road Impact Fees not being a tax nor a fee; or, affecting any pre-existing homeowner or current or, already approved residential developments, it's implementation will not cause any retroactive negative effects. Also, it will take a year to implement giving all stakeholders time to prepare for its start.

Utilizing the monies submitted and collected from residential developers, the city will be able to direct the "earmarked" monies, when necessary, to construct new roads or additional lanes to existing road infrastructure in and around the newly developed area. As a result, the use of monies from the General and, or Street Maintenance Fund will be lessened, freeing the city to utilize the monies in older areas of Killeen.

Yes, it can be predicted that Developers will pass the extra cost on to the buyer of the home but, the price addition to a 15 – 30 year mortgage will not constitute a cost that will make the mortgage payment unpayable due to monetary resources.

#### **Requested Action:**

Staff reviews and presents recommendations regarding the implementation of Road Impact Fees and advises the council on the percentage of assessed fee to residential developers. This will be done in conjunction with the CIAC recommendation. The final recommendation and, or information provided will guide the council's decision.



# City of Killeen

## Legislation Details

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**File #:** RQ-21-007    **Version:** 1    **Name:** Future Agenda Items Requests  
**Type:** Future Agenda Requests    **Status:** Future Agenda Items  
**File created:** 1/4/2021    **In control:** City Council Workshop  
**On agenda:** 1/19/2021    **Final action:**  
**Title:** Proactive Exploratory Committee of Stakeholders  
**Sponsors:** City Council  
**Indexes:**  
**Code sections:**  
**Attachments:** [Request](#)

Date	Ver.	Action By	Action	Result
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## ATTACHMENT A

### REQUEST TO PLACE ITEM ON THE AGENDA

(Per Section 1-20 of Governing Standards and Expectations)

Requestor(s): Councilman Ken Wilkerson

Date: Dec 29, 2020

#### Problem/Issue/Idea Name for Agenda:

Killeen has seen an increase in violent crime, and gang related activity, particularly among our youth and young adult population. This trend is not sustainable, nor should it be acceptable to any of the stakeholders of our city. The problem is complex, and demands an exploratory, comprehensive deep dive into the causes; an analysis of the resources available to address it; and plan to ultimately correct it. The time for rhetoric has passed. A plan with actionable items is needed ASAP to address this problem.

#### Description of Problem/Issue/Idea:

I do not expect that the police have an answer for crime. Police may have an opinion about what causes crime. However, to expect that they can tell you why a young adult choses to commit crime is not their job or perview. Parents, social scientists, educators, and youth mentors are probably more adept at explaining the causes and potential remedies for this problem. Certainly our police need to be included, but they are not the sole and lone cause or cure. As stated before, this issue is complex.

#### Requested Action:

I recommend an exploratory committee of stakeholders within our community be formed to study, discuss, and make a plan for a project to deal with this issue in a proactive and comprehensive way immediately.  
I recommend that funding be CONSIDERED to possibly hire professionals from the psychology, medical, academic, and civic/religious services communities IF NECESSARY due to the importance of this priority.



# City of Killeen

## Legislation Details

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**File #:** MN-21-003    **Version:** 1    **Name:** Minutes of Regular City Council Meeting of January 12, 2021

**Type:** Minutes    **Status:** Minutes

**File created:** 1/4/2021    **In control:** City Council

**On agenda:** 1/19/2021    **Final action:**

**Title:** Consider Minutes of Regular City Council Meeting of January 12, 2021.

**Sponsors:** City Secretary

**Indexes:**

**Code sections:**

**Attachments:** [Minutes](#)

Date	Ver.	Action By	Action	Result
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**City of Killeen**  
Regular City Council Meeting  
Killeen City Hall  
January 12, 2021 at 5:00 p.m.

Presiding: Mayor Jose Segarra

Attending: Mayor Pro Tem Shirley Fleming (via video conference), Councilmembers Debbie Nash-King (via video conference), Steve Harris, Ken Wilkerson, Rick Williams, Mellisa Brown.

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

Vacant: District 3 Seat

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

**Approval of Agenda**

*Motion was made by Mayor Pro Tem Fleming to approve the agenda pulling Agenda Items RS-21-001 and RS-21-004 from Consent Agenda. Motion was seconded by Councilmember Nash-King. The motion carried unanimously.*

**Presentations**

**PR-21-001** Presentation - Bell County Health Department  
Amanda Chadwell with the Bell County Health Department

Dr. Chadwell reviewed Bell County's COVID-19 website and the resources that are on the website and how to navigate the information available to citizens.

**Citizen Petitions**

**CP-21-001** Mr. Van Fraley with I Am Possible Teen Center requested the city's help with his goals to provide a service to Killeen teens by assisting with costs such as waiving or paying his organizations utility bills.

**Citizen Comments**

Ms. Linda Marzi spoke on Agenda Item RS-21-001 (RFP 21 01 Contracted Veterinary Services)  
Ms. Emily Kuczek spoke on Agenda Item RS-21-001 (RFP 21 01 Contracted Veterinary Services)  
Ms. Erika Turner spoke on Agenda Item RS-21-001 (RFP 21 01 Contracted Veterinary Services)  
Ms. Pat Davis spoke on Agenda Item RS-21-001 (RFP 21 01 Contracted Veterinary Services)  
Ms. Monique Koch spoke on Agenda Item RS-21-001 (RFP 21 01 Contracted Veterinary Services)  
Mr. George Grammas spoke on Agenda Item RS-21-001 (RFP 21 01 Contracted Veterinary Services)  
Ms. Holly Teel spoke on Agenda Item RS-20-125 (Public Facility Corporation)  
Mr. James Ralston spoke on Agenda Item RS-20-125 (Public Facility Corporation)  
Mr. Jim Wright spoke on Agenda Item RS-20-125 (Public Facility Corporation)

### **Consent Agenda**

- MN-21-001** Consider Minutes of Regular City Council Meeting of December 8, 2020.
- MN-21-002** Consider Minutes of Regular City Council Meeting of December 15, 2020.
- RS-21-002** Consider a memorandum/resolution authorizing the purchase of twelve canopies for the City of Killeen Parks System from Playground Solutions of Texas in the amount of \$183,155.
- RS-21-003** Consider a memorandum/resolution authorizing the purchase of solar LED lighting for the Fort Hood Regional Trail, the Conder Park Trail, and the Mickey's Dog Park from JEC Energy Solutions in the amount of \$235,044.
- OR-21-001** Consider an ordinance ordering a general election to be held on May 1, 2021 to elect a district council member for each district.

The City Secretary read the caption of the ordinance.

AN ORDINANCE ORDERING THE HOLDING OF AN ELECTION IN THE CITY OF KILLEEN, TEXAS, FOR THE PURPOSE OF ELECTING A COUNCILMEMBER FOR EACH OF THE 4 DISTRICTS; PROVIDING FOR THE FILING OF WRITTEN APPLICATION TO HAVE THEIR NAMES PRINTED ON THE OFFICIAL BALLOT; 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.

*Motion was made by Mayor Pro Tem Fleming to approve the consent agenda. Motion was seconded by Councilmember Wilkerson. Motion carried unanimously.*

### **Resolutions**

- RS-21-001** Consider a memorandum/resolution awarding RFP 21 01 for contracted veterinary services and enter into an agreement with Aztec Pet Hospital in an amount not to exceed \$90,000 annually.

*Motion was made by Councilmember Brown to reject the bid and issue a new RFP. Motion was seconded by Mayor Pro Tem Fleming. During discussions, Councilmember Nash-King made a motion to call for the vote. Motion was seconded by Mayor Pro Tem Fleming. Motion failed 2 to 4 with Councilmember Brown, Councilmember Harris, Councilmember Wilkerson and Councilmember Williams in opposition. Following discussion, the motion to reject bid and issue new RFP failed 3 to 4 with Mayor Segarra breaking tie and Councilmember Nash-King, Councilmember Wilkerson, and Councilmember Williams in opposition. Councilmember Wilkerson made a motion to approve RS-21-001. Motion was seconded by Councilmember Nash-*

*King. Motion carried 4 to 3 with Mayor Segarra breaking tie and Councilmember Brown, Mayor Pro Tem Fleming and Councilmember Harris in opposition.*

**RS-21-004** Consider a memorandum/resolution confirming the City Manager's annual evaluation and pay increase.

*There was discussion about the three most recently elected councilmembers not having enough time to sufficiently evaluation the City Manager. The City Attorney reminded the councilmembers that the Governing Standards and Expectations state that all members are required to vote unless a member has a legal conflict, and that abstaining from a vote for any other reason would be recorded as a vote against the item. Motion was made by Mayor Pro Tem Fleming to approve RS-20-125. Motion was seconded by Councilmember Nash-King. Motion carried 5 to 1 with Councilmember Brown recorded as a vote in opposition by abstaining from the vote.*

**RS-20-125** Consider a memorandum/resolution authorizing and approving the creation of the Killeen Public Facility Corporation to act on behalf of the City of Killeen and approving the Certificate of Formation.

**Staff Comments:** Traci Briggs, City Attorney.

This item has been discussed during the December 8, 2020 City Council Workshop Meeting and at a public forum held on December 10, 2020. Ms. Briggs reviewed amendments that include noting the PFC will be organized as a single-issue PFC exclusively for the purpose of supporting the NRP multifamily project and that it shall not sell or deliver bonds. City staff recommends that the city council approve and authorize the creation of the Killeen Public Facility Corporation to act on the city's behalf and approve the certificate of formation. Ms. Briggs and NRP representative Alastair Jenkin were available to address any questions or concerns from city council, and outside counsel Jim Plummer of Bracewell LLP joined via video conference.

*Motion was made by Mayor Pro Tem Fleming to approve RS-20-125. Motion was seconded by Councilmember Nash-King. Motion carried 4 to 3 with Mayor Segarra breaking the tie and with Councilmember Brown, Councilmember Wilkerson, and Councilmember Williams in opposition.*

## **Public Hearings**

**PH-20-047** **HOLD** a public hearing and consider an ordinance requested by Karen Wunsch on behalf of S. Young Family Ltd. (c/o Susan Young Jones) (Case #FLUM20 07) to amend the Comprehensive Plan's Future Land Use Map (FLUM) from a 'General Commercial' and 'General Residential' designation to a 'Planned Development' designation for approximately 22.54 acres, out of the J. Goslin Survey, Abstract No. 344 and the H. C. McClung Survey, Abstract No. 570. The property is addressed as 1900 E. Veterans Memorial Boulevard, Killeen, Texas. (Tabled from December 8, 2020 Regular City Council Meeting)

The City Secretary read the caption of the ordinance.

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN'S FUTURE LAND USE MAP TO CHANGE APPROXIMATELY 22.54 ACRES, OUT OF THE J. GOSLIN SURVEY,

ABSTRACT NO. 344 AND THE H. C. MCCLUNG SURVEY, ABSTRACT NO. 570 FROM A 'GENERAL COMMERCIAL' AND 'GENERAL RESIDENTIAL' DESIGNATION TO A 'PLANNED DEVELOPMENT'; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

**Staff Comments:** Tony McIlwain, Executive Director of Planning.

The applicant is requesting that the FLUM be amended as follows: approximately 5.14 acres from 'General Commercial' to 'Planned Development'; and, approximately 17.40 acres from 'General Residential' to 'Planned Development'. A concurrent rezoning request has also been submitted for a Planned Unit Development for "R-3A" (Multi-Family Apartment Residential District) use. Staff recommends approval of the 'Planned Development' FLUM designation as the applicant's request is consistent and compatible with the existing residential and commercial land uses and prevailing community character and is in conformance with the PUD requirements outlined in Sec. 31-256.9. The Planning and Zoning Commission recommended approval of the request by a vote of 6 to 1.

Mayor Segarra invited the applicant to speak.

The applicant, Alastair Jenkin, appeared before city council to provide additional information and answer questions.

Mayor Segarra opened the public hearing.

Ms. Holly Teel signed up to speak but was not at the meeting when called upon.

With no one appearing, the public hearing was closed.

*Motion was made by Councilmember Nash-King to approve PH-20-047. Motion was seconded by Mayor Pro Tem Fleming. Motion carried 4 to 3 with Mayor Segarra breaking the tie and with Councilmember Brown, Councilmember Wilkerson and Councilmember Williams in opposition.*

**PH-20-048 HOLD** a public hearing and consider an ordinance requested by Karen Wunsch on behalf of S. Young Family Ltd. (c/o Susan Young Jones) (Case #Z20 22) to rezone approximately 22.54 acres, out of the J. Goslin Survey, Abstract No. 344 and the H. C. McClung Survey, Abstract No. 570, from "R 1" (Single Family Residential District) and "B 5" (Business District) to Planned Unit Development (PUD) for "R 3A" (Multi Family Residential District). The property is addressed as 1900 E. Veterans Memorial Boulevard, Killeen, Texas. (Tabled from December 8, 2020 Regular City Council Meeting)

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 22.54 ACRES, OUT OF THE J. GOSLIN SURVEY, ABSTRACT NO. 344 AND THE H. C. MCCLUNG SURVEY, ABSTRACT NO. 570, FROM "R-1" (SINGLE-FAMILY RESIDENTIAL DISTRICT) AND "B-5" (BUSINESS DISTRICT) TO PLANNED UNIT DEVELOPMENT (PUD) FOR "R-3A"

(MULTI-FAMILY RESIDENTIAL DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

**Staff Comments:** Tony McIlwain, Executive Director of Planning.

The applicant has proposed a Planned Unit Development (PUD) concept plan which includes sixteen (16) three story multi-family structures with a total of 368 residential units on 22.54 acres of land. In addition to the residential structures, the applicant is proposing amenities that will include a large pool area with grills, a fitness center, a clubhouse, an internet café, and a dog park. Mr. McIlwain reviewed the Planned Unit Development standards that included site design, complementary architecture, layout repetition, external materials, articulation, balconies, amenities, height regulations, roof pitch, stairs, accessory buildings, open space, fencing, screening, and parking. Thirty-three (33) surrounding property owners were notified of the request, two written responses in support have been received. Staff recommends approval of the applicant's PUD zoning request as it satisfies the PUD requirements outlined in Code Sec. 31-256.9. The Planning and Zoning Commission recommended approval of the applicant's request by a vote of 6 to 1.

Mayor Segarra invited the applicant to speak.

The applicant, Alastair Jenkin, appeared before city council to provide additional information and answer questions.

Mayor Segarra opened the public hearing.

Ms. Holly Teel signed up to speak but was not at the meeting when called upon.

With no one appearing, the public hearing was closed.

*Motion was made by Mayor Pro Tem Fleming to approve PH-20-048. Motion was seconded by Councilmember Nash-King. Motion carried 4 to 3 with Mayor Segarra breaking the tie and with Councilmember Brown, Councilmember Wilkerson and Councilmember Williams in opposition.*

**PH-19-038 HOLD** a public hearing and consider an ordinance requested by Robert Craig on behalf of ECU Inc. (Case #Z19 23) to rezone Lots 10 and 11, Block 2, Marlboro Heights Replat, from "B 5" (Business District) to "B C 1" (General Business and Alcohol Sales District). The property is addressed as 2704 E. Veterans Memorial Blvd., Killeen, Texas. (Tabled from October 8, 2019 Regular City Council Meeting)

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 LOTS 10 AND 11, BLOCK 2, MARLBORO HEIGHTS REPLAT, FROM "B-5" (BUSINESS DISTRICT) TO "B-C-1" (GENERAL BUSINESS AND ALCOHOL SALES DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

**Staff Comments:** Tony McIlwain, Executive Director of Planning.

This request was originally submitted by Robert Craig on August 13, 2019. The request was recommended for approval by the Planning and Zoning Commission on September 16, 2019 and was subsequently tabled by the city council, per the applicant's request on October 8, 2019. The purpose of the request is to allow the business owner to sell alcohol for on-premise consumption. The applicant's request is consistent with the Future Land Use Map. Zoning notices were originally sent out regarding this request on September 4, 2019. Staff received one written response in support and fourteen written responses in opposition of the request. Staff re-notified 35 surrounding property owners within the 400' notification boundary on December 9, 2020. City staff has not received any written responses in support or opposition since these notifications were made and further recommends approval of the applicant's zoning request as it is typical of similar establishments along Veteran's Memorial Boulevard. Planning and Zoning Commission recommended approval of the request by a vote of 3 to 2.

Mayor Segarra invited the applicant to speak.

The applicant's representative, Thomas Young, appeared before city council to provide additional information and answer questions.

Mayor Segarra opened the public hearing.

Mr. Jim Wright spoke in favor of request.

Ms. Amy Harrison spoke in favor of request.

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

*Motion was made by Councilmember Brown to disapprove PH-19-038. Motion was seconded by Mayor Pro Tem Fleming. Motion carried 5 to 1 with Councilmember Harris in opposition.*

**PH-21-001 HOLD** a public hearing and consider an ordinance requested by Jeff Lackmeyer on behalf of Lorie Renegar (Case# FLUM Z20 02) to amend the Comprehensive Plan's Future Land Use Map (FLUM) from a 'Suburban Residential' (SR) designation to a 'General Residential' (GR) designation for approximately 16.104 acres out of the V. L. Evans Survey, Abstract No. 288. The property is addressed as 952 N. Roy Reynolds Drive, Killeen, Texas.

The City Secretary read the caption of the ordinance.

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN'S FUTURE LAND USE MAP TO ADD A 'GENERAL RESIDENTIAL' DESIGNATION TO APPROXIMATELY 16.104 ACRES OUT OF THE V. L. EVANS SURVEY, ABSTRACT NO. 288, KILLEEN, TEXAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

**Staff Comments:** Tony McIlwain, Executive Director of Planning.

The Future Land Use Map identifies approximately 320 acres of undeveloped property along the eastern edge of the city limits as being intended for future 'Suburban Residential' (SR) development. Within this area: approximately 273 acres are zoned "R-1"; approximately 32 acres are zoned "R-2"; and the remaining area is a mix of "R-3", "B-4", "B-5", and M-2" (Heavy Manufacturing). The majority of the undeveloped property designated as 'Suburban Residential' (SR) in this area is already zoned "R-1" or "R-2". City staff finds that it is unlikely the adjacent undeveloped property would be down zoned to a less restrictive zoning designation. Further, staff finds that the current (SR) designation is inappropriate for this tract due to the existing "M-2" uses immediately adjacent to the south. Staff is of the determination that it is unlikely this property would develop with large-lot, single-family residential uses. Staff recommends approval of the applicant's request to amend the Future Land Use Map designation from 'Suburban Residential' to 'General Residential'. The Planning and Zoning Commission recommended approval of the applicant's request by a vote of 4 to 1.

Mayor Segarra invited the applicant to speak.

The applicant, Jeff Lackmeyer, appeared before city council 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-21-001. Motion was seconded by Councilmember Williams. Motion carried unanimously.*

**PH-21-002** **HOLD** a public hearing and consider an ordinance requested by Jeff Lackmeyer on behalf of Lorie Renegar (Case #Z20 07) to rezone approximately 16.104 acres out of the V. L. Evans Survey, Abstract No. 288, from "R 1" (Single Family Residential District) to "R 2" (Two Family Residential District). The property is addressed as 952 N. Roy Reynolds Drive, Killeen, Texas.

The City Secretary read the caption of the ordinance.

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF APPROXIMATELY 16.104 ACRES OUT OF THE V. L. EVANS SURVEY, ABSTRACT NO. 288, FROM "R-1" (SINGLE-FAMILY RESIDENTIAL DISTRICT) TO "R-2" (TWO-FAMILY RESIDENTIAL DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

**Staff Comments:** Tony McIlwain, Executive Director of Planning.

The applicant intends to build up to 50 to 60 two-family homes on the property. City staff notified owners of 129 surrounding properties. To date, no responses have been received in support or opposition to the request. Staff recommends approval of the applicant's "R-2" (Two Family Residential District) request as presented. Staff finds that the request is consistent with the adjacent land uses

and prevailing residential community character. The Planning & Zoning Commission recommended approval of the request by a vote of 4 to 1.

Mayor Segarra invited the applicant to speak.

The applicant, Jeff Lackmeyer, appeared before city council 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 Williams to approve PH-21-002. Motion was seconded by Councilmember Wilkerson. Motion carried unanimously.*

**PH-21-003 HOLD** a public hearing and consider an ordinance requested by Garrett Nordyke on behalf of Bernard Klimaszewski (Case #FLUM20 06) to amend the Comprehensive Plan's Future Land Use Map (FLUM) from an 'Estate' designation to a 'General Residential' designation for Lots 71 74, Llewelyn Estates 3. The property is addressed as 5011 Cunningham Road, Killeen, Texas.

The City Secretary read the caption of the ordinance.

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN'S FUTURE LAND USE MAP TO ADD A 'GENERAL RESIDENTIAL' DESIGNATION TO LOTS 71-74, LLEWELYN ESTATES 3; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

**Staff Comments:** Tony McIlwain, Executive Director of Planning.

The request is to amend approximately 22.505 acres on the Future Land Use Map from 'Estate' to 'General Residential'. If approved, the applicant intends to develop the property into single-family residential lots. The subject property is currently undeveloped. The surrounding adjoining properties are predominately estate style lots with agricultural use, vacant undeveloped lots, and single-family residential lots. Staff recommends approval of the applicant's request to amend the Future Land Use Map from 'Estate' to 'General Residential'. The Planning and Zoning Commission recommended approval of the request by a vote of 4 to 3.

Mayor Segarra invited the applicant to speak.

The applicant, Garrett Nordyke, appeared before city council to provide additional information and answer questions.

Mayor Segarra opened the public hearing.

Maria Wright spoke in opposition of the request.

Nina Cobb spoke in opposition of the request.

Khandiese Cooper spoke in opposition of the request.

Timothy McNeely spoke in opposition of the request.

Heather McNeely spoke in opposition of the request.  
Gerda Kapsch spoke in opposition of the request.

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

*Motion was made by Councilmember Wilkerson to disapprove PH-21-003. Motion was seconded by Councilmember Nash-King. Motion carried unanimously.*

**PH-21-004 HOLD** a public hearing and consider an ordinance requested by Quintero Engineering, L.L.C. on behalf of Kailles Projects, L.L.C. (Case #Z20 26) to rezone Lot 2, Block 1, Mulford Addition, from "B 3" (Local Business District) to "R 2" (Two Family Residential District). The property is addressed as 1403 Mulford Street, Killeen, Texas.

The City Secretary read the caption of the ordinance.

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF LOT 2, MULFORD ADDITION, FROM "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:** Tony McIlwain, Executive Director of Planning.

The subject property is identified as 'R-MIX' (Residential Mix) on the Future Land Use Map (FLUM) of the Comprehensive Plan. This land use designation permits a mix of residential types and densities intermixed, both on the same block and across streets. Staff finds that the applicant's request for "R-2" (Two-Family Residential) zoning is consistent with the Comprehensive Plan's Future Land Use Map (FLUM). If approved, the applicant intends to develop a two-family home on the property. Staff notified sixty-one surrounding property owners regarding this request. To date, no responses have been received in support or opposition. Staff recommends approval of the applicant's request to rezone the property from "R-1" (Single-Family Residential) to "R-2" (Two-family Residential) as presented. The Planning and Zoning Commission recommended approval of the request by a vote of 5 to 0.

Mayor Segarra invited the applicant to speak.

The applicant was not in attendance.

Mayor Segarra opened the public hearing.

With no one appearing, the public hearing was closed.

*Motion was made by Councilmember Brown to approve PH-21-004. Motion was seconded by Councilmember Williams. Motion carried unanimously.*

**PH-21-005 HOLD** a public hearing and consider an ordinance requested by Catalino Hernandez (Case #Z20 27) to rezone Lot Pt. 6, 7, Block 6, North Side Addition

from "B 3" (Local Business District) to "B 4" (Business District). The property is addressed as 1401 N. 8th Street, Killeen, Texas.

The City Secretary read the caption of the ordinance.

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF LOT PT. 6, 7, BLOCK 6, NORTH SIDE ADDITION 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.

**Staff Comments:** Tony McIlwain, Executive Director of Planning.

The subject property is currently a vacated building. The applicant is proposing an Auto Repair Shop. Staff notified 48 surrounding property owners regarding this request. To date, no responses have been received in support or opposition. Staff is of the determination that the zoning request is consistent with the Comprehensive Plan. The Planning and Zoning Commission recommended approval of the request by a vote of 6 to 0.

Mayor Segarra invited the applicant to speak.

The applicant, Catalino Hernandez, appeared before city council 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-21-005. Motion was seconded by Mayor Pro Tem Fleming. Motion carried unanimously.*

### **Adjournment**

With no further business, upon motion being made by Councilmember Wilkerson, seconded by Councilmember Brown, and unanimously approved, the meeting was adjourned at 8:59 p.m.



# City of Killeen

## Legislation Details

<b>File #:</b>	RS-21-005	<b>Version:</b>	1	<b>Name:</b>	Lease Addendum No. 6-American and United Airlines
<b>Type:</b>	Resolution	<b>Status:</b>			Resolutions
<b>File created:</b>	1/4/2021	<b>In control:</b>			City Council Workshop
<b>On agenda:</b>	1/19/2021	<b>Final action:</b>			
<b>Title:</b>	Consider a memorandum/resolution approving Addendum No.6 to the airline lease agreements with the Killeen Fort Hood Regional Airport.				
<b>Sponsors:</b>	Aviation Department				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	<a href="#">Staff Report</a> <a href="#">Addendums</a> <a href="#">Presentation</a>				

Date	Ver.	Action By	Action	Result
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## STAFF REPORT

**DATE:** January 19, 2021

**TO:** Kent Cagle, City Manager

**FROM:** Mike Wilson, Executive Director of Aviation

**SUBJECT:** Approval of Addendum No. 6 with American and United Airlines

### **BACKGROUND AND FINDINGS:**

Airline lease agreements for Killeen-Fort Hood Regional Airport (KFHRA) were originally approved by Council in May 2004 and have either been extended for various term lengths or have been regenerated as new agreements due to airline mergers and restructuring. The agreements with American Airlines, Inc. and United Airlines, Inc. were last extended in 2018 and expired on September 30, 2020.

Due to the impacts of COVID-19 to the airline industry, both of our local airline tenants, American Airlines and United Airlines, contacted staff to discuss options for reducing their operational costs at the KFHRA, including lowering their rent fees.

After several months of negotiations, the airline tenants have agreed to Addendum No.6, that will extend their current lease, keeping the existing rent and fee structure, for one additional year with the understanding that the accumulated deferred rent payments for May, June and July 2020, as described in Addendum No. 5, Article VI, Rental Fees, and Accounting Records, will be waived. Addendum No. 6 also provides for the lease agreements to be extended by one year at the rates and fees approved by the City Council.

Due to the extended negotiations and delayed responses, both lease addendums will be back dated to October 1, 2020, and run through September 30, 2021.

### **THE ALTERNATIVES CONSIDERED:**

Alternatives considered were: (1) do not extend lease agreement with the airlines, or (2) extend the agreements with the airlines.

### **Which alternative is recommended? Why?**

Staff recommends alternative 2. Aviation staff has negotiated terms which are beneficial to both the airlines and the City which will provide for continued commercial air service to our community.

### **CONFORMITY TO CITY POLICY:**

Yes

**FINANCIAL IMPACT:**

The lease agreement extensions provide the tenants will pay annual rental fees totaling \$96,347.64, plus various monthly security, telephone, and information technology fees within the lease. The revenue lost from waiving May, June and July's rent, in the amount of \$24,087, is offset by the CARES Act Airport grant funds.

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

N/A

**Is this a one-time or recurring expenditure?**

N/A

**Is this expenditure budgeted?**

N/A

**If not, where will the money come from?**

N/A

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

N/A

**RECOMMENDATION:**

City Council approve lease Addendum No. 6 with American and United Airlines and authorize the City Manager or designee to execute same as well as all addendums and lease actions to the agreement, including termination, to the extent allowed by state and local law.

**DEPARTMENTAL CLEARANCES:**

Finance  
Legal

**ATTACHED SUPPORTING DOCUMENTS:**

Addendums

**STATE OF TEXAS**

**COUNTY OF BELL**

**ADDENDUM NO. 6**

The City of Killeen, a municipal corporation of Bell County, Texas, hereinafter referred to as "Airport"; and American Airlines, Inc., hereinafter referred to as "Tenant", hereby agree that the terms and conditions of the Lease Agreement dated September 12, 2012 between the City of Killeen and American Airlines, Inc., and amended with Addendum No. 1 dated September 10, 2013, Addendum No. 2 dated August 26, 2014, Addendum No. 3 dated September 27, 2016, Addendum No. 4 dated September 26, 2018 and Addendum No. 5 dated June 8, 2020 will remain in full force and effect, with the exception of the changes made and incorporated in Addendum No. 6 herein.

**ARTICLE V**

**Terms of Agreement**

1. The Airport hereby grants unto the said Tenant, for a period of one year, beginning October 1, 2020 and ending September 30, 2021, the right to conduct air carrier services, as previously described, at the Killeen-Fort Hood Regional Airport.
2. If Tenant is not in default of the terms hereunder, Tenant will have the option to enter into a new one (1) year lease agreement under the terms and fees as set by the City Council of the City of Killeen, providing it gives notice of its option at least sixty (60) days prior to the termination date hereof.
3. No change
4. No change

**ARTICLE VI**

**Rentals, Fees, and Accounting Records**

1. Tenant shall pay to the Airport \$4,099.94 per month for Basic Rents and Fees as described in Exhibit "E". Basic Rents and Fees include leased premises rentals, minimum passenger screening/departure area rent, minimum baggage claim area rent, and public address system use fee.

**Due to the COVID-19 impacts to the aviation industry and in consideration for Tenant's agreement to renew this lease for the term stated in Article V, Airport agrees that all accumulated deferred payments for the months of May, June, and July of 2020 as described in Addendum No. 5, Article VI, Rental Fees, and Accounting Records will not be required to be repaid.**

2. Tenant shall pay the Airport landing fees, the amounts of passenger screening/departure area rent and baggage area rent over the minimum amounts, credential charges, telephone fees, and other sundry charges described in Exhibit "E" to

the Airport no later than thirty (30) days after the invoice for that period is provided to the tenant. For purposes of this provision, Tenant may designate either its local representative or a corporate office to receive the official copy of this invoice.

3. A late fee of one and a half percent (1.5%) of the total amount due will be assessed to the Tenant if payments prescribed in Paragraph 1 or 2 above are not received in the administrative offices of the Director of Aviation by the dates prescribed therein. An additional one and a half percent (1.5%) of the outstanding amount will be assessed each month that all or a portion of the Tenant's obligations remain unpaid. Obligations unpaid more than sixty days after the prescribed due dates will be cause for considering the payment(s) in default of the lease agreement.

4. No change

5. No change

**EXHIBIT "E"**  
**Rents and Fees Schedule**

No change

IN WITNESS WHEREOF, the parties have executed this lease in duplicate on this \_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

CITY OF KILLEEN:

\_\_\_\_\_  
Lucy Aldrich  
City Secretary

\_\_\_\_\_  
Kent Cagle *KAC* hcc  
City Manager

ATTEST:

AMERICAN AIRLINES, INC.

*Managing Director*  
Name  
Title

*Leshore Mason Diamond*  
Leshore Mason Diamond  
Director

**UNITED  
CONTRACT  
183479-6**

**STATE OF TEXAS**

**COUNTY OF BELL**

**ADDENDUM NO. 6**

The City of Killeen, a municipal corporation of Bell County, Texas, hereinafter referred to as "Airport"; and United Airlines, Inc., (successor-in-interest, by merger, to United Air Lines, Inc.), hereinafter referred to as "Tenant", hereby agree that the terms and conditions of the Lease Agreement dated September 12, 2012 between the City of Killeen and United Air Lines, Inc., and amended with Addendum No. 1 dated September 10, 2013, Addendum No. 2 dated August 26, 2014, Addendum No. 3 dated September 27, 2016, Addendum No. 4 dated September 26, 2018 and Addendum No. 5 dated June 8, 2020 will remain in full force and effect, with the exception of the changes made and incorporated in Addendum No. 6 herein.

**ARTICLE V**

**Terms of Agreement**

1. The Airport hereby grants unto the said Tenant, for a period of one year, beginning October 1, 2020 and ending September 30, 2021, the right to conduct air carrier services, as previously described, at the Killeen-Fort Hood Regional Airport.

If Tenant is not in default of the terms hereunder, Tenant will have the option to enter into a new one (1) year lease agreement under the terms and fees as set by the City Council of the City of Killeen, providing it gives notice of its option at least sixty (60) days prior to the termination date hereof.

2. No change

3. No change

**ARTICLE VI**

**Rentals, Fees, and Accounting Records**

1. Tenant shall pay to the Airport \$3,929.03 per month for Basic Rents and Fees as described in Exhibit "E" to the Airport no later than thirty (30) days after the invoice for that period is provided to the tenant. Basic Rents and Fees include leased premises rentals, minimum passenger screening/departure area rent, minimum baggage claim area rent, and public address system use fee.

**Due to the COVID-19 impacts to the aviation industry and in consideration for Tenant's agreement to renew this lease for the term stated in Article V, Airport agrees that all accumulated deferred payments for the months of May, June, and July of 2020 as described in Addendum No. 5, Article VI, Rental Fees, and Accounting Records will not be required to be repaid.**

2. Tenant shall pay the Airport landing fees, the amounts of passenger screening/departure area rent and baggage area rent over the minimum amounts,

credential charges, telephone fees, and other sundry charges described in Exhibit "E" to the Airport no later than thirty (30) days after the invoice for that period is provided to the tenant. For purposes of this provision, Tenant may designate either its local represented or a corporate office to receive the official copy of this invoice.

3. A late fee of one and a half percent (1.5%) of the total amount due will be assessed to the Tenant if payments prescribed in Paragraph 1 or 2 above are not received in the administrative offices of the Director of Aviation by the dates prescribed therein. An additional one and a half percent (1.5%) of the outstanding amount will be assessed each month that all or a portion of the Tenant's obligations remain unpaid. Obligations unpaid more than sixty days after the prescribed due dates will be cause for considering the payment(s) in default of the lease agreement.

4. No change

5. No change

**EXHIBIT "E"**  
**Rents and Fees Schedule**

No change

IN WITNESS WHEREOF, the parties have executed this lease in duplicate on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

CITY OF KILLEEN:

\_\_\_\_\_  
Lucy Aldrich  
City Secretary

\_\_\_\_\_  
Kent Cagle *ma* hcc  
City Manager

ATTEST:

UNITED AIRLINES, INC.

DocuSigned by:  
*Laura Asmussen*  
031DC353584E428...  
\_\_\_\_\_  
Laura Asmussen  
Associate- Lease Administration  
Corporate Real Estate

DocuSigned by:  
*Peter Froehlich*  
1282CBCE6131494...  
\_\_\_\_\_  
Peter Froehlich  
Managing Director, Airport Affairs  
Corporate Real Estate



# AIRLINE LEASE EXTENSIONS

RS-21-005

January 19, 2021

# Background

2

- ❑ Killeen Fort Hood Regional Airport has had lease agreements and extensions with American and United Airlines since 2004
- ❑ In Spring of 2020, due to COVID-19 impacts, both airlines were granted a deferral of rent payments for May, June and July

# Background

3

- Current term was due to expire September 30, 2020
- During the negotiation process this Fall for a new extension, both airlines were looking for options to reduce operating costs due to COVID-19, including lower rents and fees

# Discussion

4

- After several months of negotiations, both airlines agreed to a one-year lease extension at the current rents and fees. (No reduction in rents and fees)
  - Airport will waive the deferred rents of May, June and July in the amount of \$24,000
  - Loss of deferred rent is offset by the CARES Act Airport grant funds.

# Discussion

5

- Due to extended negotiations and delayed responses, the addendums will be backdated to October 1, 2020 and expire September 30, 2021
- One-year terms with an option for one additional year at rates and fees approved by City Council

# Alternatives

6

- ❑ Do not extend leases with existing airlines
- ❑ Extend leases with existing airlines
  - ▣ Staff has negotiated terms which are beneficial to both the airlines and the City which will provide for continued commercial air service to our community

# Recommendation

7

- City Council approve the lease extensions with American and United Airlines and authorize the City Manager or designee to execute same as well as all addendums and lease actions to the agreement, including termination, to the extent allowed by state and local law



# City of Killeen

## Legislation Details

<b>File #:</b>	RS-21-006	<b>Version:</b>	1	<b>Name:</b>	Airport Gift Shop Concession Lease Agreement-Tailwinds Concessions, Inc.
<b>Type:</b>	Resolution	<b>Status:</b>		<b>Status:</b>	Resolutions
<b>File created:</b>	1/4/2021	<b>In control:</b>		<b>In control:</b>	City Council Workshop
<b>On agenda:</b>	1/19/2021	<b>Final action:</b>		<b>Final action:</b>	
<b>Title:</b>	Consider a memorandum/resolution approving an airport gift shop concession lease agreement with Tailwinds Concessions, Inc. at Killeen Fort Hood Regional Airport.				
<b>Sponsors:</b>	Aviation Department				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	<a href="#">Staff Report</a> <a href="#">Agreement</a> <a href="#">Certificate of Interested Parties</a> <a href="#">Presentation</a>				

Date	Ver.	Action By	Action	Result
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## STAFF REPORT

**DATE:** January 19, 2021

**TO:** Kent Cagle, City Manager

**FROM:** Mike Wilson, Executive Director of Aviation

**SUBJECT:** APPROVAL OF AIRPORT GIFT SHOP CONCESSION LEASE AGREEMENT  
FOR KILLEEN FORT HOOD REGIONAL AIRPORT

### **BACKGROUND AND FINDINGS:**

The current Airport Gift Shop operator notified airport staff that she did not intend to extend the current lease when it expired on September 30, 2019, but would continue to operate in a month to month status until a new concessionaire could be found. An RFQ was issued in September 2019 to solicit offers to operate the Airport Gift Shop, but there were no responses. Airport staff continued for several months to attempt to recruit interested parties with no success. Finally, in September 2020, staff reached out to a very experienced national concession company, Tailwinds Concessions. Tailwinds Concessions has locations in twenty-five airports in the U.S., primarily in smaller Regional Airports, and have been in business since 2001. Tailwinds indicated an interest, and several meetings and site visits were held.

Staff has negotiated a lease agreement with Tailwinds to operate gift shop concessions at the Killeen-Fort Hood Regional Airport. The term of the lease agreement is for two (2) years, (11) months beginning March 1, 2021 and ending January 1, 2024. The agreement will authorize the tenant to sell authorized products: accessories, apparel, electronics, food-gifts, medicine, media magazines and books, souvenirs, toys, travel items, tobacco, and other products associated with an airport gift shop operation. Tailwinds Concessions, Inc. supports the Federal Aviation Administration-Airport Concessions/Disadvantaged Business Enterprise (ACDBE) program through sub-vendor opportunities for purchases of goods and services.

### **THE ALTERNATIVES CONSIDERED:**

Alternatives considered: (1) do not approve the agreement, or (2) approve the agreement.

### **Which alternative is recommended? Why?**

Staff recommends alternative 2, approval of the agreement, because (1) Tailwinds is a first-class airport concessions company specializing in regional airports similar to KFHR, and (2) the agreement would provide for a consistent revenue source for the Airport for the next (2) years, (11) months consisting of basic rent and percentage of gross revenues.

### **CONFORMITY TO CITY POLICY:**

Yes

**FINANCIAL IMPACT:**

Total annual revenue to the Killeen-Fort Hood Regional Airport Enterprise Fund represented by this lease agreement is approximately \$9,732.00. This includes \$391 per month for rental fee and approximately \$420 per month at 14% of estimated gross sales of \$3,000 per month. Percentage of gross revenues is projected to increase due to sales of improved merchandise-mix and growth in passengers.

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

N/A

**Is this a one-time or recurring expenditure?**

N/A

**Is this expenditure budgeted?**

N/A

**If not, where will the money come from?**

N/A

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

N/A

**RECOMMENDATION:**

Council approve the Airport Gift Shop concession agreement with Tailwinds Concessions, Inc. and authorize the City Manager or designee to execute same as well as any and all amendments and/or lease actions to the agreement as allowed per federal, state, or local law.

**DEPARTMENTAL CLEARANCES:**

Finance  
Legal

**ATTACHED SUPPORTING DOCUMENTS:**

Agreement  
Certificate of Interested Parties

**STATE OF TEXAS**

**COUNTY OF BELL**

**RETAIL CONCESSION LEASE AGREEMENT**

This lease is made and entered into by and between the City of Killeen, a municipal corporation of Bell County, Texas, hereinafter referred to as "Airport"; and Tailwind Concessions, Inc., d/b/a Airport Gift Shop, hereinafter referred to as "Tenant".

**ARTICLE I**

**Description of Leased Premises**

The Airport, in consideration of the rents and covenants herein to be performed by the Tenant, does hereby lease and let unto Tenant the following described property, hereinafter referred to as "Leased Premises" (Exhibit B), Room B205 known as the Airport Gift Shop located in the Ted C. Connell Terminal Building at the Killeen-Fort Hood Regional Airport, 8101 Clear Creek Rd, Killeen, Texas 76549: to include office and storage space in Room B204.

**ARTICLE II**

**Description of Concession Granted**

1. The Airport grants Tenant the right to engage in the activities of a retail concession. Authorized products include retail of accessories, apparel, electronics, food-gifts, medicine, media magazines and books (to include bestseller paperbacks or hard cover), retail items, souvenirs, toys, and travel, tobacco products, and other products associated with an airport gift shop operation. This concession agreement does not allow the sale of sandwiches, any unpackaged food or drink items, or the use of vending or game machines for the sale of services, products, or entertainment without the prior written approval of the Executive Director of Aviation.
2. Tenant agrees and understands that the concession granted by this agreement is not an exclusive concession. The Airport shall have the right to deal with and arrangements with any other individual, company, or corporation for engaging in like activity on the airport premises subject to the same conditions, prerequisites, and terms binding Tenant herein.

**ARTICLE III**

**Obligations of the Airport**

1. The Airport shall maintain and repair the non-leased portion of the areas surrounding the Leased Premises.
2. The Airport shall provide adequate access to the Leased Premises so long as Airport, Transportation Security Administration, Federal Aviation Administration, U.S. Army and other pertinent regulations are not violated. This access includes the terminal ingress/egress routes during times when the terminal building is open to the public.

3. The Airport will keep the terminal building open to the public at least one hour before the first scheduled flight of the day until at least 30 minutes after the arrival of the last scheduled flight of the day.
4. Parking will be provided for Tenant's employees in an area designated by the Airport. Parking will be at no additional cost to the employee or the tenant while the employee is on business of the tenant as long as the employee possesses his/her electronic access card that is controlled and issued by the Tenant's designated station manager. This provision applies only to employees of the tenant whose duty assignment is at the Killeen-Fort Hood Regional Airport. Senior company officials and other employees who have occasional official duties at the airport may obtain a daily pass from the airport administration office to accommodate their requirements.
5. If the Leased Premises are destroyed, damaged, or otherwise made unavailable by any means which are not fully the fault of the Tenant due to fire, flood, explosion, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority, to the extent that the Tenant will be unable to conduct any substantial portion/s of the business contemplated by this lease, either party may cancel this lease and the Tenant will stand charged only with the rent specified in ARTICLE VI up to the time of such damage, destruction, or other non-availability. If the repair of the damage can be reasonably accomplished by the Airport in less than ninety (90) days, the Airport shall make such repairs with the rental to be abated in proportion to the space usable to the Tenant during the repair period. All repair work shall be done in a good and workmanlike manner, which is in concert with the City of Killeen requirements.
6. The Airport shall provide heating and air conditioning in all leased areas of the terminal building. The Airport has provided the initial supply of light bulbs for these fixtures; however, subsequent replacement of such bulbs will be made by the Airport with bulb replacement costs passed on to the Tenant as specified in Exhibit "A". Light/sign fixtures used solely for premise enhancement/ advertisement shall be maintained by the Tenant.
7. The Airport will furnish keys, at no initial cost to Tenant, to the Tenant's designated Station Manager who shall be responsible for safekeeping of such keys. These include:
  - a. Access to leased premises.
  - b. Post office box (mail delivery).

Lost keys will be charged to Tenant in accordance with the Rents and Fees Schedule depicted on Exhibit "A".

8. The Airport normally has master keys or coded card access to all passageways in the terminal building, for use in emergencies. The Tenant may not add it's own locks or change locks to these areas.

9. The Airport shall furnish telephone system/service access to the Internet via a T-1. Rates for these services will be in accordance with the Rents and Fees Schedule depicted on Exhibit "A". A letter of agreement or other suitable document will be executed between the Airport's Director of Aviation or his/her designated representative and the local designated representative of the Tenant to document exactly which services are agreed to between the two parties. Tenant shall be prohibited from procuring telephone, data communications, wireless 802.11 data, or Internet access from others without written approval of the Executive Director of Aviation.
10. After reasonable notice to Tenant (when practical), the Airport reserves the right to temporarily close the airport or any other facilities thereon for maintenance, improvements, or for the safety of the public only for the period of time reasonable necessary.
11. The Airport will issue airport credentials to each employee of the tenant upon authorization by the designated local manager of the tenant. These credentials will include picture identification, employee parking area access, and other uses that may be required.

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

1. Tenant agrees that it will not assign this lease or sublet the Leased Premises or any part thereof, without prior written consent of the Killeen City Manager.
2. Tenant agrees to keep the Leased Premises clean and shall provide its own janitorial services. This provision includes the regular cleaning of both the interior and exterior glass walls and door inclosing the leased premises.
3. Tenant shall be responsible for disposal of its own trash accumulations by depositing it in the nearest exterior trash dumpster on a daily basis. Trash receptacles inside the terminal building are for customer use only. Tenant also agrees to participate in the City of Killeen's recycling program by depositing all recyclable products in the appropriate outside recycling container in lieu of the trash dumpster.
4. Tenant agrees that it shall not engage in any business or activity within the confines of the Killeen-Fort Hood Regional Airport other than those permitted herein or such other activities as may be expressly authorized in writing by the Airport.
5. Tenant shall operate the Leased Premises without cost to the City of Killeen, and will maintain all of the included equipment, appliances and furnishings.
6. Tenant agrees to keep clean, maintain and repair all Tenant owned furnishings utilized in the public areas to include cabinets, display cases, signage, etc.
7. Tenant agrees that its employees, while performing the duties associated with the concession granted in ARTICLE II, will be neatly groomed and attired in a

designated company uniform, and will conduct themselves in a courteous, professional, and businesslike manner while providing service to the public.

8. Tenant shall provide and maintain an adequate staff of employees with skills, licenses, and certificates appropriate to the activities conducted.
9. Upon vacating, Tenant shall leave the Leased Premises in as good condition and substantially as they were before removal; ordinary wear and tear excepted. Tenant shall make no structural changes, additions or improvements to the Leased Premises without prior written consent of the Executive Director of Aviation, and appropriate building permits obtained from the City of Killeen Building and Developments Services Department. Any such structural changes / improvements become property of the Airport, unless otherwise agreed upon in writing before such work begins. The foregoing notwithstanding, Tenant shall not be liable for damage caused by other tenants and other users, or their employees, representatives or invitees, and shall be liable only for its proportionate share of wear and tear in the leased premises.
10. Tenant's employees shall observe and comply with all posted restrictions on parking or standing vehicles, speed limits, and traffic rules on the airport properties.
11. Tenant shall, not later than ten (10) days after the end of each month, provide a report reflecting the following for the completed month: (a) a Gross Receipts statement reporting the amount of total gross revenue received in the Gift Shop; (b) gross revenues for all retail items sold across all revenue centers, regardless of where those retail items are sold throughout the terminal. Tenant will provide a category listing for all items subject to the rental rate, which will also reflect on the rent report submitted each month; (c) a listing of the amount of excluded receipts in accordance with Article VI, paragraph 3.b; and (d) amounts previously paid to the Airport or included with the report for that month. Such report will be signed by the Tenant's designated manager or other representative designated by the Tenant.
12. Tenant, or its designated station manager, is responsible to request and receive the necessary quantity of electronic access cards from the Airport's Operations Center in order to provide one access card to each employee that has regular duty at the airport. Said electronic access cards will provide each employee access and exit to the designated employee parking lot according to Article III, Paragraph 4. It will also provide designated employees access to other authorized areas, as applicable. The tenant will notify the Airport's Operations Center by telephone or other appropriate means as soon as possible following the loss of an electronic access card. Any lost access cards must be reported in writing to the Airport's Operations Center as soon as possible, but no later than the end of the next working day from the date of the loss. Tenant is responsible for any charges or damages incurred by the use of access cards issued to Tenant unless more than one business day has passed from the time the Tenant provides written notification to the Airport's Operations Center to cancel any access these access cards may allow. A monthly fee will be charged for active access cards and for lost cards as indicated in Exhibit "A". Tenant is responsible

for maintaining control of which employee is issued each electronic access card and collecting cards from terminated or suspended employees. Each employee may be issued only one access card at any one time. All communication with Airport concerning the status of a specific card will be articulated by card number, not by employee name.

13. Tenant may advertise only within the leased premises of the terminal building. Installation and operation of appropriate identifying signs will be allowed within the leased premises and above the exterior window of the leased premises, subject to the approval of the Executive Director of Aviation, or his designated representative. The Tenant may coordinate with the Airport Business Manager, as appropriate, for advertising/promotional material in other areas of the building.
14. As a minimum, Tenant shall provide the service described in Article II and continuously remain open to the public for the duration of the time the terminal building is open to the public (Art. III, Par. 3.). Normal hours of operation will be posted near the entrance door of the leased premises. The Executive Director of Aviation may approve exceptions to these minimum operation hours for Federal holidays or other reasonable occasions.

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

1. The Airport hereby grants unto the said Tenant, for a period, beginning March 1, 2021 and ending January 1, 2024 the right to operate a retail concession, as previously described, at the Killeen-Ft Hood Regional Airport, Robert Gray Army Airfield.
2. If Tenant is not in default of the terms hereunder, Tenant will have the option to enter into a new two (2) year lease agreement under the terms and fees as set by the City Council of the City of Killeen, providing it gives notice of its option at least ninety (90) days prior to the termination date hereof.
3. At the expiration of the term of this lease, the Tenant will immediately vacate the leased premises unless the Tenant has executed a subsequent lease renewal agreement for that premises prior to its expiration. Alternatively, the Tenant may submit a written request to the Executive Director of Aviation to remain in the premises on a month-to-month basis beyond that expiration date. If the Director provides written approval of such a request, the Tenant will be considered to be in a "hold over status". Any such holding over by the Tenant on the expiration of the term of this lease shall not constitute a renewal thereof but shall constitute only a tenancy on a month-to-month basis. All provisions of this lease will remain in full force and effect for the duration of the period that the Tenant remains in hold over status except that rental rates will be increased in accordance with ARTICLE VI, Par 7.
4. As consideration for this lease, Tenant promises to pay to the Airport, at the office of the Executive Director of Aviation in Killeen, Bell County, Texas, the concession

fees and rent prescribed in ARTICLE VI and Exhibit "A". The basic rents and fees prescribed in ARTICLE VI, Par. 1, are payable without demand in monthly installments in advance on or before first day of each and every month during the term of this lease. Other charges and fees will be due and payable as prescribed in ARTICLE VI, Par 2 and 3.

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

1. Tenant shall pay to the Airport \$391.00 per month as described in Exhibit "A" as Basic Rents and Fees. Basic Rents and Fees are payable without demand in monthly installments in advance on or before the first day of each and every month during the term of this lease.
2. Tenant shall pay to the Airport 14% of gross revenues for all RETAIL items sold across all revenue centers, regardless of where those retail items are sold throughout the terminal.
  - a. "Gross Receipts" shall include all receipts, whether by coin or currency, on account, by check or credit card, collected or uncollected, whether conducted on or off airport, derived by the Tenant as a result of its operation of the concession rights herein granted, without exclusion, except those expressly permitted in paragraph 3.b. below. Gross receipts shall include the total amount actually charged to the customer by the Tenant for, or in connection with, products sold, or delivered from the Tenant's Leased Premises and adjoining revenue centers at the Killeen-Fort Hood Regional Airport, regardless of where or by whom the payment is made.
  - b. Gross Receipts shall exclude receipts from the following:
    - (1) Federal, State, City or municipal sales taxes now in effect or hereinafter levied which are separately stated and collected from customers of the Tenant.
    - (2) The value of any goods exchanged or transferred from or to other business locations of the Tenant, where such exchanges or transfers are not made for the purpose of avoiding a sale or service fee by the Tenant that would otherwise be made from or at the Killeen-Fort Hood Regional Airport.
    - (3) Refunds to customers. Receipts with respect to any refunds made to Tenant's customers, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit, providing the refund and reason therefore is documented along with the name and address of the person receiving the refund.
    - (4) Documented discounts and rebates to customers, to include discount cards and coupons.

4. Tenant shall pay the sundry charges and other variable fees based upon activity to the Airport as described in Exhibit "A", no later than thirty (30) days after the invoice for that period is provided to the Tenant. Sundry charges are subject to change on an annual basis. Airport will provide a revised Rents and Fees Schedule to Tenant at least sixty (60) days before the effective date of any changes to sundry charges. For purposes of this provision, Tenant may designate either its local representative or a corporate office to receive the official copy of this invoice.
5. A late fee of five percent (5%) of the total amount due will be assessed to the Tenant if payments prescribed in Paragraphs 1, 2, or 3 above are not received in the administrative offices of the Executive Director of Aviation by the dates prescribed therein. An additional five percent (5%) of the outstanding amount will be assessed each month that all or a portion of the Tenant's obligations remain unpaid. Obligations unpaid more than sixty days after the prescribed due dates will be cause of considering the payment(s) in default of the lease agreement.
6. If Tenant defaults in the payment of rent, fees, or any part thereof, and such default shall continue for thirty (30) days after written notice by the City of Killeen to the Tenant to pay, the Airport shall, without further notice, have the right to re-enter the Leased Premises to remove the Tenant and all persons holding over it and to terminate this lease and repossess the premises. Such repossession shall not constitute a waiver by the Airport for any other rights it may have to enforce collection of rents for the balance of the term or to recover damages from the Tenant for default in payment of rents.
7. If the Tenant holds over beyond the term of the lease on a month-to-month basis, basic rents and concession fees, as listed in Exhibit "A", will increase by 15%. Beginning with the fourth month in a hold over status, the above described rents and fees will increase by 20%. Beginning with the seventh month in a hold over status, the above described rents and fees will increase by 25%. Other fees and/or charges will be at the current rates in effect for that month as approved by the City Council.

**Due to the COVID-19 impacts to the aviation industry and in consideration for Tenant's agreement, the Tenant may submit a written request to the Executive Director of Aviation to waive Basic Rent & Fees payments as stated in ARTICLE VI, 1., for a 6 month period of time.**

## **ARTICLE VII**

### **Rights of Inspection**

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

and audit any records and computer software necessary to verify the correct reporting of data used to compute fees described in Exhibit "A".

2. Upon at least fifteen (15) days written notice, Airport auditors or other authorized representatives shall, at any time during the term of this lease agreement, within two years after the end of this agreement, or within two years of any extension to it, have access to, and the right to audit, examine, or reproduce any and all records of the Tenant related to the most recent thirty six (36) months performance under this lease agreement. Tenant shall retain all records associated with transactions at the Killeen-Fort Hood Regional Airport within the Leased Premises or at another a mutually acceptable location in Killeen, Texas for the longer of the most recent thirty six (36) months or until completion of any pending audit or litigation action between the parties.
3. If the audit reveals that additional fees are due the Airport, Tenant shall, upon written notice by the Airport pay such additional fees, plus interest and penalties, within ten (10) days of written notice. Interest will be calculated at one and one-half percent (1 ½%) per month for each month after the day the additional amount should have originally been paid. The penalty will be twenty percent (20%) of the total of the additional fees due (not including interest). If the audit reveals that the Tenant has overpaid the fees due the Airport, such overpayment shall be credited to the Tenant's account, or refunded if the term of the lease agreement has expired and all other obligations by the Tenant have been satisfied. If the audit reveals an underpayment of more than five percent (5%), the cost of the audit shall be borne by the Tenant.
4. In addition to the interest and penalty payments as stated in paragraph 3 above, any deliberate attempts to misrepresent gross receipt amounts, attempts to divert airport earned revenue to an off-airport site will be cause for default of the lease agreement.

## **ARTICLE VIII**

### **Non-Discrimination Covenants**

1. The Tenant for itself, its personal and legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agrees as a covenant running with the lease that:
  - a. No persons on the grounds of race, color, religion, sex, age, disability, or national origin shall be unlawfully excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities and the privileges provided herein.
  - b. That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, age, disability, or national origin shall be unlawfully excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

- c. That the Tenant shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Department of Transportation, Subtitle A, Office of the Secretary, Nondiscrimination in Federally Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.
- 
- 2. Tenant assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, disability, or sex be unlawfully excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Tenant assures that no person shall be unlawfully excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by the subpart. The Tenant assures that it will require that its covered suborganizations provide assurances to the Airport that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required, by 14 CFR Part 152, Subpart E, to the same effect.
  - 3. Tenant agrees that in the event of breach of any of the preceding nondiscrimination covenants, the Airport shall have the right to terminate this lease and the privileges herein, and hold the same as if said lease had never been made or issued.
  - 4. Tenant in the conduct of its authorized business activities on said Leased Premises and on said Airport shall furnish good, prompt, and efficient service adequate to meet the demands for its services at the airport and shall furnish such services on a fair, equal, and non-discriminatory price for each service.
  - 5. Contract Assurance
    - A. (1) This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.  
  
(2) The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.
    - B. As a recipient of FAA Airport Improvement Program grant funds, the City of Killeen is obligated to comply with Airport Concessions Disadvantaged Business Enterprise (ACDBE) program requirements as established by 49 CFR Part 23 and 49 U.S. Code § 47107. The ACDBE goal for the expected concession is 8.59%. Therefore, the City strongly encourages,

but does not require, that proposers for this concession opportunity make a good faith effort to meet the 8.59% ACDBE goal either through its own certification, or through the use of DBE certified sub-vendors/contractors or suppliers.

(1) The concessionaire agrees to participate in the Airport's ACDBE program and support the airport at meeting the overall goal of 8.59% for concessions during the term of this agreement.

(2) Goods and Services: The Airport and concessionaire can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses conducted at the airport. The Airport, and the concessionaire at the airport, shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises; the dollar value from purchases of goods and services from ACDBEs; and the dollar value from purchases of goods and services from all firms (ACDBEs and non-ACDBEs).

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

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

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

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

2. The Airport reserves the right to increase the minimum required insurance in an amount and type not to exceed coverage required at comparable airports to be effective thirty (30) days after notice is sent to the address provided herein.

3. The Airport and the Tenant shall be liable for their own acts of negligence, and each agrees to indemnify the other to the fullest extent allowed by law for any losses, damages, costs or expenses, including attorney fees and litigation expenses, paid or sustained by reason of the sole negligence of the indemnifying party.
4. The Tenant shall hold the Executive Director of Aviation and all other Department of Aviation personnel, and the officers, elected officials and employees of the city harmless from and against all suits, claims, demands, damages, actions, and/or causes of action of any kind or nature in any way arising out of, or resulting from its tenancy and activities, and shall pay all expenses in defending any such claims against the City. Similarly, the City shall hold Tenant harmless from and against all suits, claims, demands, damages, actions, and/or causes of action of any kind or nature in any way arising out of the City's activities under this lease, and shall pay all expenses in defending any such claims against the Tenant. The indemnification provided for in this agreement shall not apply to the extent of the indemnified party's gross negligence or willful misconduct.
5. The Tenant shall be solely liable and responsible for civil penalties imposed upon the Airport as a result of negligent acts and/or violations of Federal, State or Local Regulations or laws by the Tenant, especially when the Airport has made good faith efforts to establish rules and procedures for compliance with such regulations. Similarly, the City shall be solely liable and responsible for civil penalties imposed upon the Tenant as a result of negligent acts and/or violations of Federal, State or Local Regulations or laws by the City which do not result from any violation of said regulations by the Tenant.

**ARTICLE X**  
**Events of Default and Remedies Upon Default**

1. "Event of Default" means the occurrence of any one or more of the following events as they may relate to such lease: (a) Tenant fails to make any Rent payment (or any other payment) as it becomes due in accordance with the terms of this agreement, and any such failure continues for thirty (30) days after written notice by the Airport to the Tenant to pay; (b) Lessee fails to perform or observe any of its obligations under this agreement, and such failure is not cured within thirty (30) days after receipt of written notice by Airport; (c) any statement, representation or warranty made by Tenant in the agreement or in any writing delivered by Tenant pursuant thereto or in connection therewith proves at any time to be false, misleading or erroneous in any material respect as of the time when made; (d) Tenant applies for or consents to the appointment of a receiver, trustee, conservator or liquidator of Tenant or of all or a substantial part of its assets, or a petition for relief is filed by Tenant under any federal or state bankruptcy, insolvency or similar law, or a petition in a proceeding under any federal or state bankruptcy, insolvency or similar law is filed against Lessee and is not dismissed within sixty (60) days thereafter
2. If any Event of Default occurs, then Airport may, at its option, exercise any one

or more of the following remedies:

- (a) Airport may terminate, cancel or rescind this agreement;
- (b) Airport may exercise any other right, remedy or privilege which may be available to Airport under applicable law or, by appropriate court action at law or in equity, Airport may enforce any of Tenant's obligations under this agreement;
- (c) Airport may require Tenant to pay (and Tenant agrees that it shall pay) all out-of-pocket costs and expenses incurred by Airport as a result (directly or indirectly) of the Event of Default and/or of Tenant's actions under this section, including, without limitation, any attorney fees and expenses and any costs related to the repossession, repair, reconditioning or disposition of the leased premises and any equipment associated with such agreement;
- (d) Airport may re-enter the Leased Premises to remove the Tenant and all persons holding over it and to terminate this lease and repossess the premises. Such repossession shall not constitute a waiver by the Airport for any other rights it may have to enforce collection of rents for the balance of the term or to recover damages from the Tenant for default in payment of rents.

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

#### **ARTICLE XI** **General Provisions**

1. Neither the failure of the Airport to strictly enforce all of the terms of this lease nor the acceptance of rent by the Airport after any breach by the Tenant nor any delay on the part of the City to strictly enforce the provisions hereof shall operate or be deemed a waiver of any rights or remedies accruing to the Airport by reasons of any subsequent breach. In any legal proceedings under this lease, the successful party shall be reimbursed by the other party for costs, expenses and reasonable attorney's fees, which shall be incurred in such proceedings.
2. Notices to the Airport shall be sufficient if sent by registered mail, postage paid, addressed to the Executive Director of Aviation, Killeen-Fort Hood Regional Airport, 8101 Clear Creek Rd, Box C, Killeen, Texas 76549, and notices to the Tenant shall be sufficient if sent by registered mail, postage paid, addressed to Jeff Switzer, President, Tailwind Concessions, Inc., 408 Landmark Dr., Wilmington, NC 28412. The parties may designate other addresses from time to time in writing.

3. This lease is made upon the express condition that if Tenant fails to keep and perform any of the covenants or agreements contained in this indenture, then this lease shall become void at the option of the City provided, the City shall first give the Tenant at least thirty (30) days written notice of intention to forfeit this lease, and shall set forth therein the specific breach of lease and of City of Killeen's intention to re-enter the Leased Premises and declare this lease forfeited, if such breach be continued. Such notice shall be served in the manner heretofore provided and after the expiration of said thirty (30) days notice this lease shall be void, provided the Tenant is then in default and the City shall then be entitled to the possession of the Leased Premises.
4. In the event of the appointment of a Trustee due to a voluntary or involuntary bankruptcy on the part of Tenant, or the appointment of a receiver for the Tenant, or a voluntary assignment for creditors by the Tenant, or if this lease shall, by operation of law or otherwise, devolve upon or pass to a person or corporation other than the Tenant, then in no case shall the Leased Premises be used for any purpose other than those contained in ARTICLE II, herein.
5. The Airport reserves the right to further develop or improve the airport as it sees fit, regardless of the desires or views of Tenant and without interference or hindrance by Tenant; however, all developments and improvements of the airport will be coordinated with Tenant.
6. This lease agreement shall be subordinate to the current or future reasonable airport rules, regulations and standards, and City Ordinances, as well as all applicable State and Federal regulations and laws. It is herein agreed between the Airport and the Tenant that the Airport Rules and Regulations now in effect and hereafter adopted or amended by the City of Killeen shall not be altered or impaired in any respect by this lease agreement, but said rules and regulations shall remain in effect and be applicable to the Tenant during the term of this lease.

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

7. The Tenant, its successors, and assigns will not make or permit any use of the property which would interfere with landing or taking off of aircraft at the airport, or otherwise constitute an airport hazard. This includes such items as electrical or electronic equipment, creation of smoke or dust, or glaring or misleading lights.

8. Airport warrants and represents that it has the right to Lease the Premises, and covenants and agrees that while performing its obligations hereunder, Tenant shall enjoy, and Airport will defend and uphold its right to quiet and peaceful possession of the Premises, and all rights and privileges granted herein.
9. This agreement is governed by the laws of the State of Texas, and venue shall be in Bell County.

IN WITNESS WHEREOF, the parties have executed this lease in duplicate on this \_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

\_\_\_\_\_  
Lucy Aldrich  
City Secretary

CITY OF KILLEEN:

\_\_\_\_\_  
Kent Cagle  
City Manager *me* hcc

ATTEST:

\_\_\_\_\_  
President

Tailwind Concessions, Inc.  
d/b/a Airport Gift Shop

*Jeff Switzer*  
\_\_\_\_\_  
Jeff Switzer

## **EXHIBIT "A"**

### **City of Killeen and Tailwind Concessions, Inc.**

#### **Rents and Fees Schedule**

##### **BASIC RENT and FEES**

Minimum Retail Concession Fee  
(includes Room B205)/Gift Shop

**14% of monthly gross revenues for all  
RETAIL items sold across all revenue  
centers throughout terminal.**

Minimum Retail Concession Fee  
(includes Room B204)/Office Space & Storage  
\$1/SQ FT @ 391 SQ FT

**\$391.00/month**

##### **TOTAL MINIMUM RENT AND FEES**

**\$391.00 per month**

##### **SUNDRY CHARGES**

Electronic access cards

**\$7.00 per month per card**

Replacement of lost access cards or keys

**\$15.00 each**

Light bulb replacement

**\$6.00 each**

Telephone Service

Local Service

**\$23.50 per line per month \***

Voice mail

**\$ 4.25 per line per month**

Phone rental

**\$ 6.00 per phone per month**

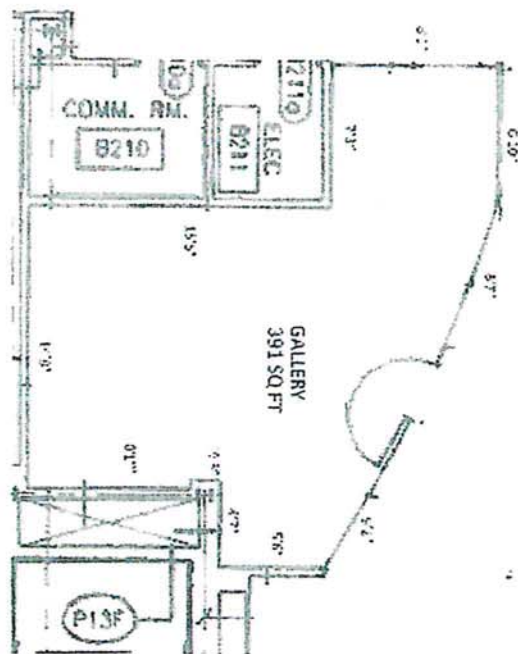
Maintenance fee

**\$15.50 per line per month**

Internet access via T-1

**\$64.00 per connection per month \***

\* Plus applicable federal / state taxes and surcharges

[illegible]

# 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.

Tailwind GRK, LLC  
Killen, TX United States

Certificate Number:  
2020-701890

Date Filed:  
12/29/2020

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 Department of Aviation

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.

: 030121GRK  
Food, beverage and retail sales at GRK airport

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.



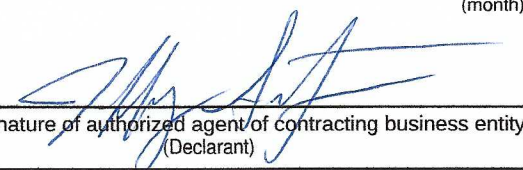
### 6 UNSWORN DECLARATION

My name is Jeff Switze, and my date of birth is 1/17/67.

My address is 6396 E. Fair Ave, Centennial, CO, 80111, USA.  
(street) (city) (state) (zip code) (country)

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

Executed in Arapahoe County, State of CO, on the 6<sup>th</sup> day of January, 20 21.  
(month) (year)

  
Signature of authorized agent of contracting business entity  
(Declarant)



AIRPORT GIFT SHOP CONCESSION  
AGREEMENT AT KILLEEN FORT HOOD  
REGIONAL AIRPORT (KFHRA)

RS-21-006

January 19, 2021

# Background

2

- ❑ The current Airport Gift Shop operator notified airport staff that she did not intend to extend the current lease which expired on September 30, 2019
- ❑ An RFQ was issued in September 2019 to solicitate offers to operate the Airport Gift Shop, but there were no responses
- ❑ Airport Staff continued to search out interested parties for several months with no success

# Discussion

3

- ❑ Current tenant agreed to stay on a month-to-month basis until we found another tenant
- ❑ September 2020, Staff reached out to Tailwinds Concession
- ❑ Tailwinds is a very experienced airport concession company
  - ▣ In business since 2001
  - ▣ 25 Airport locations across the United States
  - ▣ Specializes in regional airports similar to KFHRA

# Discussion

4

- ❑ Staff has negotiated a lease agreement with Tailwinds to operate gift shop concessions at the Killeen-Fort Hood Regional Airport
- ❑ Agreement includes basic rent plus percentage of gross profit estimated to be \$9,732 per year depending on sales
- ❑ The term of the lease agreement is for two (2) years, eleven (11) months beginning March 1, 2021 and ending January 31, 2024

# Alternatives

5

- ❑ Do not approve the Airport Gift Shop concession agreement
  - ▣ Airport continue without concessions
  - ▣ Loss of potential revenue to the Airport
  
- ❑ Accept the Airport Gift Shop concession agreement
  - ▣ Provides excellent service to customers
  - ▣ Provides a consistent line of business revenue for KFHRA

# Recommendation

6

- Approve the Airport Gift Shop concession agreement with Tailwinds Concessions, Inc. and authorize the City Manager or designee to execute same as well as any and all amendments and/or lease actions to the agreement as allowed per federal, state, or local law.



# City of Killeen

## Legislation Details

<b>File #:</b>	RS-21-007	<b>Version:</b>	1	<b>Name:</b>	Tanko Streetlighting Agreement
<b>Type:</b>	Resolution	<b>Status:</b>		<b>Status:</b>	Resolutions
<b>File created:</b>	12/16/2020	<b>In control:</b>		<b>In control:</b>	City Council Workshop
<b>On agenda:</b>	1/19/2021	<b>Final action:</b>		<b>Final action:</b>	
<b>Title:</b>	Consider a memorandum/resolution authorizing a professional services agreement with Tanko Streetlighting, Inc. for streetlight audit and ownership support in an amount not to exceed \$196,300.				
<b>Sponsors:</b>	Finance Department				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	<a href="#">Staff Report</a> <a href="#">Agreement</a> <a href="#">Certificate of Interested Parties</a> <a href="#">Presentation</a>				

Date	Ver.	Action By	Action	Result
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## STAFF REPORT

**DATE:** January 19, 2021

**TO:** Kent Cagle, City Manager

**FROM:** Jon Locke, Executive Director of Finance

**SUBJECT:** Streetlight Audit and Ownership Support

### **BACKGROUND AND FINDINGS:**

There are approximately 4,440 streetlights throughout the City that are owned by Oncor. The City pays Oncor a monthly tariff per streetlight that amounts to nearly \$697,085 annually. As Killeen grows and additional streetlights are added, the annual cost of streetlights will increase proportionately.

City staff have been exploring the possibility of acquiring ownership of streetlights within the city. There are currently three Oncor covered cities in Texas that own their streetlights, namely Wichita Falls, Arlington, and Fort Worth. These cities acquired ownership of their streetlights many years ago. There have not been any Texas cities that have acquired ownership of their streetlights in recent years.

Tanko Streetlighting, Inc. is a national firm that specializes in assisting municipalities with their streetlighting needs. The company provides a turn-key solution for municipalities with professional services ranging from auditing streetlights to energy efficiency conversion projects. Tanko has been involved in projects that total more than 500,000 streetlights nationwide spanning twenty-three states and fifty-five utilities. The company is currently working with three cities in Texas on streetlighting projects, including Keller, Grapevine, and Corinth.

Tanko's standard turn-key service consists of four primary components: 1) project development, 2) ownership negotiations, 3) energy efficiency conversion, and 4) ongoing streetlight maintenance. The proposed professional services agreement will cover the first two components. The remaining components will be bid out separately when and if the City decides to move forward with each.

Project Development consists of three tasks: 1) comprehensive geographic information system (GIS) audit of existing streetlights, 2) data reconciliation, and 3) design for a LED streetlight conversion project. This essential step allows for the proper valuation of the streetlight system and provides insight into the existing infrastructure. The audit will collect data on all existing streetlight inventory and identify attributes on-site, including:

- ☐ Global Positioning Service (GPS) coordinates of each fixture location;
- ☐ Fixture type;
- ☐ Lamp type and wattage;
- ☐ Pole material, mounting height, and arm length;
- ☐ Pole ID number;

- ☐ Street width and configuration (e.g. intersection, crosswalk, etc.);
- ☐ Electrical feed (e.g. overhead, underground); and
- ☐ Visible issues (e.g. pole leaning, fixture damage, tree obstruction).

Tanko will provide weekly audit reports on locations completed and a record of all fixtures audited with their associated attributes. The results of the audit will be compared to Oncor's billing inventory to ensure all streetlights have been identified and a data reconciliation report will be provided to the City.

With the data collected during the audit, Tanko will provide a recommended LED streetlight replacement design that will include the brand of fixture, replacement wattages, color temperatures, light distribution patterns, and options to optimize a LED streetlight retrofit. The City's streetlights will be organized by roadway classification (e.g. residential, collector, and arterial) and Tanko will provide a minimum of three layouts for replacement fixtures.

The next step is ownership negotiations, where Tanko will assist the City in obtaining ownership of streetlights from Oncor. Tanko will provide an in-depth valuation of existing streetlights that will include a determination of the value of the streetlight system, estimation of deferred maintenance, determining the remaining life of the system, an estimate of cost savings should the City decide to convert to LED fixtures, and a multi-year cash flow analysis to show the feasibility of ownership. Tanko will negotiate on behalf of the City and coordinate with the City's legal team in the event ownership negotiations lead to litigation. Costs related to legal action will be an additional cost and the responsibility of the City.

Tanko will be compensated based on the following pricing:

<b>Service Description</b>	<b>Task</b>	<b>Unit Pricing</b>	<b>Quantity</b>	<b>Pricing</b>
Project Development	GIS Audit	\$18 per fixture	4,440	\$79,920
Project Development	Data Recon & Design	\$7 per fixture	4,440	\$31,080
Ownership Negotiations	N/A	*\$40,000	1	\$40,000
		Subtotal Amount		\$151,000
		Contingency		\$45,300
		Total		\$196,300

\*Fixed fee payable only upon viable offer from Oncor to the City or a Court Order in favor of the City to purchase the streetlights.

The primary reason for the project is to reduce streetlighting costs. The annual amount paid to Oncor for streetlights is estimated to decrease from \$697,085 to \$91,628, representing an annual savings of \$605,457. Since the City will own the streetlights, the cost of maintaining the streetlights will become the City's responsibility. Maintenance costs are estimated to be \$6 per month per fixture or \$319,680 annually. Factoring in the maintenance costs, the net annual savings of the project are estimated to be \$285,777 (\$605,457 annual cost savings - \$319,680 maintenance costs).

## **THE ALTERNATIVES CONSIDERED:**

1. Do not enter into a professional services agreement for streetlight audit and ownership support;
2. Enter into a professional services agreement with Tanko Streetlighting, Inc.

## **Which alternative is recommended? Why?**

Option 2 is recommended. Tanko's sole focus is on municipal streetlighting projects. The firm has extensive background in streetlighting that includes experience on projects as small as 49 fixtures to as large as 38,000 fixtures. The project is estimated to save the City \$285,777 annually.

## **CONFORMITY TO CITY POLICY:**

The professional agreement complies with state and local purchasing guidelines:

- ☐ Local Government Code, Chapter 252 - Purchasing and Contracting Authority of Municipalities
- ☐ City's Financial Management Policy, Section VIII. Procurement of Goods and Services

## **FINANCIAL IMPACT:**

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

The estimated expenditures associated with the agreement are \$151,000, and the project is expected to be finished prior to December 2021. Including the contingency for underestimated streetlights of \$45,300, the not to exceed amount of the agreement is \$196,300. If streetlight ownership negotiations require legal action, the City will incur additional costs. The cost to acquire the streetlights from Oncor will be determined during the negotiation process.

### **Is this a one-time or recurring expenditure?**

Costs associated with this agreement and acquiring the streetlights are one-time costs. There will be ongoing costs to maintain the streetlights.

### **Is this expenditure budgeted?**

Funding is available in the Governmental Capital Projects Fund, account number 349-8920-493.69-01.

### **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 Council approve the professional services agreement with Tanko Streetlighting, Inc. for streetlight audit and ownership support in the amount not to exceed \$196,300 and that the City Manager or designee be authorized to execute change orders as permitted by state and local law.

**DEPARTMENTAL CLEARANCES:**

Public Works  
Legal

**ATTACHED SUPPORTING DOCUMENTS:**

Agreement  
Certificate of Interested Parties

CONTRACT FOR  
“STREET LIGHT AUDIT & OWNERSHIP SUPPORT  
PROJECT”

This Contract is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”), by and between the City of Killeen, 101 N College Street, Killeen, TX 76541, a municipal corporation organized and existing under the laws of the State of Texas (the “City”), and Tanko Streetlighting, Inc., 220 Bayshore Blvd, San Francisco, CA 94124 a California corporation, (the “Contracting Party”).

RECITALS:

WHEREAS, on July 27, 2020, the City received a Proposal from the Contracting Party for Streetlight Audit and Ownership Support Project; and

WHEREAS, the City concluded that the Contracting Party’s qualifications, pricing and approach will meet the City’s requirements and goals; and

WHEREAS, the City and the Contracting Party desire to enter into a formal contract for the project.

NOW THEREFORE, in consideration of the recitals set forth above and the parties’ mutual promises and obligations contained below, the parties agree as follows:

1. Work - The Contracting Party agrees to perform the Work described more fully in the attached Exhibit A – Scope of Services. The Contracting Party also agrees to comply with all of the terms and conditions set forth herein.
2. Term – The Work shall be completed no later than December 31, 2021, unless otherwise extended by written authorization by the City.
3. Contract Documents – The Contract includes the Scope of Services (Exhibit A), the Pricing Proposal (Exhibit B), the Insurance Requirements (Exhibit C), and the “Boycott Israel Acknowledgement” (Exhibit D), which are made a part hereof.
4. Price and Payment - That for, and in consideration of, the payments and agreements herein after mentioned, to be made by the City, the Contracting Party hereby agrees with the City to commence and to complete the WORK described as follows: “Ownership Support” (as described in Exhibit A – Scope of Services) herein after called the WORK, for the Not to Exceed Amount of One Hundred Ninety-Six Thousand, Three Hundred Dollars (\$196,300.00) in accordance with the conditions and prices stated in the Pricing Proposal (Exhibit B).”
  - 4a. City acknowledges that estimated fixture quantity is approximately 4,440, but that final fixture quantity will be determined by the completion of the audit and data reconciliation processes.

- 4b. City acknowledges that Contracting Party will perform a comprehensive field audit as detailed in the Scope of Services (Exhibit A) for all street light fixtures in the City and that the cost of the audit will be based on a fixed per unit price of Eighteen Dollars (\$18.00) per audited fixture. In the event that the fixture quantities confirmed in the audit exceed the estimated quantities, the City will be billed at the fixed per unit price.
- 4c. If, after the City defines the street light fixtures included in the project scope, the City determines that any audited fixture location is not in the scope of work for this project, City agrees to pay Contracting Party a fee of Eighteen Dollars (\$18.00) per audited fixture for the auditing and data reconciliation services.
- 4d. If the audit confirms more than 4,400 existing fixtures, and the City requests that these additional fixtures be included in the design process, City agrees that the cost of design for each additional fixture will be based on the per unit fixture price of Seven Dollars (\$7.00) per data reconciled and designed fixture.
- 4e. For Step 1, Task 1: GIS Audit, Contracting Party shall invoice the City on a monthly basis, based on fixtures audited.
- 4f. Contracting Party shall invoice the City for Step 1, Tasks 2-3 upon submission of the deliverables for Task 3.
- 4g. Contracting Party shall immediately invoice the City the Total Not to Exceed Amount of Forty Thousand Dollars (\$40,000.00) for Step 2 in one lump sum only upon receipt of a viable offer from the utility (confirmed by Contracting Party to be reasonable based on pricing from previous municipal streetlight acquisition nationwide) or a Court award of possession of the streetlight assets in favor of the City.
- 4h. City shall pay Contracting Party within thirty (30) days of receipt of invoice.
- 5. Right to Terminate – If either party wishes, this Contract can be terminated at any point.
  - 5a. City shall be responsible for payment for services rendered for Step 1 tasks up until the time of termination.
  - 5b. City shall only be responsible for payment on Step 2 tasks once the deliverables are provided. If the Contract is terminated prior to the point in which the deliverables for Step 2 are provided, there is no cost to the City and the Contracting Party is not held responsible for any part (completed or remaining) of the Contract.
- 6. No Waiver or Estoppel – Either party's failure to insist upon the strict performance by the other of any terms, provisions and conditions of the Contract shall not be a waiver or create an estoppel. Notwithstanding any such failure, each party shall have the right thereafter to insist upon the other party's strict performance, and neither party

shall be relived of such obligation because of the other party's failure to comply with or otherwise to enforce or to seek to enforce any of the terms, provisions and conditions hereof.

7. Indemnification and Insurance – To the fullest extent permitted by law, Contracting Party agrees to defend, indemnify and hold harmless the City of Killeen, its respective boards and commissions, officers, agents, officials, employees contractors, servants, volunteers, contractors and representatives from any and all suits, claims, losses, damages, costs (including, without limitation, reasonable attorneys' fees), compensations, penalties, fines, liabilities or judgments of any name or nature for, including, but not limited to, injuries or alleged injuries to person(s) (including without limitation, bodily injury, sickness, disease or death), or damage to or destruction of property, real or personal, or financial losses (including, without limitations, those caused by loss of use) sustained by any person or concern, (including, but not limited to, officers, agents, officials, employees, servants, volunteers, contractors and representatives of the City of Killeen, its boards and commissions) arising from, or alleged to have arisen from, any and all acts or omissions of the Contracting Party, its employees, agents, servants, contractors, and/or representatives in the performance of this Agreement. This indemnification shall not be affected by other portions of this Contract relating to insurance requirements.

The Contracting Party agrees to name the City of Killeen as an additional insured and will procure and keep in force at all times, at its own expense, insurance in accordance with Insurance Exhibit C attached hereto and incorporated by reference herein.

8. Licenses, Fees, Permits and Code Compliance – The Contracting Party shall be responsible for obtaining and maintaining all requisite licenses and permits and shall be solely responsible for all fees for such obligations. The Contracting Party is responsible for complying with all applicable local, state and federal laws, codes, and regulations in the design and implementation of this project.
9. Notice – Any notices provided for hereunder shall be given to the parties in writing (which may be hardcopy, facsimile, or e-mail) at their respective addresses set forth below:

If to the City:

Kent Cagle  
City Manager  
City of Killeen  
101 N College Street  
Killeen, TX 76541  
kcagle@killeentexas.gov

If to the Contracting Party:

Jason Tanko  
Chief Executive Officer  
Tanko Streetlighting, Inc.  
220 Bayshore Boulevard  
San Francisco, CA 94124  
jason@tankolighting.com

10. Successors and Assigns. The City and Contracting Party each binds itself and its successors, executors, administrators and assigns to any other party of this Contract and to the successors, executors, administrators and assigns of such other Party, in respect to all covenants of this Contract. Except as above, neither the City nor the Contracting Party shall assign, sublet or transfer its interest in this Contract without the prior written consent of the other Party.
11. Applicable Law and Venue – This entire Contract is performable in Bell County, Texas, and the venue for any action related, directly or indirectly, to this Contract or in any manner connected therewith shall only be in Bell County, Texas, and this Contract shall be construed under the laws of the State of Texas.
12. Execution – This Contract may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the parties hereto and delivered (including delivery by facsimile) to each of the parties.

IN WITNESS THEREOF, the parties have executed this contract as of the last date signed below.

CITY OF KILLEEN

By \_\_\_\_\_  
KENT CAGLE, CITY  
MANAGER

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

TANKO STREETLIGHTING, INC.

By  \_\_\_\_\_  
JASON TANKO, CEO

Date: 12/15/2020 \_\_\_\_\_

# EXHIBIT A – SCOPE OF WORK

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## Step 1: Project Development

The following tasks will be part of Step 1:

### Task 1: Comprehensive GIS Audit of Existing Streetlights

In our experience, a proper GIS audit is essential to equipping the client with a comprehensive and accurate understanding of its existing infrastructure. The GIS audit is pivotal, as the data collected enables appropriate valuation and acquisition of the system. It also positions the municipality or its contractor to effectively maintain the system, as well as manage any system upgrades, such as LED conversion, which requires detailed field data to properly design and install.

Our data-driven approach to project implementation has defined our success. From GPS location coordinates to fixture wattages, accurate data collection and data management is the backbone from which our methodology stems. As the vast majority of our clients are interested in LED conversion of their systems, our auditors collect more than thirty fields of data per streetlight fixture to ensure that after the ownership transfer, the same data set can be used to create an LED streetlight design customized to our clients' needs and tailored to each light's unique location. This approach also enables us and our clients to streamline maintenance processes, as we know exactly where each light is, the type of pole it is on, the type of fixture that is installed, etc., so that our maintenance crews can be prepared ahead of time to respond to requests and minimize visiting the same fixture multiple times.

Tanko Lighting's approach to the audit is an in-field strategy that poses the following advantages:

- Our initial audit has a 98% accuracy rate. Since we identify and rectify any missing data or errors, our final error rate is significantly less than 1% - which is further rectified during the installation and final commissioning phases of a project.
- Deploying trained auditors to the field at the onset of the project enables our team to obtain the most definitive, up-to-date data set possible. While we supplement our field data with digital data sources (e.g. aerial imagery, street-level imagery, and municipal/utility inventories), the integrity of our audit is never dependent on the age or accuracy of available digital data sources.
- Our in-field approach provides the greatest accuracy and access to the pole and fixture. In person, we can identify potential safety issues, such as leaning poles or structural damage to the pole/arm/fixture. We can also verify pole numbers/labels and confirm any locations where numbers/labels are damaged or missing. This in-person verification of pole labels and exact locations is also invaluable in reconciling the utility billing inventory with what we find in the field (see Task 2).
- Comprehensive access to the pole and fixture allows for a more conscientious design. Because our team collects so much information that can only be gathered in person (e.g. fixture wattage, various height/distance measurements of the light and street, and factors that inform lighting levels and distribution patterns), we can create a highly-customized design tailored to a city's specific lighting needs – and identify any concerns from the project start.

- Knowing exactly what assets are in the field, as well as the current condition of those assets, enables us to identify which assets are eligible for purchase and determine a fair valuation of the lighting system.
- Collecting data in person gives our team the highest possible certainty of what is in the field. This precision means that should the municipality move forward with an LED conversion or other system-wide updates, the municipality will be able to budget and procure for exactly what is in the field - money is not wasted on over-ordering, nor is project completion delayed by under-ordering. This precision also minimizes sloppy design (and inherent lower energy savings) – which are more likely from a subcontracted audit.

The preparation phase for the audit will involve the following activities that are critical to the accuracy of the data collection:

- Tanko Lighting working with municipal staff to clearly define audit scope, including priority areas, municipal boundaries, and any areas outside the right-of-way that should be included.
- Our team developing and providing to municipal staff a list of the attributes that will be collected at each light during the audit.
- City staff providing our team with all available City and utility records for streetlights.
- Our team reviewing these data records to determine which should be utilized for the data reconciliation phase.
- Our team developing audit maps, scheduling, and dispatching auditors to the field.

Once the preparation phase is complete, the audit will commence. We will collect data on all of the existing inventory and identify attributes on-site, including:

- Global Positioning Service (GPS) coordinates (latitude, longitude) of each fixture location and date of capture
- Fixture type
- Lamp type and wattage
- Pole material, mounting height, and arm length
- Pole ID number
- Street width and configuration (e.g. intersection, crosswalk, cul-de-sac)
- Electrical feed (overhead, underground)
- Visible issues (e.g. pole leaning, fixture damage, tree obstruction)

Our auditors collect and transmit data points daily. We will compile data weekly to provide the municipality with a Weekly Audit Report (a sample can be provided upon request). The Weekly Audit Report will enable the City to identify and address any immediate safety concerns, as well as other issues – such as tree trimming – that may need attention prior to future maintenance or LED conversion.

Unlike other potential providers, Tanko Lighting is an industry expert focused solely on streetlighting. We have built our own in-house data team with the right blend of both streetlighting technical expertise and data analysis skills to collect and reconcile accurate project data (note that we never subcontract out the audit or data services). Further, our field auditors have accurately collected data on hundreds of thousands of streetlight fixtures nationwide – ensuring that the City's audit will be conducted by highly qualified

professionals with tremendous experience. This renders Tanko Lighting as the most qualified to perform the GIS audit, as our staff is significantly experienced in the nuances and characteristics of all streetlight configurations.

#### Deliverables:

- Weekly Audit Reports: An overview map listing the locations completed during the data collection phase, along with a description of any issues that the municipality or utility would need to devote immediate attention to.
- Audit Data: Record of fixtures found in the field audit and their associated attributes, to be provided in geodatabase, shapefile, or spreadsheet form (this deliverable will be provided after the completion of Task 2).

## Task 2: Data Reconciliation

Tanko Lighting has developed a methodology to capture every streetlight asset owned by and/or billed to a municipality. Using precise GPS technology and expert streetlighting GIS Analysts, our team reconciles every asset it locates in the field with each record in the utility's billing inventory to ensure that all assets eligible for acquisition have been identified. In our team's experience, cross referencing these various data sources results in extremely precise and clean data. Projects typically have a utility billing discrepancy of approximately 5 – 10 percent of the inventory quantity, which can result in cities being over-billed by their utility. Any such discrepancies will be identified during this phase of the project, included in a data reconciliation report to the municipality, and taken into account during negotiations with the utility on the municipality's behalf.

The data reconciliation report will include the following items:

- Analysis of locations confirmed during the audit
- Analysis of locations appearing in the utility records but not in the confirmed audit records
- Analysis of locations confirmed in the audit records but not in the utility records

#### Deliverables:

- Reconciliation Report: A concise report detailing any discrepancies found between field data and utility billing records, as well as where records tied out cleanly. Note that any locations where discrepancies exist will not be included in the design phase. Further, addressing these discrepancy locations with the utility will occur during the subsequent installation phase of the project (under separate contract).

## Task 3: Design

In Tanko Lighting's experience, a comprehensive LED streetlight conversion project is the ideal opportunity for a municipality to reassess its entire streetlighting design and ensure that field conditions are optimized for all applications in the design. To achieve this, our team routinely conducts municipal-wide design processes for each of its turn-key streetlighting projects. Recent projects in which design processes were implemented include Simi Valley, CA, La Verne, CA, Santa Clarita, CA, Chino Hills, CA, Fullerton, CA, Vernon, CT, and Malden, MA Bristol, CT, and Norwich, CT. This experience has led to our team's streamlined approach to design.

Once our team has canvassed the City through the audit and established a "clean" data set of the existing conditions (via the data reconciliation process), it can then develop and apply a replacement design. Our

team utilizes Illuminating Engineering Society (IES) RP8 standards for roadways and right of ways. Additionally, we utilize Trade Manual 12-12 for direction on light level equivalencies between HPS and LED and maintain a working knowledge of all the latest publications and updates in the market. However, there are many instances when municipal customers need to alter these standards to best meet their specific needs. Thus, our team uses these types of industry accepted standards as guidelines and works closely with the City to develop customized proposed standards of comfort and functionality that match its needs.

Our goal will be to provide the City with an appropriate replacement design that includes the brand of fixture, photocell, replacement wattages, color temperatures, distribution patterns and other appropriate settings and options to optimize the LED streetlight retrofit. The design will ultimately result in a replacement plan for all existing streetlights that includes photometric data, lifecycle cost analysis (including the initial capital outlay), net present value and return on investment, energy savings, as well as maps of the replacement plan (see sample map above).

In our experience, a critical initial step in proper design involves photometric analysis – which is an examination of the distribution or “spread” of light from the fixture onto the ground. Whereas a typical High Pressure Sodium (HPS) fixture indiscriminately throws the light in all directions, a typical LED fixture pinpoints the light spread to where it is needed most – on the roadway (see graphic to the right).

Given that an LED streetlight conversion is a significant investment, ensuring that the replacement LED fixtures properly distribute the light is imperative before the installation phase begins. The only way to confirm that the LED replacement fixtures improve the existing conditions is to model the light spread of the existing and replacement fixtures.

Tanko Lighting is seasoned in this type of modeling. Our proven process involves both theoretical photometrics modeling (demonstrating the light distribution from an aerial perspective at the fixture location), as well as photopic (which measures the light that the cones of the eyes typically perceive) and scotopic (which measures the light that the rods of the eyes typically perceive) field measurements obtained from directly under the fixture and at varying distances to the sides of and across the street from the fixture. The results from these models portray the most accurate existing and replacement conditions that verify that the replacement LED fixtures will improve the system.

Tanko Lighting's approach to comprehensive design typically includes the following elements::

- Developing typical photometric layouts based on assumptions, including wattage, distribution type, pole height, spacing etc.
- Organizing the streetlight infrastructure by roadway classifications (such a residential, collector and arterial) and conducting a minimum of three theoretic photometric layouts (representing the aforementioned roadway classifications) for replacement fixtures of the City's preferred fixture brands and lines. Developing theoretic photometric layouts for one typical existing fixture per main roadway classification (one for residential, one for collector and one for arterial) to demonstrate baseline conditions and utilize as a point of comparison to the photometric layouts for replacement fixtures.
- Applying standard LED replacement wattage recommendations based on the location of each existing HPS fixture.
- Addressing distribution pattern needs for the specific roadway types and neighborhood characteristics (such as cul-de-sac locations) to ensure a tight light distribution pattern and minimize backlighting.

- Conferring with the City's safety coordinators and police officers to solicit feedback on areas that are currently over- or under-lit and are public safety concerns.
- Coordinating an optional pilot project installation, including selecting appropriate fixture(s) to pilot, identifying locations to pilot in, obtaining fixtures and coordinating with an installer. Tanko Lighting recommends that the pilot include the installation of 8-10 fixtures, presumably in groups of 2, to evaluate differences in color temperature, wattage, etc. Upon request, Tanko Lighting will conduct photopic/scotopic field light measurements, as well as manufacturer-provided photometric analyses before and after sample fixture installations to confirm that the theoretical design is appropriately meeting field conditions. If the City is interested in a pilot installation, Tanko Lighting can provide pricing upon request.
- Reviewing additional data sets (upon request and only if there is readily-available data) to identify potential areas in need of special consideration (such as available data on important localized land uses (e.g. parks, schools, hospitals, etc.), pedestrian, vehicle use and crash data, relative volumes of pedestrian and bicycle activity, unique neighborhood characteristics) and incorporating the analysis of the additional data into the design recommendations.
- Selecting appropriate wattages and distribution types for replacement fixtures to meet the City's needs, while maintaining the objective of providing a simplified design that standardizes inventory (so that the system has consistency and can be more easily maintained over time).
- Applying the City's preferred products, typical models and special considerations to its GIS inventory to produce maps of the type and wattages by location (see sample map on the previous page), as well as an analysis of the total cost, incentives, savings, and payback for the potential retrofit design.
- Presenting the options and total cost/incentives/savings/payback to the City and obtain its final approval on design.

Our team will guide the City through how to interpret the photometrics, reviewing how the results indicate the products' spread of light, the distances the fixtures reach, how much back light is present (which is wasted light), how much light is distributed directly under the fixture (also wasted light), and the general containment of light in the road/right-of-way. The interpretation of the photometrics data will enable the City to confidently choose a fixture that meets its preferences.

The overall benefits to Tanko Lighting's design approach include:

- Standardization – The City is ensured that there is a consistent design method resulting in wattage continuity on its streets. Standardization also leads to a reduction in the variety of fixtures that the City must keep in its inventory
- Safety – Based on the most updated field conditions, the City can be assured that the design matches the system's current needs and results in improved public safety from streets no longer being under or over lit
- Efficiency – The process takes a very thorough approach by examining all relevant field factors and thereby maximizes the available savings by utilizing the most efficient design, while meeting light output needs
- Streamlined Installation – The process allows for the development of a detailed scope of work (via a map of all replacements) by fixture for the installers to follow in the field – which enables more efficient materials gathering at the start of each work day

Deliverables:

- Replacement Plan Maps: City-wide maps with recommended LED replacement wattages for the City to review and approve.
- Pilot Installation (Optional): Coordination of a pilot installation of a minimum number of City-preferred products.

## Step 2: Ownership Negotiations

Tanko Lighting has extensive experience nationally with municipal streetlight ownership projects. This experience will be leveraged for the City's project. Our team will provide comprehensive services to support the City's ownership of its streetlight assets from its utility, including:

- In-depth financial valuation of the existing streetlight system assets, including:
  - Determination of the value in use of the system to be purchased
  - Determination of the value on a functional basis
  - Estimation of the original book value of the assets
  - Determination of the salvage and functional replacement value of the system
  - Estimation of the degree of deferred maintenance within the system
  - Estimate of the costs/savings involved with converting the system to LED fixtures
  - Determination of the remaining economic life of the system
- Providing financial analysis of the feasibility of ownership, including:
  - 10 and 20-year cash flow analysis with inclusion of multiple financing options and sensitivity to turnover point and cash flow
- Coordinating financing, if needed
- Initiating and leading negotiations with the utility
- Presenting analysis, strategies and options to City staff and Council members via webinars, phone calls and/or a limited number of meetings
- Providing background evidence, case law, data, research, legal arguments, and precedence to support litigation to forcibly purchase the streetlight system (if necessary). Please note that Tanko Lighting will coordinate with the City's legal counselor(s) and that all court appearances, court filings, court costs, filing fees, attorney's fees, legal costs/services, and expert witness fees will be the City's responsibility

Tanko Lighting shall initiate contact with the utility within 60 days of execution of this agreement. This Step can be cancelled at no cost to the City at any point before the deliverables are provided if either party wishes. If the City chooses not to pursue litigation and/or no reasonable offer is made through negotiations, then no deliverable is due from Tanko Lighting and no payment is due from the City.

Please note that should the City need additional negotiations support beyond the utility offer or Court award, Tanko Lighting will provide a detailed scope of work and pricing for this work once the Step 2 deliverables have been achieved.

### Deliverables:

- Preliminary Financial Valuation Analysis: 10 and 20-year cash flow analysis with multiple financing options, demonstrating the feasibility of ownership.
- Analysis Presentation: Power Point presentation presenting the financial analysis, purchase price recommendations, strategies, and options for the City.
- Streetlight Ownership Offer from Utility: Tanko Lighting's efforts will result in a viable offer from the utility to the City or a Court Order in favor of the City to purchase the streetlight assets.

- Supporting Documentation: Case law, data, and other background evidence to support the City's legal case to purchase the streetlight system.

## EXHIBIT B – PRICING

Pricing				
Step	Task	Unit Pricing	Estimated Quantity	Extended Pricing
Step 1: Project Development	Task 1: GIS Audit	\$18.00 per fixture	4,440	\$79,920
	Tasks 2 – 3: Data Reconciliation & Design	\$7.00 per fixture	4,440	\$31,080
Step 2: Ownership Negotiations	N/A	A fixed fee of \$40,000 will be due only upon a viable offer from the utility to the City or a Court Order in favor of the City to purchase the streetlight assets.	1	\$40,000
Subtotal Amount:				\$151,000
Contingency for Underestimated Quantity (@ 30%):				\$45,300
Total (Not to Exceed) Amount:				\$196,300

- Proposed Payment Terms:
  - Step 1:
    - Task 1: Tanko Lighting will invoice the City for Task 1: GIS Audit on a monthly basis, based on the quantity of fixtures audited during the month.
    - Tasks 2 – 3: Tanko Lighting will invoice the City for Tasks 2 – 3 upon submission of the design deliverables.
  - Step 2: Tanko Lighting will invoice the City for Step 2: Ownership Negotiations in one lump sum only upon receipt of a viable offer from the utility to the City or a Court Order in favor of the City to purchase the streetlight assets. If the deliverable for Step 2: Ownership Negotiations cannot be achieved, Tanko Lighting will not invoice the City for any services rendered.
  - The City shall pay Tanko Lighting within thirty (30) days of receipt of invoices.

## EXHIBIT C – INSURANCE REQUIRMENTS

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### Comprehensive General Liability and Property Damage Insurance.

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

#### Bodily Injury.

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

#### Property Damage Insurance.

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

### B. Comprehensive Automobile Liability.

#### Bodily Injury

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

#### Property Damage

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

## EXHIBIT D

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### **Acknowledgement – “Boycott Israel”**

By signing and submitting this bid the vendor 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.

SIGNATURE: \_\_\_\_\_

DATE: 12/15/2020 \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

Jason Tanko \_\_\_\_\_

# 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.**

Tanko Streetlighting, Inc.  
San Francisco, CA United States

**Certificate Number:**  
2020-699395

**Date Filed:**  
12/15/2020

**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.**

TankoStreetLight  
Street Light Audit & Ownership Support Project

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

**5 Check only if there is NO Interested Party.**

**6 UNSWORN DECLARATION**

My name is Jason Tanko, and my date of birth is 04/02/1973.

My address is 928A Broderick Street, San Francisco, CA, 94115, USA.  
(street) (city) (state) (zip code) (country)

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

Executed in San Francisco County, State of California, on the 15th day of December, 2020.  
(month) (year)

\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)



# AGREEMENT FOR STREETLIGHT AUDIT AND OWNERSHIP SUPPORT

RS-21-007

January 19, 2021

# Background

2

- ❑ There are approximately 4,440 streetlights in the City owned by Oncor
- ❑ City pays a monthly tariff for maintenance and energy costs of streetlights
  - ▣ Local and collector streets (100w) - \$12.28 per fixture
  - ▣ Major collector and arterial streets (250w) - \$16.06 per fixture
- ❑ Average monthly tariff per fixture - \$13.08
- ❑ Tariffs total \$58,090 per month and \$697,085 annually

# Background, continued

3

- ❑ Streetlight costs will reduce significantly if owned by City
- ❑ Three Oncor covered cities own their streetlights
  - ▣ Wichita Falls, Arlington, and Ft. Worth
- ❑ Tanko Streetlighting, Inc. is a national firm that focuses on municipal streetlighting
  - ▣ Provide turn-key solution: project development (audit and reconciliation), ownership negotiations, energy efficiency conversions, and ongoing streetlight maintenance
  - ▣ Currently working with Keller, Grapevine, and Corinth

# Agreement Components

4

## □ Project Development

- ▣ Comprehensive geographic information system (GIS) audit of streetlights
- ▣ Data reconciliation
- ▣ Design for a LED streetlight conversion project

## □ Ownership Negotiations

- ▣ Valuation of existing streetlights
- ▣ Estimation of deferred maintenance and remaining life
- ▣ Multi-year cashflow analysis to show ownership feasibility
- ▣ Negotiate on behalf of City

# Agreement Pricing

5

Service Description	Task	Unit Price	Estimated Quantity	Extended Price
Project Development	GIS Audit	\$18 per fixture	4,440	\$79,920
Project Development	Data Reconciliation and Design	\$7 per fixture	4,440	31,080
Ownership Negotiations	N/A	\$40,000 upon viable offer	1	<u>40,000</u>
Subtotal Amount				\$151,000
Contingency for Underestimated Streetlight Quantity (at 30%)				<u>45,300</u>
Total Not to Exceed Amount				\$196,300

# Estimated Savings

6

Description	Current	New	Difference
Annual Streetlight Cost	\$697,085	\$91,628	\$605,457
Maintenance Costs	<u>0<sup>1</sup></u>	<u>319,680<sup>2</sup></u>	<u>(319,680)</u>
Total	\$697,085	\$411,308	\$285,777

1- Included in Oncor agreement

2- Estimated to be \$6 per fixture per month

# Alternatives

7

- ❑ Do not enter into a professional services agreement for streetlight audit and ownership support
- ❑ Enter into a professional services agreement with Tanko Streetlighting, Inc.

# Recommendation

8

City Council approve the professional services agreement with Tanko Streetlighting, Inc. for streetlight audit and ownership support in the amount not to exceed \$196,300 and that the City Manager or designee be authorized to execute change orders as permitted by state and local law



# City of Killeen

## Legislation Details

<b>File #:</b>	RS-21-008	<b>Version:</b>	1	<b>Name:</b>	Killeen Community and Senior Center
<b>Type:</b>	Resolution	<b>Status:</b>		<b>Status:</b>	Resolutions
<b>File created:</b>	1/4/2021	<b>In control:</b>		<b>In control:</b>	City Council Workshop
<b>On agenda:</b>	1/19/2021	<b>Final action:</b>		<b>Final action:</b>	
<b>Title:</b>	Consider a memorandum/resolution authorizing a professional services agreement with Randall Scott Architects, Inc., in the amount of \$543,825 for the Killeen Community and Senior Center Project.				
<b>Sponsors:</b>	Public Works Department, Recreation Services Department				
<b>Indexes:</b>	Killeen Community Center				
<b>Code sections:</b>					
<b>Attachments:</b>	<a href="#">Staff Report</a> <a href="#">Conceptual Floor Plan</a> <a href="#">Agreement</a> <a href="#">Certificate of Interested Parties</a> <a href="#">Presentation</a>				

Date	Ver.	Action By	Action	Result
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## STAFF REPORT

**DATE:** January 19, 2021

**TO:** Kent Cagle, City Manager

**FROM:** Danielle Singh, Executive Director of Public Works

**SUBJECT:** Authorize a Professional Services Agreement with Randall Scott Architects, Inc., in the amount of \$543,825 for the Killeen Community and Senior Center Project.

### **BACKGROUND AND FINDINGS:**

Killeen Community Center and Bob Gilmore Senior Center are located near the intersection of Veterans Memorial Blvd. and WS Young Drive. City Council previously approved a resolution (CCM/R#19-121R; attached as supporting document) awarding a professional services contract to Randall Scott Architects to perform a Needs Assessment and Conceptual Design Services. The assessment and concept plan study was completed in June 2020. The conceptual floor plan is attached as supporting document. City staff and consultant presented the concept plan to the senior community members and Senior Advisory Board accordingly and received positive feedback and approval. City staff and consultant also presented the concept plan and a virtual tour of the proposed facility to the City Council in August 2020 and obtained permission to proceed to the next phase. The Council presentation file is attached as supporting document.

This professional services agreement is for the design phase and necessary support services during construction phase. The design process includes the preparation of construction and bid documents. The scope of work also includes construction administrative services, which consist of assisting City with bid process, inspections, documentation, and project close-out.

Out of the total stated fee amount, \$532,725 is required for above mentioned services. Two optional additional services are included in the proposal: (1) Structural foundation design at the cost of \$5,750 if discovered that it is needed after construction has begun to better support the expansion of the outer walls, and (2) Artwork and accessories design package at the cost of \$5,350 should the Recreation Services Department decide to have this. Payment of optional additional services will depend on actual service to be provided based on necessity.

The scope of this phase does not include design and construction of the new gymnasium as delineated in the concept plan in the northeast of existing building. Subject of funding availability in future, design and construction of the new gymnasium can be completed in a subsequent phase.

### **THE ALTERNATIVES CONSIDERED:**

Alternatives are -

- a. Alternative 1 - Do not move forward with the project at this time.
- b. Alternative 2 - Instruct staff to search for or to consider a different architectural consulting firm for the Professional Services Agreement.
- c. Alternative 3 - Authorize a Professional Services Agreement with Randall Scott Architects, Inc.

**Which alternative is recommended? Why?**

Staff recommends alternative 3, which is to authorize the City Manager to execute a Professional Services Agreement with Randall Scott Architects, Inc. This recommendation is based on the necessity to complete the project as soon as feasible for the residents in the northern portion of the city and also due to the consulting firm's capability as well as familiarity with the existing facility as they have completed the preliminary assessment which included conceptual floor plan.

**CONFORMITY TO CITY POLICY:**

This item conforms to all applicable State and City policies.

**FINANCIAL IMPACT:**

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

The fee for the services is not to exceed \$543,825.

**Is this a one-time or recurring expenditure?**

This is a one-time expenditure.

**Is this expenditure budgeted?**

Funding for this project is available in the account 349-8930-493.69-01.

**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:**

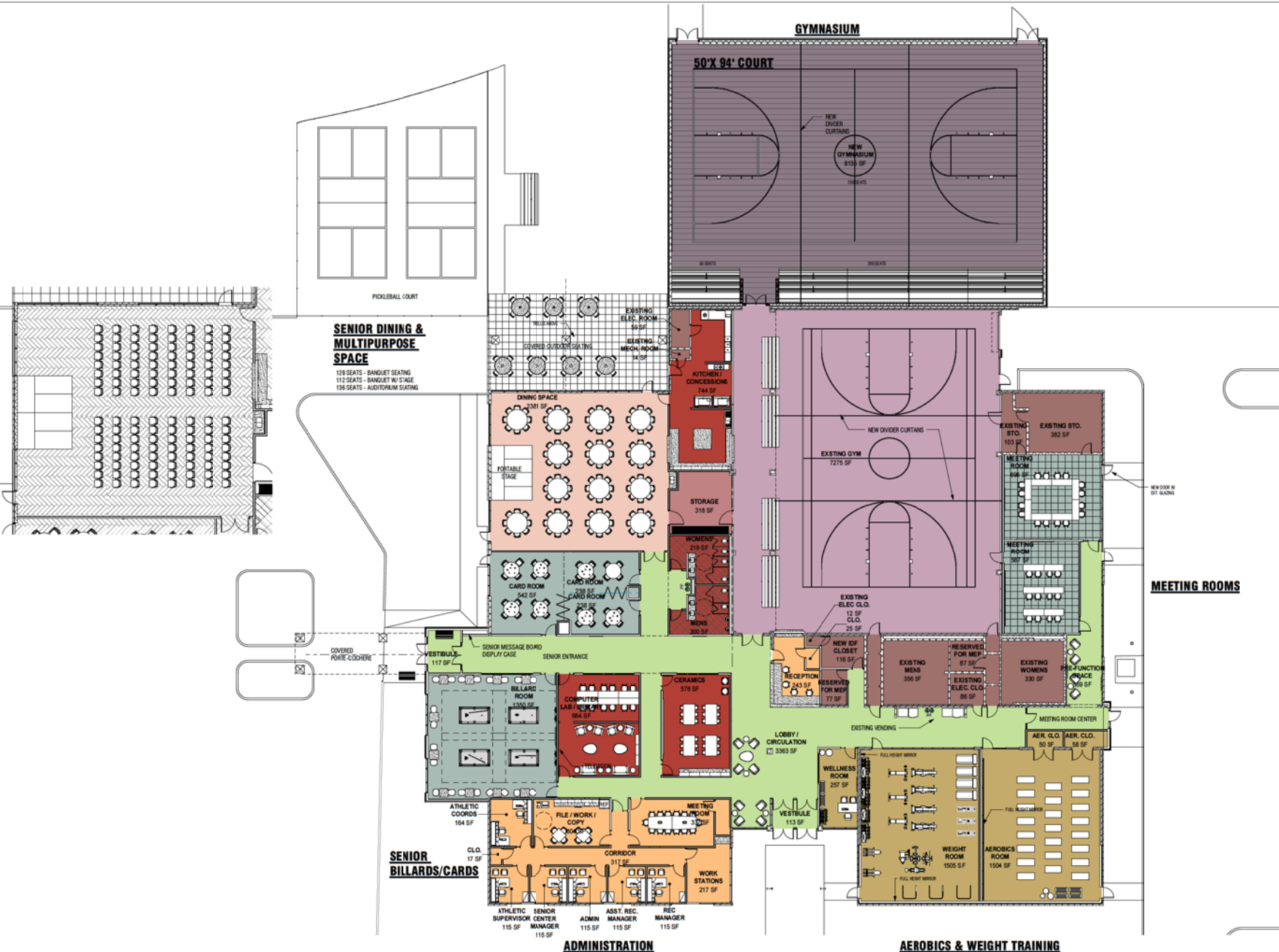
Staff recommends that the City Council authorize the City Manager or his designee to enter into a Professional Services Agreement with Randall Scott Architects, Inc., in the amount of \$543,825 for the design and construction administration services of the Killeen Community and Senior Center project, and that the City Manager is expressly authorized to execute any and all changes within the amounts set by the state and local law.

**DEPARTMENTAL CLEARANCES:**

Public Works  
Recreation Services  
Finance  
City Attorney

**ATTACHED SUPPORTING DOCUMENTS:**

Agreement  
Conceptual Floor Plan  
Certificate of Interested Parties



#### TOTAL SQUARE FOOTAGE:

<b>NEW CONSTRUCTION:</b>	
WEST ENTRANCE, BILLIARD	1,855 SF
WEIGHT ROOM / AEROBICS	1,250 SF
EAST ENCLOSURE	388 SF
<b>NEW GYMNASIUM</b>	
	8,400 SF
<b>TOTAL:</b>	<b>11,793 SF</b>
<b>RENOVATED CONSTRUCTION:</b>	
ALL SPACES EXCEPT EXISTING MEP SERVICES AND STORAGE TO REMAIN:	
<b>TOTAL:</b>	<b>18,000 SF</b>

# AIA<sup>®</sup> Document B104<sup>™</sup> – 2017

## ***Standard Abbreviated Form of Agreement Between Owner and Architect***

**AGREEMENT** made as of the 8th day of December in the year 2020  
(In words, indicate day, month and year.)

**BETWEEN** the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

City of Killeen  
101 N. College St.  
Killeen, TX 76541

and the Architect:  
(Name, legal status, address and other information)

Randall Scott Architects, Inc. (also referred to herein as RSA)  
2140 Lake Park Blvd, Suite 300  
Dallas, TX 75080  
Telephone Number: 972.664.9100

for the following Project:  
(Name, location and detailed description)

Killeen Community and Senior Center Renovations  
2201 E. Veterans Memorial Blvd  
Killeen, TX 76542

The Owner and Architect agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
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7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
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11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth below:

*(State below details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, and other information relevant to the Project.)*

Refer to Architect's Fee Proposal attached hereto as Exhibit B.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall agree on any necessary adjustments to the schedule, the Architect's services and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without the Architect's written permission shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

### ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services set forth in this Agreement consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

**§ 2.1.A** The Owner and Architect acknowledge that the Architect's standard of care is one of reasonable professional diligence and care of similarly situated architects performing the same or similar professional design services on similar project types in similar locations.

**§ 2.1.B** Except for remedial costs required to incorporate omitted work, the Architect or the Architect's consultants shall not be responsible for any cost or expense that is related to: an omission, provides a betterment, upgrade or enhancement of the Project, as these costs or expenses would have been part of the Project construction costs in the first place. These are part of the Owner's cost of the Project and shall be covered by the Owner's separate Project Contingencies.

**§ 2.2** The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.8:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

- .1 General Liability  
\$1,000,000
- .2 Automobile Liability  
\$1,000,000
- .3 Workers' Compensation  
Per Statute
- .4 Professional Liability  
\$1,000,000
- .5 Umbrella Liability  
\$5,000,000

### **ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

**§ 3.1** The Architect's Basic Services consist of those described in this Article 3 and include mechanical, plumbing and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

**§ 3.1.1** The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on (1) the accuracy and completeness of the services and information furnished by the Owner and (2) the Owner's approvals. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

**§ 3.1.2** As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

**§ 3.1.3** The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### **§ 3.2 Design Phase Services**

**§ 3.2.1** The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

**§ 3.2.2** The Architect shall discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the Project requirements.

**§ 3.2.3** The Architect shall consider the relative value of alternative materials, building systems and equipment, together with other considerations based on program, aesthetics, and any sustainable objectives, in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

**§ 3.2.4** Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents appropriate for the Project and the Architect shall prepare and submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

**§ 3.2.5** The Architect shall submit the Design Documents to the Owner, and request the Owner's approval.

### **§ 3.3 Construction Documents Phase Services**

**§ 3.3.1** Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.4.4.

**§ 3.3.2** The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

**§ 3.3.3** The Architect shall submit the Construction Documents to the Owner, update the estimate for the Cost of the Work and advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

**§ 3.3.4** The Architect, following the Owner's approval of the Construction Documents and of the latest estimate of the Cost of the Work, shall assist the Owner in obtaining bids or proposals and awarding and preparing contracts for construction.

### **§ 3.3.5 Competitive Bidding**

**§ 3.3.5.1** Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

**§ 3.3.5.2** The Architect shall assist the Owner in bidding the Project by:

- a** facilitating the distribution of digital versions (PDF's) of Bidding Documents to prospective bidders;
- b** organizing and conducting a pre-bid conference for prospective bidders;
- c** preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- d** organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

**§ 3.3.5.3** If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### **§ 3.4 Construction Phase Services**

#### **§ 3.4.1 General**

**§ 3.4.1.1** The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A104™-2017, Standard Abbreviated Form of Agreement Between Owner and

Contractor. If the Owner and Contractor modify AIA Document A104–2017, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

**§ 3.4.1.2** The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

**§ 3.4.1.3** Subject to Section 4.2, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

### **§ 3.4.2 Evaluations of the Work**

**§ 3.4.2.1** The Architect shall visit the site per the Architect’s Fee Proposal Exhibit B, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

**§ 3.4.2.2** The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

**§ 3.4.2.3** The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect’s response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 3.4.2.4** When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

**§ 3.4.2.5** The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### **§ 3.4.3 Certificates for Payment to Contractor**

**§ 3.4.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect’s certification for payment shall constitute a representation to the Owner, based on the Architect’s evaluation of the Work as provided in Section 3.4.2 and on the data comprising the Contractor’s Application for Payment, that, to the best of the Architect’s knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

**§ 3.4.3.2** The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor’s right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§ 3.4.4 Submittals**

**§ 3.4.4.1** The Architect shall review and approve, or take other appropriate action, upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or any construction means, methods, techniques, sequences or procedures.

**§ 3.4.4.2** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

**§ 3.4.4.3** The Architect shall review and respond to written requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. The Architect will endeavor to provide an initial response to RFI's within 7 days, however, in certain circumstances it may not be possible to respond within that timeframe which would result in more time being required to provide an appropriate response.

#### **§ 3.4.5 Changes in the Work**

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

#### **§ 3.4.6 Project Completion**

The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

### **ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES**

**§ 4.1** Supplemental Services are not included in Basic Services but may be required for the Project. The Architect shall provide the Supplemental Services indicated below, and the Owner shall compensate the Architect as provided in Section 11.2. Supplemental Services may include programming, site evaluation and planning, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, coordination of separate contractors or independent consultants, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.2, value analysis, interior architectural design, tenant related services, preparation of record drawings, commissioning, sustainable project services, and any other services not otherwise included in this Agreement. *(Identify below the Supplemental Services that the Architect is required to provide and insert a description of each Supplemental Service, if not further described in an exhibit attached to this document.)*

**§ 4.2** The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Upon recognizing the need to perform Additional Services, the Architect shall notify the Owner. The Architect shall not provide the Additional Services until the Architect receives the Owner's written authorization. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3.

§ 4.2.1 The Architect shall provide services necessitated by a change in the Initial Information, changes in previous instructions or approvals given by the Owner, or a material change in the Project including size; quality; complexity; the Owner's schedule or budget for Cost of the Work; or procurement or delivery method as an Additional Service.

§ 4.2.2 The Architect has included in Basic Services 30 (thirty) visits to the site by the Architect during construction. The Architect shall conduct site visits in excess of that amount as an Additional Service.

§ 4.2.3 The Architect shall, as an Additional Service, provide services made necessary by a Contractor's proposed change in the Work. The Architect shall prepare revisions to the Architect's Instruments of Service necessitated by Change Orders and Construction Change Directives as an Additional Service.

§ 4.2.4 If the services covered by this Agreement have not been completed within 24 (twenty-four) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

§ 4.2.5 The Architect's services for the following shall be deemed additional services:

1. Design services in regards to changes caused by existing physical conditions that could not be reasonably known or discovered prior to construction.
2. Review of substitution requests by the Contractor or Owner after 7 days prior to bid date.
3. Value engineering and design services required to offset increased construction market costs of labor and materials due to Acts of God such as, but not limited to, hurricanes, tornadoes or pandemics.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 A written Needs Assessment and Conceptual Design setting forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements has been prepared by the Architect and presented to City Staff May 12, 2020 with a subsequent fly-around/fly-through virtual presentation being made to Staff on June 2, 2020.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs including an Owner's "Project Contingency" of not less than 15% of the Total Project Cost or Budget for the Project. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall furnish as-built drawings of the existing Killeen Community Center, to describe physical characteristics, legal limitations and utility locations for the site of the Project; a written legal description of the site; and services of geotechnical engineers or other consultants, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.4 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.5 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests; tests for air and water pollution; and tests for hazardous materials. . Such testing, inspections and reports shall include at a minimum:

- a. Construction materials testing inspections and reports.
- b. HVAC Test and Balancing and reports.
- c. Window testing, inspection and reports.
- d. Other tests, inspections and reports as required by the Construction Documents or requested by the Architect and his consultants.

- e. Hazardous materials survey of existing Community Center Building where connections and/or renovations have to be made to the Killeen Community Center and Senior Center Renovations.

§ 5.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

§ 5.9 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.10 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1, as a Supplemental Service.

§ 6.3.1 Evaluations of the Owner's budget for the Project and the preliminary estimate of the Cost of the Project prepared by the Architect represent the Architect's judgement as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's method of determining bid prices, or over competitive bidding, market or negotiation conditions. The Architect's evaluation of the Owner's budget and preliminary estimate of the Cost of the Work are made on the basis of the Architect's experience, qualifications, and best judgement of the current and future market conditions in the construction industry. Accordingly, the Architect cannot and does not warrant or represent that proposals, bids, negotiated prices, or actual construction costs will not vary from the Owner's budget for the Project or from any preliminary estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect. The Architect shall compile his estimates of the Cost of the Work based on all or a portion of the following: design progress, utilizing historical data, material quotations, discussions with trade professionals, and experience with similar projects. Bids will not be solicited for the Architect's estimating purposes; therefor, competitive bidding

or lack thereof may affect the actual costs. The Owner shall acknowledge the following assumptions and cautions relative to the Architect's evaluations of the Owner's budget and preliminary estimate of the Cost of the Work:

1. The Opinions of the Cost of the Work will assume a competitive bidding process for the entire scope of Work, as defined by the plans and specifications. Competitive bidding process is defined as receiving responsive bids from a minimum of (3) General Contractors and (3) subcontractors per trade.
2. If the number of bids indicated in 6.3.1.1 above are not received by the General Contractor or Owner, the bids may deviate from the Architect's evaluation of the Owner's budget and/or the preliminary estimate of the Cost of the Work.
3. Due to unpredictable conditions in the construction and other industries causing unusual fluctuations, such as the influence of commodity trading markets, regional supply and demand, regional inflation, or natural disasters and Acts of God such as, but not limited to, hurricanes and tornadoes; costs and availability of products and labor may fluctuate causing the Architect's evaluation of the Owner's budget and preliminary estimate of the Cost of the Work to differ from actual bids.
4. The Architect shall not be responsible for value engineering services required due to construction market cost increases in labor and materials caused by Acts of God such as, but not limited to, hurricanes and tornadoes, or geo-global cost increases as these are beyond the Architect's control. Value engineering changes to the Project Scope if required due to Acts of God, shall be provided as an Additional Service by the Architect and his consultants.

**§ 6.4** If, through no fault of the Architect, construction procurement activities have not commenced within 60 days after the Architect submits the Construction Documents to the Owner the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

**§ 6.5** If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

**§ 6.6** If the Owner's current budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

**§ 6.7** If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate including Acts of God or geo-global cost increases which are beyond the Architect's control, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

**§ 7.1** The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

**§ 7.2** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums when due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other, for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A104-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.6.

**§ 8.1.4 RISK ALLOCATION. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH THE OWNER AND THE ARCHITECT, THE OWNER AND ARCHITECT AGREE THAT THE LIMIT OF PROFESSIONAL LIABILITY OF THE ARCHITECT AND HIS CONSULTANTS SHALL BE LIMITED TO \$1,000,000 ON A CLAIMS MADE BASIS AND \$1,000,000 IN THE AGGREGATE FOR ALL CLAIMS MADE AGAINST THE ARCHITECT AND HIS CONSULTANTS.**

§ 8.1.5 Owner agrees to pay the Architect for all time and expenses incurred as a result of testifying, subpoenas, depositions, arbitration, trials and mediations between the Owner and Owner's Contractor/CM at Risk and/or the Owner's Contractor's

subcontractors as related to the Project. These services exclude proceedings in which the Architect is a party in the corresponding action.

## **§ 8.2 Mediation**

**§ 8.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement *may* be subject to mediation, *if approved by both parties, prior to proceeding with* binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

**§ 8.2.2** Mediation, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 8.2.3** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
(Check the appropriate box.)

- ☐ Arbitration pursuant to Section 8.3 of this Agreement
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

## **§ 8.3 Arbitration (Deleted)**

*(Paragraphs deleted)*

### **§ 8.3.4 Consolidation or Joinder**

**§ 8.3.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 8.3.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 8.3.4.3** The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

**§ 8.4** The provisions of this Article 8 shall survive the termination of this Agreement.

## **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of

performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than 30 days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, Reimbursable Expenses incurred, and all costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

.1 Termination Fee:

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year and one month from the date of Substantial Completion.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws and jurisdiction of Texas. *Venue is proper in Bell County, Texas.*

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A104-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

## ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum  
(Insert amount)

Refer to Architect's Fee Proposal attached hereto labeled Exhibit B

- .2 Percentage Basis  
(Insert percentage value)

( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

- .3 Other  
(Describe the method of compensation)

§ 11.2 For Supplemental Services identified in Section 4.1, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Refer to Architect's Fee Proposal attached hereto labeled Exhibit B for Architect's Hourly Rates

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation.)

Refer to Architect's Fee Proposal attached hereto labeled Exhibit B for Architect's Hourly Rates

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent ( %), or as follows:

Refer to Architect's Fee Proposal attached hereto labeled Exhibit B for Architect's Markup on Consultant Additional Services

**§ 11.5** Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty Five	percent (	25	%)
Design Development Phase	Twenty Five	percent (	25	%)
Construction Documents Phase	Twenty Five	percent (	25	%)
Bidding & Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
<b>Total Basic Compensation</b>	<b>one hundred</b>	<b>percent (</b>	<b>100</b>	<b>%)</b>

**§ 11.6** When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

**§ 11.6.1** When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

**§ 11.7** The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Refer to Architect's Fee Proposal attached hereto labeled Exhibit B for Architect's Hourly Rates

Employee or Category	Rate
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**§ 11.8 Compensation for Reimbursable Expenses**

**§ 11.8.1** Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally maintained by the Architect and the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 Reimbursable Expenses compensation is a lump sum amount included in the overall professional fee. Refer to Exhibit B.

## § 11.9 Payments to the Architect

### § 11.9.1 Initial Payment

An initial payment of Zero (\$ 0 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

### § 11.9.2 Progress Payments

§ 11.9.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid 30 ( thirty ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Insert rate of monthly or annual interest agreed upon.)*

One point five % per month

§ 11.9.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.9.2.3 Records of Reimbursable Expenses and hourly services pertaining to Additional Services shall be documented in each invoice from the Architect.

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

*(Include other terms and conditions applicable to this Agreement.)*

§ 12.1 The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, TX 78701-3942, ph. 512.305.9000, has jurisdiction over individuals licensed under the Architects Registration Law, Article 249A, VTCS.

§ 12.2 By signing this contract, Architect 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.

## ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B104™-2017, Standard Abbreviated Form of Agreement Between Owner and Architect

*(Paragraph deleted)*

- .3 Exhibits:

*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits identified in Section 4.1.)*

AIA A104-2017 Exhibit A

Exhibit B – Architect's Fee Proposal and Hourly Rates for Personnel

- .4 Other documents:  
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

**CITY OF KILLEEN, TEXAS**

OWNER (Signature)

(Printed name and title)

**RANDALL SCOTT ARCHITECTS, INC.**

ARCHITECT (Signature)

*Randall B. Scott, AIA*

Randall B. Scott, AIA, Founding Principal

(Printed name, title, and license number, if required)

Init.

## Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Randall B. Scott, AIA, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:00:08 ET on 01/07/2021 under Order No. 3736888881 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B104™ – 2017, Standard Abbreviated Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

Randall B. Scott, AIA  
(Signed)

FOUNDING PRINCIPAL  
(Title)

1.7.21  
(Dated)

# **AIA**® Document A104™ – 2017 Exhibit A

## ***Determination of the Cost of the Work***

### **for the following PROJECT:**

*(Name, location and brief description)*

Killeen Community and Senior Center Renovations  
2201 E. Veterans Memorial Blvd  
Killeen, TX 76542

### **THE OWNER:**

*(Name, legal status, address and other information)*

City of Killeen  
101 N. College St  
Killeen, TX 76541

### **THE CONTRACTOR:**

*(Name, legal status, address and other information)*

### **THE ARCHITECT:**

*(Name, legal status, address and other information)*

Randall Scott Architects, Inc.  
2140 Lake Park Blvd., Suite 300  
Richardson, TX 75080  
972.664.9100

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

## **ARTICLE A.1 COSTS TO BE REIMBURSED**

### **§ A.1.1 Cost of the Work**

**§ A.1.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article A.1.

**§ A.1.1.2** Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

### **§ A.1.2 Labor Costs**

**§ A.1.2.1** Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.1.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ A.1.2.2.1 Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

*(Identify the personnel, the type of activity, and, if applicable, any agreed percentage of time to be devoted to the Work.)*

§ A.1.2.3 Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.1.2.4 Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits, and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.1.2.

§ A.1.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

#### § A.1.3 Subcontract Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of their subcontracts and this Agreement.

#### § A.1.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.1.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.1.4.2 Costs of materials described in the preceding Section A.1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

#### § A.1.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.1.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ A.1.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section A.1.8.1, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ A.1.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.1.5.4 Costs of the Contractor's site office, including general office equipment and supplies.

**§ A.1.6 Miscellaneous Costs**

**§ A.1.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

**§ A.1.6.1.1** Costs of self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ A.1.6.1.2** Costs of insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior approval.

**§ A.1.6.2** Sales, use, or similar taxes, imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

**§ A.1.6.3** Fees and assessments for the building permit and for other permits, licenses, and inspections for which the Contractor is required by the Contract Documents to pay.

**§ A.1.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Article 18 of the Agreement or by other provisions of the Contract Documents, and which do not fall within the scope of Section A.1.7.3.

**§ A.1.6.5** Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents.

**§ A.1.6.5.1** The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor has reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Section 9.14 of this Agreement. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price.

**§ A.1.6.6** Costs for communications services, electronic equipment, and software directly related to the Work and located at the site, with the Owner's prior approval.

**§ A.1.6.7** Costs of document reproductions and delivery charges.

**§ A.1.6.8** Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

**§ A.1.6.9** Legal, mediation, and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

**§ A.1.6.10** Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior approval.

**§ A.1.6.11** That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ A.1.7 Other Costs and Emergencies**

**§ A.1.7.1** Other costs incurred in the performance of the Work with the Owner's prior approval.

**§ A.1.7.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

**§ A.1.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence

of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

#### **§ A.1.8 Related Party Transactions**

**§ A.1.8.1** For purposes of this Section A.1.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds any equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

**§ A.1.8.2** If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article A.4. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article A.4.

### **ARTICLE A.2 COSTS NOT TO BE REIMBURSED**

**§ A.2.1** The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section A.1.2.2;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided written approval before such costs are incurred;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article A.1;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section A.1.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Article A.1; and
- .8 Where a Guaranteed Maximum Price is part of this Agreement, costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

### **ARTICLE A.3 DISCOUNTS, REBATES AND REFUNDS**

**§ A.3.1** Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

**§ A.3.2** Amounts that accrue to the Owner in accordance with Section A.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

### **ARTICLE A.4 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ A.4.1** Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to

accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers and, in consultation with the Architect, object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

**§ A.4.2** When the Contractor has provided a Guaranteed Maximum Price, and a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ A.4.3** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost-plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article A.5.

#### **ARTICLE A.5 ACCOUNTING RECORDS**

**§ A.5.1** The Contractor shall keep full and detailed records and accounts related to the Cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records, for a period of three years after final payment, or for such longer period as may be required by law.

**§ A.5.2** When the Contractor believes that all the Work required by the Agreement has been fully performed, the Contractor shall deliver to the Owner's auditors a final accounting of the Cost of the Work.

**§ A.5.3** The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 4.2.1 of the Agreement have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 15.4.3 of the Agreement. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

**§ A.5.4** If the Owner's auditors' report concludes that the Cost of the Work as substantiated by the Contractor's final accounting is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the dispute without a further decision of the Architect. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. If the Contractor fails to request mediation within this 30-day period, the substantiated amount reported by the Owner's auditors shall become binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount, if any, determined by the Owner's auditors to be due the Contractor.

**§ A.5.5** If, subsequent to final payment and at the Owner's request, the Contractor incurs costs in connection with the correction of defective or non-conforming work as described in Article A.1, Costs to be Reimbursed, and not excluded by Article A.2, Costs Not to be Reimbursed, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Contractor has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.



## EXHIBIT 'B' TO THE OWNER ARCHITECT AGREEMENT

**Revised December 8, 2020**

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

**RE: PROPOSAL TO PROVIDE ARCHITECTURAL/ENGINEERING SERVICES FOR KILLEEN COMMUNITY AND SENIOR CENTER RENOVATIONS**

### **I. PROJECT SCOPE**

This proposal is submitted by Randall Scott Architects, Inc. (hereinafter referred to as RSA or Architect) to the City of Killeen (herein after referred to as the City, Owner or Client) to provide Architectural/Engineering Design Services for the Killeen Community and Senior Center Renovations.

#### **A. PROJECT CRITERIA**

##### **1. OVERVIEW**

- a. The project scope is based upon a Needs Assessment and Conceptual Design prepared by Randall Scott Architects for the Killeen Community and Senior Center Renovation as presented to Staff May 12, 2020 (Floor and Site Plan) and June 2, 2020 (Fly-around/Fly-through).
- b. Construction Only Cost (COC) for the project excluding a new gym is anticipated to be approximately \$4.3M.
- c. The Total Project Cost (TPC) is estimated to be approximately \$5.5M. Total Project Cost includes the Construction Only Cost, A/E fees, contingencies, surveying, third party materials testing services, FF&E and other non-construction related project costs.
- d. The general project scope includes renovating the existing Killeen Community Center and adding Senior Center functions to it with a separate entrance for seniors.
- e. RSA assumes the City will use either Competitive Sealed Proposal or CMAR delivery method for construction.

### **II. PRE-DESIGN PHASE SERVICES**

#### **A. PROGRAM OF REQUIREMENTS**

1. The Pre-Design services for this project have been completed by RSA including the Needs Assessment, Visioning Session, the Conceptual Design and Preliminary Construction Only Cost Estimate.

### III. BASIC SERVICES

#### A. SCHEMATIC DESIGN PHASE (25% COMPLETE)

Schematic Design Phase services provided by RSA and our Consultants for this project shall consist of the following:

1. Perform a detailed code and zoning review for the proposed projects and consult with the City on any changes that impact the design.
2. **Workshop # 1** – Within 30 days after receiving notice to proceed, **RSA will meet with the Stakeholders** to review their comments on the Conceptual Design proposed in the Needs Assessment.
3. **Attend a Town Hall meeting** with Staff, Council and Senior Citizens to present basic information about the proposed design and gather final input.
4. Prepare **final Schematic Design site plans, floor plans and renderings** of RSA's proposed design incorporating final review comments **and submit for the City's review** in electronic format. City Staff shall review and respond to RSA with review comments within 14 days of receipt of the SD package electronic files.
5. Prepare a Project Schedule for the project.
6. Coordinate the MEP, structural, civil, IT/AV and landscape architecture consultants' Schematic Design services and drawings.
7. Prepare a preliminary Technical Specifications Table of Contents.
8. Confirm ADA, general power and fire protection requirements for the project.
9. Prepare an updated Schematic Design Cost Estimate with 20% contingency. **Note: RSA's original cost estimate in the Needs Assessment did not include a 20% contingency in it. This will increase the cost of the project.**
10. Collaborate with the City in reconciling the project scope, budget and estimated construction cost.
11. Prepare a PowerPoint presentation of the Final Schematic Design Drawings, Project Schedule and SD Cost Estimate and assist Staff in presenting to Council for approval if requested.
12. Prepare and distribute meeting notes documenting the basic issues, resolutions and action items agreed to during this phase.

#### B. DESIGN DEVELOPMENT PHASE (50% COMPLETE)

Based on the approved Schematic Design documents and reconciled SD Cost Estimates, the Design Team will prepare the following Design Development documents:

1. Cover Page
2. General Notes
3. Architectural site plan illustrating the current site and proposed building improvements
4. Architectural floor plan with dimensions
5. Roof Plan
6. Partition types
7. Proposed room finish & door schedules
8. Exterior building elevations
9. Wall sections
10. Preliminary section details
11. Reflected ceiling plan
12. Millwork elevations
13. Interior elevations

14. Preliminary interior finishes plans
15. Unedited technical specifications for all trades (CSI Divisions 1-33)
16. 50% complete mechanical, electrical and plumbing drawings and details
17. 50% complete structural plans and details
18. 50% complete civil site plans and details
19. 50% complete AV/IT (low voltage systems) plans and details on separate sheets
20. Incorporate Center's IT point-to-point 50 MG Link connection with Central Fire Station upgrade.  
**Note: RSA was unaware of this requirement during the Needs Assessment. This additional scope may cause the cost of the project to increase over the budget established by the Needs Assessment.**
21. Preliminary landscape architecture plans and site details
22. Prepare a DD Cost Estimate with 15% contingency, or provide documents to the CMAR if CMAR delivery is chosen, and collaborate with the Owner to adjust the Design Development scopes of work to reconcile with the City's budget. **Note: RSA did not include this large of a contingency in the Needs Assessment. Using this large of a contingency may cause the cost of the project to increase.**
23. Submit the Design Development drawings and specifications documents to City Staff for review in electronic format. City Staff shall review and respond to RSA with review comments within 14 days of receipt of the DD documents electronic files.
24. Prepare and distribute meeting notes documenting the basic issues, resolutions and action items agreed to during this phase.
25. **Attend meetings with City Staff** to review the Design Development documents, DD cost estimate and status of the Project Schedule.

**C. CONSTRUCTION DOCUMENTS PHASE (75% & 100% SIGNED AND SEALED DOCUMENTS)**

Based on the approved Design Development documents and reconciled DD Cost Estimate, the Design Team will prepare 75% complete Construction Documents and 100% complete (signed and sealed) Construction Documents inclusive of the City of Killeen's front end Project Manual documents. A copy of the 100% Construction Documents shall be printed and delivered to City of Killeen's Purchasing/Finance department. An updated 100% CD estimate will be provided with the final Construction Documents (unless CMAR delivery is utilized in which case this estimate will be provided by the CMAR). At both the 75% and 95% CD completion stages, these documents will be submitted to City Staff for review. Staff shall review and provide response comments to RSA within 14 days of receipt of the documents to the City.

The Construction Documents will include a base bid scope of work and add alternates which the Design Team will agree upon with the City to assist in managing the project costs. The Design Team will work with the Owner, and CMAR if CMAR delivery is chosen, to make final adjustments to the project scope and construction documents to reconcile the scope and cost estimate with the City's budget. Once the scope and estimate are reconciled with the budget including a 10% contingency, the Design Team will issue the final CD's for bidding. **Note: a 10% contingency is very large. We would recommend 7.5%-8% contingency for this type/size of project.** Such a large contingency would cause the cost of the project to be over the \$4.3M estimate prepared by RSA in the Needs Assessment.

The Construction Documents Phase includes attendance by the Design Team at **meetings with the Owner and other entities** to coordinate the Construction Documents and pricing. Services during this phase include the preparation and distribution of project meeting notes documenting the basic issues, resolutions and action items agreed to during this phase.

#### **D. BIDDING & NEGOTIATION PHASE**

Once the final Construction Documents are approved by the Owner, the Design Team will provide the following services during the Bidding and Negotiation Phase:

1. Coordinate with the City of Killeen Purchasing Dept. to distribute electronic PDF files of the bidding documents plans and specifications to interested general Contractors. The printing of these documents for bidding and construction shall be at the Contractor's expense. RSA does not provide printed sets of plans and specs for bidders' use.
2. Attend a Pre-Bid Conference at the project site or a location designated by the Owner if requested.
3. Coordinate with the City of Killeen Purchasing Dept. to answer Contractor questions during the bidding phase about the construction documents and intended design.
4. Review substitution requests from bidders up until 7 days prior to bid date. Coordinate with the City of Killeen Purchasing Dept. to issue addenda documenting any approved substitution requests 3 days prior to bid date.
5. Prepare addenda and coordinate with City of Killeen Purchasing Dept. to issue them to Contractors clarifying questions on the drawings and specifications.
6. Prepare and distribute project meeting notes documenting the basic issues, resolutions and action items agreed to in meetings attended by the Architect during this phase.
7. The Owner's maximum Construction Only Cost for this project as of the time of this proposal is \$4.3M. Architect's final opinion of probable cost will be provided for cost comparison with bids.
8. Coordinate with City of Killeen in developing the Owner/Contractor Agreement.
9. Reconcile bids and provide recommendation on best value Contractor.

#### **E. CONTRACT ADMINISTRATION PHASE**

During the Construction Administration Phase, the Design Team will provide the following Services:

1. Conduct a Pre-Construction Meeting to discuss the issues of coordination, points of contact for each entity and protocol to be followed during the Construction Phase of the project.
2. **Visit the site twice monthly** to review construction in an effort to determine in general whether or not, when the Project is completed, it will be constructed in substantial accordance with the Contract Documents. While on site, the Architect will **attend OAC Meetings** with the Owner and Contractor to review the project status, previous set of construction meeting notes, submittal logs, ASI logs, RFI logs and construction schedule status along with coordination issues that need resolution by the group. Architect will attend virtual on-line OAC meetings during the weeks between on-site visits.
3. Review substitution requests from the Contractor only for materials and products which become unavailable during the Construction Phase due to circumstances beyond the Contractor's control.
4. Review submittals and shop drawings required by the Contract Documents and provide direction to the Contractor on how to proceed (No Exceptions Taken, Revise and Resubmit, etc.).

5. Review the Contractor's Requests for Information (RFI's) and respond as deemed appropriate by the Architect.
6. Prepare Architect's Supplemental Instructions (ASI's) when deemed necessary by the Architect and issue them to the Contractor.
7. Review the Contractor's Cost Proposal Requests (CPR's), make recommendations to the Owner and process change orders.
8. Review Contractor's Applications for Payment and transmit to the City for payment with any recommended adjustments from the Design Team.
9. Prepare a punch list for each discipline and perform a final walk-through for verification that punch list items have been completed.
10. Establish dates of Substantial and Final Completion and prepare certificates for same.
11. Coordinate project close out, receipt of warranty & maintenance binders from the Contractor.
12. Coordinate the preparation of as-built documents and deliver them to the Owner.

#### **IV. ADDITIONAL SERVICES**

Additional Services are all services not explicitly listed under Section III *Basic Services* of this Proposal. Additional Services shall be provided when requested by the City on an hourly or negotiated fee basis in addition to the fees charged for the services outlined in Section III above. Prior to beginning Additional Services work, RSA shall submit an Additional Services Proposal (ASP) to the City outlining the proposed scope of services and request approval from the City in writing if it believes that Additional Services are warranted or have been requested by the City. Additional Services include, but are not limited to, the following:

- A. Revisions requested by the City to the Architect's Work resulting in changes in the design, scope and/or quality. Revisions to the Architect's Work or documents due to changes in the information provided to the Architect by the City.
- B. Preparing Design alternatives (other than those listed in Section III above) and redesign services for the project including, but not limited to, redesign services required due to the City making changes to the project scope.
- C. Meetings with citizen groups (outside of the one listed under the Basic Services portion of this Proposal and normal Council presentations) to present information about the project. RSA will assist staff in presenting our work to Council during regular Council Meetings as a Basic Service if requested.
- D. Field verification of existing conditions necessary to complete the design team's work not indicated on as-built documents provided to the Architect by the City.
- E. Consulting services required to complete the project which are not specifically listed under the Professional Fee Sections VI.A *Basic Services*.
- F. Design of structural foundations such as carton form or pier and beam with crawl space foundation systems.
- G. Design of off-site utilities beyond the property line of the project site being designed by RSA under this agreement.
- H. Platting or rezoning services.
- I. Surveying services (shall be provided to RSA by the Owner).
- J. Geotechnical engineering services and reports (shall be provided to RSA by the Owner).
- K. Coordination services associated with environmental, archeological and historic building assessments including, but not limited to: 1) historic building evaluations of the property required by governing agencies, 2) archeological evaluations of the property required by governing

agencies; 3) evaluation of the presence and potential impact of special conditions or sensitive receptors present on the property such as wetlands, endangered species and native trees required by governing agencies.

- L. Preparation of change orders not the fault of the architect or his consultants.
- M. All work associated with the location and modifications to the floodplain and creek areas adjacent to the project.
- N. Development of artwork packages for the building.
- O. Design services regarding repurposing of the site currently occupied by the existing Bob Gilmore Sr. Center into a garden area or other functions. The cost of repurposing this area is not within the budget estimate provided on this project by RSA.

## V. PRELIMINARY PROJECT SCHEDULE

The schedule for this project will be determined as part of the scope of services provided by RSA.

## VI. PROFESSIONAL FEES

### A. BASIC SERVICES

1. The minimum fee for <i>Basic Services</i> inclusive of the Architectural, Structural and MEP engineering services outlined in Section III Basic Services of this Proposal for the Community Center/Senior Center Expansion/Renovation shall be provided based on a fee percentage of 8.5% times the \$4.3M Construction Only Cost Est.	<b>\$355,500</b>
2. Field Verification of Community Center existing conditions	<b>\$13,350</b>
3. Civil Engineering Services	<b>\$18,275</b>
4. Audio Visual & Acoustical Consultant	<b>\$12,450</b>
5. Technology Consultant (IT Services)	<b>\$15,650</b>
6. Landscape Architecture and Irrigation Design	<b>\$20,375</b>
7. Newforma Project Management Software License for Project	<b>\$1,500</b>
8. Registered Accessibility Specialist	<b>\$3,200</b>
9. FF&E Design Services	<b>\$27,250</b>
10. Detailed Cost Estimating Services	<b>\$20,175</b>
11. Envelope Consultant Services	<b>\$12,250</b>
12. Lump Sum for Reimbursable Expenses	<b>\$32,750</b>
<b>Total Basic Services Fees</b>	<b>\$532,725</b>

1. **Note: The above fees are based on the Community/Senior Center Facilities and associated site work at a budgeted Construction Only Cost (COC) of \$4.3M with a Total Project Cost (TPC) of approximately \$5.5M. Should the Construction Only Cost (COC) or Owner's Construction Budget be increased during the course of this project to exceed \$4.3M, RSA's fees shall at that time be increased at a fee percentage of 8.5% times the amount exceeding the \$4.3M COC at the time the City increases their budget or the COC. A final**

**adjustment to RSA's fees will be made at the end of the construction phase of the Project once the final construction cost is known.**

**B. OPTIONAL ADDITIONAL SERVICES**

1. Optional Additional Services for the project shall be provided for the following lump sum fees when requested/agreed to by the Client.
  - a. Structural Foundation (pier and beam or carton form foundation) \$5,750
  - b. Artwork and accessories design package \$5,350

**C. ADDITIONAL SERVICES**

1. Additional Services for the project shall be provided at the following hourly rates or negotiated on a lump sum basis at the time they are required:

Founding Principal	\$300.00/hr.
Principal	\$275.00/hr.
Sr. Vice President	\$250.00/hr.
Vice President/PM	\$225.00/hr.
Project Architect	\$200.00/hr.
Staff Architect	\$185.00/hr.
Visualization Renderer	\$185.00/hr.
Interior Designer	\$185.00/hr.
Administrative	\$105.00/hr.
Consultants	Cost + 10%

**VII. PROFESSIONAL REGISTRATION**

The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, phone: 512.305.9000, has jurisdiction over individuals licensed under the Architects' Registration Law, Article 249A, VTCS.

**VIII. TERMS AND CONDITIONS**

- A. This Proposal is valid for 90 days from the date at the top of the first page of this document unless included as an attachment to a fully executed purchase order and a fully executed AIA B104 2017 Owner Architect Agreement prior to that date.
- B. The City shall provide, and the Architect shall be entitled to rely upon the accuracy of: **1)** a detailed boundary and topographic survey of the site with grades at 1 foot intervals; spot grades for top and bottom of curbs at 5' intervals, trees (caliper at 3' above grade, canopy size and species); above and below ground utilities locations including flow line elevations and capacities; surrounding streets and full width of ROW locations; 2 benchmarks tied to USGS surveys; and the location of all improvements on and adjacent to the site including the existing Senior Center and adjacent parking areas; **2)** a geotechnical report with shallow and deep borings and recommendations for the design of the new slab, foundation and paving designs; and **3)** reasonably accurate as-built construction documents of the existing Killeen Community Building RSA will be working on.
- C. The Owner acknowledges that all projects such as the one being contemplated are required by law to be submitted to the Texas Department of Licensing & Regulation for handicap accessibility review. The Architect will submit plans for the proposed project to TDLR for review. The Owner acknowledges that the construction documents are not complete until TDLR has approved them

and any comments they require are incorporated even though construction may have begun and even be completed before comments are received. The Architect and his Consultants shall not be held financially responsible for changes to the project required by TDLR.

- D. The Owner acknowledges that RSA has no responsibility for the discovery of nor remediation of hazardous materials including, but not limited to, asbestos, PCP's, lead, etc. and that these are the responsibility of the Owner.

#### **IX. EXCLUSIONS**

The following items are specifically excluded from the Design Team's scope of work and this proposal:

- A. Geotechnical engineering services.
- B. Environmental, archaeological and historical assessment services required for the project.
- C. Site surveying (topographic and boundary with utilities information)
- D. Off-site paving, utilities and storm drainage system design services.

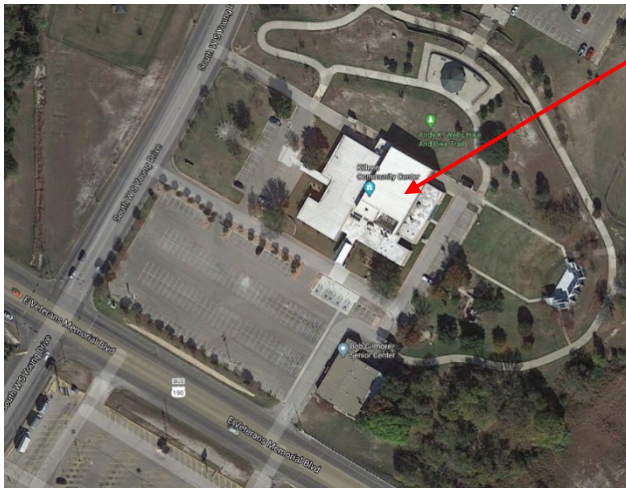
**Randall Scott Architects appreciates the opportunity to submit the above Proposal and looks forward to continuing our design services with the City of Killeen on this important Project!**

Thank you,

RANDALL SCOTT ARCHITECTS, INC.

*Randall B. Scott, AIA*

Randall B. Scott, AIA  
President & CEO



Existing City of Killeen  
Community/Senior Center

# 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:  
2021-702641

Date Filed:  
01/04/2021

Date Acknowledged:

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

Randall Scott Architects, Inc.  
Richardson, TX United States

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

City of Killeen, Texas

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.

2019-554233  
Architectural Services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Scott, Randall	Richardson, TX United States	X	

5 Check only if there is NO Interested Party.



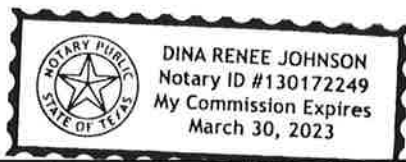
### 6 UNSWORN DECLARATION

My name is RANDALL B. SCOTT, and my date of birth is 3/19/1957.

My address is 2140 LAKE PARK Blvd #300 Richardson TX 75080 USA.  
(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 4<sup>TH</sup> day of JANUARY 2021.  
(month) (year)



Randall B. Scott  
Signature of authorized agent of contracting business entity  
(Declarant)



# SENIOR CENTER PROFESSIONAL SERVICES AGREEMENT FOR DESIGN AND CONSTRUCTION PHASE

RS-21-008

January 19, 2021

# Senior Center Background

2

- Initially, the Bob Gilmore Senior Center (BGSC) was scheduled to be renovated, but the preliminary structural assessment conducted in February 2019 revealed significant structural concerns and operations were suspended on the 13<sup>th</sup> of February 2019
- This assessment changed the course of this project from a renovation to new construction
- Senior center operations were moved to the Rosa Hereford Community Center in March 2019. Seniors moved around within this space until August 2019, when Room 200 became the permanent home of Bob Gilmore Senior operations
- RS briefed City Council in April of 2019, recommended that we seek/hire an architectural firm to conduct a needs assessment and create a conceptual design

# Senior Center Background

3

- In November of 2019, Randall Scott Architects (RSA) was selected to provide Pre-Design services including a site assessment of the Community Center campus, a needs assessment of the new space, preliminary floor planning, cost estimates and conceptual design/architectural modeling
- Staff held our first meeting with RSA on January 17, 2020, covering:
  - Design team introductions
  - Overview of project scope
  - Dispersement of programming questionnaires and how to complete them (POR)
  - Discussion of the process
  - Facility tour
- Randall Scott Architects completed Needs Assessment and Conceptual Design Services for a new Senior Center within the existing Killeen Community Center in June of 2020

# Background and Funding Information

2

- ❑ On June 18, 2020, the Senior Advisory Board was briefed on this plan and voted unanimously to accept the plan as proposed, seeking further direction from City Council
- ❑ August 4, 2020 City Council gave direction to move forward into the design/construction phase with RSA
- ❑ This Professional Services Agreement is for design and construction administration services to complete the project
- ❑ Not to Exceed a fee amount of \$543,825
- ❑ This project is budgeted in the 2021 Capital Improvement Program



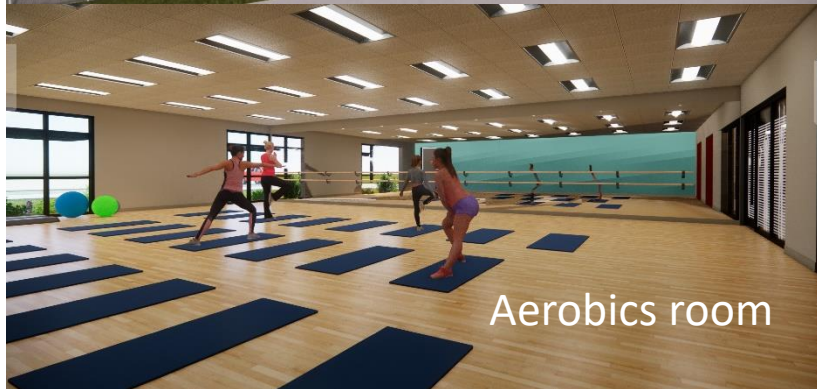
## Exhibit

## Conceptual Floor Plan

- ❑ Approved by Senior Advisory Board and Consented by the City Council
- ❑ Scope includes renovation, remodeling, and expansion
- ❑ New Gymnasium is not included in this phase

# Senior Center Proposed Plan

6



# BOB GILMORE SENIOR CENTER CONSTRUCTION PLAN

A brief timeline

NOV 2019



Started initial  
phase with RSA

AUG 2020



Discussion and  
direction from  
City Council

JAN 2021



Design  
agreement  
authorization  
from City  
Council

6-8

MONTHS



Design and  
Construction  
Documents

1 MONTH



Bidding for  
Construction

12-14 MONTHS



Construction

NOV 2022



Proposed landing date

# Alternatives

5

- ❑ Option 1: Do not move forward with the project at this time
- ❑ Option 2: Search for or consider a different architectural firm for the Professional Services Agreement
- ❑ Option 3: Authorize a Professional Service Agreement with Randall Scott Architects for design and construction phase services

# Recommendation

6

- City Council authorize the City Manager to enter into a Professional Service Agreement with Randall Scott Architects, Inc. in the amount of \$543,825 and that the City Manager is expressly authorized to execute any and all changes within the amounts set by state and local law



# City of Killeen

## Legislation Details

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**File #:** RS-21-009    **Version:** 1    **Name:** Amend CIAC Rules & Procedures  
**Type:** Resolution    **Status:** Resolutions  
**File created:** 12/30/2020    **In control:** City Council Workshop  
**On agenda:** 1/19/2021    **Final action:**  
**Title:** Consider a memorandum/resolution amending the Capital Improvements Advisory Committee Rules and Procedures.  
**Sponsors:** Public Works Department  
**Indexes:**  
**Code sections:**  
**Attachments:** [Staff Report](#)  
[Revised CIAC Rules and Procedures](#)  
[Presentation](#)

Date	Ver.	Action By	Action	Result
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## STAFF REPORT

**DATE:** January 19, 2021

**TO:** Kent Cagle, City Manager

**FROM:** Danielle Singh, Executive Director of Public Works

**SUBJECT:** Amendments to the Capital Improvements Advisory Committee Rules and Procedures

### **BACKGROUND AND FINDINGS:**

On October 16, 2018, City Council authorized the creation of the Capital Improvements Advisory Committee (CIAC) and appointed fifteen (15) members. The committee is required by the Texas Local Government Code, Chapter 395 for all municipalities that desire to impose an impact fee. By statute, the committee must have a minimum of five (5) members. Forty percent (40%) of the members must be members of the real estate, development, or building industry, and at least one member must reside in the extraterritorial jurisdiction (ETJ). The CIAC reviews and recommends land use assumptions, capital projects, and other items pertaining to the adoption and maintenance of impact fees.

On September 10, 2019, the CIAC Rules and Regulations were amended to reduce the number of members from fifteen (15) to ten (10) and to calculate a quorum based on the number of filled positions. It also clarified that members were appointed to a two-year term. These amendments were to alleviate the issues the committee had obtaining a quorum for multiple meetings.

On December 15, 2020 City Council discussed the current Rules and Regulations and provided direction to have the committee reduced to nine (9) members.

### **THE ALTERNATIVES CONSIDERED:**

1. Take no action. The existing Rules and Regulations would still be in effect.
2. Revise the Rules and Regulations to revise the number of positions to nine (9) members.

### **Which alternative is recommended? Why?**

Staff recommends that City Council revise the Rules and Regulations to set the number of positions to nine (9) members in accordance with recent direction provided by the City Council.

### **CONFORMITY TO CITY POLICY:**

This action conforms to City Policies

**FINANCIAL IMPACT:**

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

N/A

**Is this a one-time or recurring expenditure?**

N/A

**Is this expenditure budgeted?**

N/A

**If not, where will the money come from?**

N/A

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

N/A

**RECOMMENDATION:**

Staff recommends that City Council revise the Rules and Regulations to set the number of positions to nine (9) members in accordance with recent direction provided by the City Council.

**DEPARTMENTAL CLEARANCES:**

Public

Works City

Attorney

**ATTACHED SUPPORTING DOCUMENTS:**

Revised CIAC Rules and Procedures

# **CAPITAL IMPROVEMENTS ADVISORY COMMITTEE**

## **RULES AND PROCEDURES**

### **I. ORGANIZATION AND OFFICERS**

#### **101. Organization**

The Capital Improvements Advisory Committee shall consist of nine (9) regular members to be appointed for terms of two years and shall be organized and shall exercise such powers as prescribed herein. No less than 40 percent of the membership of the advisory committee must be representatives of the real estate, development, or building industries who are not employees or officials of a political subdivision or governmental entity. If the impact fee is to be applied in the extraterritorial jurisdiction of the City, the membership must include a representative from that area.

#### **102. Officers**

A Chairman and Vice-Chairman shall be elected annually from among the Committee's membership at the first available meeting after the appointment of members by the City Council of the City of Killeen and at such other times as these offices may become vacant.

#### **103. Duties**

- A. The Committee shall act under the authority of the Code of Ordinances of the City of Killeen and Chapter 395.058 of the Texas Local Government Code presently adopted or subsequently amended.
- B. The Chairman, or in his absence the Vice-Chairman, shall preside at all meetings, and shall decide all points of order or procedure. In the absence of both Chairman and Vice-Chairman, any member may preside at a meeting where quorum is present. All decisions of the Committee shall be over the signature of the Chairman.
- C. The Committee serves in an advisory capacity and is established to:

1. advise and assist the City Council in adopting land use assumptions;
2. review the capital improvements plan and file written comments;
3. monitor and evaluate implementation of the capital improvements plan;
4. file semiannual reports with respect to the progress of the capital improvements plan and report to the City Council any perceived inequities in implementing the plan or imposing the impact fee; and
5. advise the City Council of the need to update or revise the land use assumptions, capital improvements plan, and impact fee.

#### **104. Rules and Order**

Roberts Rules of Order, latest revision, shall be the Committee's final authority on all questions of procedure and parliamentary law not covered by these Rules and Procedures.

### **II. MEETINGS**

#### **201. Quorum**

A quorum shall consist of a majority of current members. The presiding officer shall count towards the quorum.

#### **202. Agenda**

A copy of the agenda shall be posted in the City Hall and the Police Department for at least 72 hours before the scheduled meeting.

#### **203. Meetings**

When there is business to be considered by the Committee, meetings shall be held quarterly.

## **204. Special Meetings**

Special meetings for any purpose may be held on the call of the Chairman.

## **205. Public Meetings**

All meetings shall be held in full compliance with the provisions of state law, ordinances of the City, and these Rules and Procedures.

# **III. HEARINGS AND DECISIONS**

## **301. Order of Business**

The Chairman shall call the Committee to order, and the members present and absent shall be recorded. The minutes of any preceding meeting shall be submitted for approval.

The Committee shall then hear and act upon items scheduled for consideration.

## **302. A motion may be made by any member other than the presiding officer. The presiding officer shall only be entitled to vote on a motion in the event there is a tie vote.**

A motion before the Committee shall require the affirmative vote of a majority of members present and not abstaining to pass.

# **IV. AMENDMENT**

## **401. Amendments**

Amendments to these Rules and Procedures may be adopted by the City Council.



## IMPACT FEE CAPITAL IMPROVEMENT ADVISORY COMMITTEE RULES AND PROCEDURES

RS-21-009

January 19, 2021

# Background

2

- ❑ On October 16, 2018, City Council authorized the creation of the Capital Improvements Advisory Committee (CIAC) and appointed fifteen (15) members
- ❑ CIAC cancelled multiple meetings due to lack of a quorum and several positions were declared vacant due to lack of attendance and resignations
- ❑ On September 10, 2019, the CIAC Rules and Regulations were amended to reduce the number of members from fifteen (15) to ten (10) and to calculate a quorum based on the number of filled positions
- ❑ Committee member appointments expired October 16, 2020
- ❑ On December 15, City Council directed staff to reduce membership to nine (9) positions

# Alternatives

3

- Take no action and proceed forward with ten (10) members
- Revise the Rules and Regulations to reduce the number of positions to nine (9) members

# Recommendation

4

- City Staff recommends that City Council revise the Capital Improvement Advisory Committee Rules and Regulations to reduce the number of positions to nine (9) members



# City of Killeen

## Legislation Details

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**File #:** RS-21-010      **Version:** 1      **Name:** Appointing Citizen Members to Various Boards & Commissions

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

**File created:** 1/4/2021      **In control:** City Council Workshop

**On agenda:** 1/19/2021      **Final action:**

**Title:** Consider a memorandum/resolution declaring vacancies on various citizen appointed boards and commissions and appointing members to fill the unexpired terms.

**Sponsors:** City Secretary

**Indexes:**

**Code sections:**

**Attachments:** [Staff Report](#)  
[Presentation](#)

Date	Ver.	Action By	Action	Result
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## STAFF REPORT

**DATE:** January 19, 2021

**TO:** Kent Cagle, City Manager

**FROM:** Traci Briggs, City Attorney

**SUBJECT:** Appointing Citizen Members to Various Boards & Commissions

### **BACKGROUND AND FINDINGS:**

The Mayor and City Council make annual appointments to the various boards, commissions, and committees each year and throughout the year as vacancies occur.

Section 2-118 of the Code of Ordinances states that persons appointed to city boards, commissions or committees can be effective members only if they attend the group's meetings regularly. In case of excessive absences, a board, commission, or committee member can be removed from office. Missing three (3) consecutive meetings or more than twenty-five (25) percent of meetings in a twelve-month period where the board meets more than four times per year shall constitute excessive absences. The city manager has been notified by the chairperson of the Senior Citizen Advisory Board that a member has missed more than three (3) consecutive meetings as defined by the code. The member with the attendance infraction is identified in the chart below in the status column as "Attendance."

In addition, Section 3-20(o) of the City Council's Governing Standards and Expectations states that citizen committees are most effective when members are able to communicate freely and that no city councilmember will be appointed as a member of a citizen committee. Two of the newly-elected councilmembers, Ken Wilkerson and Mellisa Brown, serve on several boards.

In October 2020 shortly after being appointed, a Planning and Zoning member resigned from their seat creating a vacancy. The member who resigned is identified in the chart below in the status column as "Resigned."

In order to declare vacancies and make appointments to fill the unexpired terms of the vacancies, City Council action is required.

Also, based on City Council direction in December 2020 regarding potential impact fees, the Capital Improvements Advisory Committee (CIAC) is required to be reinstated. This committee was previously created, but all member terms have since expired. The Committee is required by Texas Local Government Code Chapter 395 for all municipalities that desire to impose an impact fee. By statute, the committee must have a minimum of five (5) members. Forty percent (40%) of the members must be members of the real estate, development or building industry, and at least one member must reside in the City's extraterritorial jurisdiction.

**THE ALTERNATIVES CONSIDERED:**

No other alternatives were considered.

**CONFORMITY TO CITY POLICY:**

Making these appointments conforms to relevant city ordinances and policies.

***Board of Adjustment - Zoning (Sub-committee: K, Wilkerson, M. Brown)***

Current Member	Status	New Member	Comments
Ken Wilkerson	Councilmember		Alternate (unexpired term 20-22)
Vacant	No Apps (09/20)		Alternate (unexpired term 19-21)

***Planning and Zoning (Sub-committee: All Council)***

Current Member	Status	New Member	Comments
Mark Manning	Resigned		Citizen Rep (unexpired term 20-23)

***Recreation Services Advisory Committee (Sub-committee: All Council)***

Current Member	Status	New Member	Comments
Ken Wilkerson	Councilmember		District 4 Rep (unexpired term 20-22)

***Senior Citizen Advisory (Sub-committee: S. Fleming, D. Nash-King)***

Current Member	Status	New Member	Comments
Mellisa Brown	Councilmember		Citizen Rep (unexpired term 19-22)
Llewellyn Walker	Attendance		Citizen Rep (unexpired term 20-23)

***Capital Improvement Advisory Committee (Sub-committee: All Council)***

Current Member	New Member	Comments
Place 1		Real estate, development or building industry
Place 2		Real estate, development or building industry
Place 3		Real estate, development or building industry
Place 4		Real estate, development or building industry
Place 5		ETJ Resident
Place 6		Community Representative
Place 7		Community Representative
Place 8		Community Representative
Place 9		Community Representative

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

There is no current or future expenditure with these appointments.

**Is this a one-time or recurring expenditure?**

N/A

**Is this expenditure budgeted?**

N/A

**If not, where will the money come from?**

N/A

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

N/A

**RECOMMENDATION:**

Recommendation is to declare vacancies on various citizen appointed boards and commissions and appoint citizen members to fill the identified unexpired terms, and to appoint members to the reinstated Capital Improvement Advisory Committee.

**DEPARTMENTAL CLEARANCES:**

City Attorney

**ATTACHED SUPPORTING DOCUMENTS:**

N/A



# APPOINT CITIZENS TO BOARDS AND COMMISSIONS

RS-21-010

January 19, 2021

# Boards & Commissions

2

- ❑ The Mayor and City Council make annual appointments to various boards, commissions and committees each year and throughout the year as vacancies occur
- ❑ November Election, Resignations and Attendance Infractions have caused the following boards and commissions to need new members appointed:
  - ▣ Board of Adjustment – Zoning
  - ▣ Planning and Zoning Commission
  - ▣ Recreation Services Advisory Committee
  - ▣ Senior Citizen Advisory Board

# Boards & Commissions

3

## **Board of Adjustment – Zoning** (Sub-committee: K. Wilkerson, M. Brown)

Current Member	Status	New Member	Comments
Ken Wilkerson	Councilmember		Alternate (unexpired term 20-22)
Vacant	No Apps (09/20)		Alternate (unexpired term 19-21)

## **Planning and Zoning Commission** (Sub-committee: All Council)

Current Member	Status	New Member	Comments
Mark Manning	Resigned		Citizen Rep (unexpired term 20-23)

## **Recreation Services Advisory Board** (Sub-Committee: All Council)

Current Member	Status	New Member	Comments
Ken Wilkerson	Councilmember		District 4 Rep (unexpired term 20-22)

## **Senior Citizen Advisory Board** (Sub-committee: S. Fleming, D. Nash-King)

Current Member	Status	New Member	Comments
Mellisa Brown	Councilmember		Citizen Rep (unexpired term 19-22)
Llewellyn Walker	Attendance		Citizen Rep (unexpired term 20-23)

# Capital Improvement Advisory Committee

4

- ❑ Based on City Council direction regarding potential impact fees, the Capital Improvement Advisory Committee must be reinstated.
- ❑ All previous appointments have expired.
- ❑ Forty percent (40%) must be members of the real estate, development or building industry, and at least one must reside in the ETJ.

# CIAC Appointments

5

## Capital Improvements Advisory Committee

Current Member	New Member	Comments
Place 1		Real Estate, development or building industry
Place 2		Real Estate, development or building industry
Place 3		Real Estate, development or building industry
Place 4		Real Estate, development or building industry
Place 5		ETJ
Place 6		Community Representative
Place 7		Community Representative
Place 8		Community Representative
Place 9		Community Representative

# Recommendation

6

- Staff recommends that the City Council recognize board member attendance infractions and resignations on various boards and commissions, to declare vacancies in the identified positions, and to appoint citizen members to fill the identified unexpired terms as well as appoint members to CIAC.



# City of Killeen

## Legislation Details

<b>File #:</b>	RS-21-011	<b>Version:</b>	1	<b>Name:</b>	Set Public Hearing Water and Wastewater Impact Fees
<b>Type:</b>	Resolution	<b>Status:</b>			Resolutions
<b>File created:</b>	12/30/2020	<b>In control:</b>			City Council Workshop
<b>On agenda:</b>	1/19/2021	<b>Final action:</b>			
<b>Title:</b>	Consider a memorandum/resolution establishing a public hearing on March 9, 2021 for the Water and Wastewater Impact Fee Capital Improvement Plan and Land Use Assumptions in accordance with Texas Local Government Code Chapter 395.				
<b>Sponsors:</b>	Public Works Department				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	<a href="#">Staff Report</a> <a href="#">Presentation</a>				

Date	Ver.	Action By	Action	Result
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## STAFF REPORT

**DATE:** January 19, 2021

**TO:** Kent Cagle, City Manager

**FROM:** Danielle Singh, Executive Director of Public Works

**SUBJECT:** Set a public hearing date of March 9, 2021 for the Water and Wastewater Impact Fee Capital Improvement Plan and Land Use Assumptions

### **BACKGROUND AND FINDINGS:**

On December 8, 2020 City Council issued a motion of direction to move forward with the process of implementing impact fees. On December 15, 2020 City Council further directed staff to take the steps necessary in order for a Capital Improvement Advisory Committee (CIAC) with nine (9) members to be appointed and to proceed forward with the process to consider the adoption of water and wastewater impact fees utilizing the 2019 Water and Wastewater Impact Fee Study.

In order to continue moving forward with impact fees, it is necessary to set a public hearing date for the Water and Wastewater Impact Fee Capital Improvement Plan and Land Use Assumptions. Texas Local Government Code Chapter 395 requires the City Council adopt a resolution to set a public hearing date to consider the land use assumptions and impact fee capital improvement plan. Once the public hearing date is set, advertisements will be sent to notify the public and a copy of the plan will be available to the public on the City's website.

A resolution to set a public hearing on the Water and Wastewater Impact Fee Capital Improvement Plan and Land Use Assumptions is a very important step in the process of adopting impact fees. This will set the initial timeline for adopting impact fees. If Council sets the public hearing for March 9, 2020:

1. The CIAC will be required to provide written comments to the City Council on March 2, 2021.
2. The City Council will need to approve or reject the Water and Wastewater Impact Fee Capital Improvement Plan and Land Use Assumptions within 30 days of the public hearing.
3. If City Council approves the Water and Wastewater Impact Fee Capital Improvement Plan and Land Use Assumptions, they would also need to set the date for the second public hearing on impact fees at the same meeting. Once this date is set, the final timeline for the adoption of impact fees cannot be altered.

### **THE ALTERNATIVES CONSIDERED:**

1. Do not continue the process of implementing impact fees.
2. Determine a later date to conduct a public hearing.
3. Approve the ordinance establishing a date for the public hearing.

**Which alternative is recommended? Why?**

Staff recommends alternative 3. Approval of the resolution establishing the public hearing date will allow the water and wastewater impact fee process to continue forward on schedule.

**CONFORMITY TO CITY POLICY:**

This item complies with all federal, state, and local policies.

**FINANCIAL IMPACT:**

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

N/A

**Is this a one-time or recurring expenditure?**

N/A

**Is this expenditure budgeted?**

N/A

**If not, where will the money come from?**

N/A

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

N/A

**RECOMMENDATION:**

City Staff recommends that the City Council approve the resolution establishing a public hearing on March 9, 2021 for the Impact Fee Water and Wastewater Capital Improvement Plan and Land Use Assumptions in accordance with Texas Local Government Code Chapter 395.

**ATTACHMENTS:**

N/A



## RESOLUTION TO SET THE DATE FOR 1<sup>ST</sup> PUBLIC HEARING FOR IMPACT FEES

RS-21-011

January 19, 2021

# Impact Fee Timeline

2

- Appoint a Capital Improvement Advisory Committee (CIAC) **January 26, 2021**
- Adopt a resolution to set the date for a public hearing on Land Use Assumptions and the Capital Improvement Plan **January 26, 2021**
- Receive CIAC recommendations regarding the land-use assumptions (growth projections) and potential projects that could apply to future impact fees **March 2, 2021**
- Hold a public hearing on Land Use Assumptions and Capital Improvement Plan **March 9, 2021**
- Consider adoption of the Land Use Assumptions and Capital Improvement Plan **March 9, 2021**

# Impact Fee Timeline Continued

3

- Adopt a resolution to set a date for a public hearing on the adoption of water and wastewater impact fees  
March 9, 2021
- Receive CIAC recommendation on the adoption of water and wastewater impact fees April 6, 2021
- Hold a second public hearing on the adoption of water and wastewater impact fees April 13, 2021
- Consider an ordinance adopting water and wastewater impact fees April 13, 2021

# Background

4

- Texas Local Government Code requires the City Council to set a public hearing date by resolution, provide public notice to the public 30 days in advance, and make information available to the public
- Public hearing date sets the initial timeline for adopting impact fees
  - ▣ CIAC must provide comments to City Council on March 2, 2021
  - ▣ Within 30 days of the public hearing, City Council will need to approve or reject Capital Improvement Plan and Land Use Assumptions
  - ▣ If approved, City Council is required to set a date for 2<sup>nd</sup> public hearing at the same meeting
    - This sets the final timeline for the adoption of impact fees

# Alternatives

5

- ❑ Do not set a date for the 1<sup>st</sup> public hearing on Land Use Assumptions and Impact Fee Capital Improvements Plan or continue the process of implementing impact fees
- ❑ Set an alternate date for the 1<sup>st</sup> public hearing on Impact Fees after March 9, 2021
- ❑ Approve the resolution setting the 1<sup>st</sup> public hearing on Impact Fees for March 9, 2021
  - ▣ Publish notice of the public hearing 30 days in advance
  - ▣ Post Land Use Assumptions and Impact Fee Water and Wastewater Capital Improvements Plan on the City website for public viewing

# Recommendation

6

- City staff recommends that the City Council approve the resolution setting a public hearing date of March 9, 2021 to consider the Impact Fee Water and Wastewater Capital Improvements Plan and Land Use Assumptions, provide public notice, and make information available to the public in accordance with State Law



# City of Killeen

## Legislation Details

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**File #:** OR-21-002    **Version:** 1    **Name:** Street Lighting Ordinance Amendment  
**Type:** Ordinance    **Status:** Ordinances  
**File created:** 1/4/2021    **In control:** City Council Workshop  
**On agenda:** 1/19/2021    **Final action:**  
**Title:** Consider an ordinance to amend the City of Killeen Code of Ordinances Sec. 26-107(b) to decrease the maximum spacing of street lights and Sec. 26-107(e) to include LED fixtures as an alternative option for street lighting.  
**Sponsors:** Public Works Department  
**Indexes:**  
**Code sections:** Sec. 26-107. - Street lighting  
**Attachments:** [Staff Report](#)  
[Oncor Street Light Analysis](#)  
[Ordinance](#)  
[Presentation](#)

Date	Ver.	Action By	Action	Result
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## STAFF REPORT

**DATE:** January 19, 2021

**TO:** Kent Cagle, City Manager

**FROM:** Danielle Singh, Executive Director of Public Works

**SUBJECT:** Amendment to City Code of Ordinances, Sec. 26-107(b) and 26-107(e).

### **BACKGROUND AND FINDINGS:**

Chapter 26 of the Code of Ordinances regulates "Subdivision and Other Property Development". Sec. 26-107 provides development standards for street lighting infrastructure. Sec. 26-107 (b) states, "Street lights will be installed at intersections, curves, dead ends, cul-de-sacs and where spacing exceeds twelve hundred (1,200) feet." City staff utilizes this section as a policy for determining the need for new street lights requests in the City. Staff developed a streetlights map based on each pole's location data provided by Oncor. Staff then randomly selected three (3) subdivisions in each council district and a total of twenty different functional classification streets within the City to analyze average distance in between streetlights. Staff has determined that the actual spacing of most streetlights in the City averages generally between 400 feet and 600 feet. This is largely due to the fact that streetlights are also required at intersections. Additionally, staff has completed research on street light ordinances in peer cities. Staff found that many other cities' policies space street lights at 300 feet (Temple, Belton, Georgetown, Leander, and Round Rock) or 600 feet (Harker Heights and Copperas Cove). Staff proposes this code amendment to replace twelve hundred (1,200) feet with six hundred (600) feet in Sec. 26-107 (b). This will be consistent with the ongoing practice in the City. It will also ensure City of Killeen's standard is comparable with other peer cities. Street light policies are typically included with subdivision or development codes, but also applied to existing areas when requests are made for new street lights.

Sec. 26-107 (e) states, "Street lights on local and collector streets shall be at least 100-watt high pressure sodium vapor or equivalent. Street lights on major collectors and arterials shall be at least 250-watt high pressure sodium vapor or equivalent." Current code provides an alternative option to high pressure sodium (HPS) but it does not specifically mention LED which is a better option from a long term energy efficiency and environmental benefits perspective. Currently, KISD plans to install LED lights along portion of Chaparral Road to be built as part of KISD High School 6. Staff proposes to add LED fixtures as an alternative option in Sec. 26-107 (e). Specific inclusion of LED fixtures will assist City staff to implement more LED street lights in the City in future.

All power costs for street lights will be borne by the City. At the present time, the City is paying \$12.28/month per 100-watt light and \$16.06/month per 250-watt light. Since the implementation of the present policy of a 1,200-foot spacing is actually resulting in an average spacing less than a 600-foot spacing, it is expected that this code amendment will not result in any cost increase and, if any, such cost increase will be relatively minor.

Per City Code Sec. 26-107 (d) and (f), developer is responsible for the cost of street light installation. However, Oncor has been installing and maintaining street lights at no additional costs following the current service agreement. Therefore, amending the City Code will not have any financial impact to the development community. Since the reduced spacing criteria aligns with the estimated spacing of streetlights throughout the City, we are anticipating financial impacts to the City in existing areas to be minimal. Additional streetlights within existing areas would only be installed if the spacing does not meet the revised criteria and only after a resident requests an additional street light.

### **THE ALTERNATIVES CONSIDERED:**

1. Continue with the current adopted maximum streetlight spacing of 1,200 feet in the ordinance and the language as currently written related to type of street lights.
2. Amend Sec 26-107(b) to require a maximum streetlight spacing of 600 feet and amend 26-107(e) to insert LED fixtures as an alternative.

### **Which alternative is recommended? Why?**

Staff recommends option 2 amending Sec. 26-107(b) and Sec. 26-107(e) as proposed. Reducing the spacing requirement for street lighting is consistent with both the City's practice and peer cities' requirements. Adding LED lights provides an energy efficient alternative.

### **CONFORMITY TO CITY POLICY:**

The proposed ordinance revisions conform to all applicable policies.

### **FINANCIAL IMPACT:**

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

Expenditures would be based on the amount of new development that occurs and the number of requests by citizens. An increased number of street lights is included in the budget on an annual basis.

#### **Is this a one-time or recurring expenditure?**

Once a new street light is installed, there is a recurring monthly charge.

#### **Is this expenditure budgeted?**

Yes, \$757,000 is budgeted for street lights electricity in account 010-3445-434.44-49.

**If not, where will the money come from?**

N/A

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

Yes, it is anticipated that the existing budget is sufficient. However, if an abnormally large amount of requests are received, it is possible that additional funds may be needed.

**RECOMMENDATION:**

Staff recommends that the City Council approve the ordinance amending Sec. 26-107(b) to decrease the maximum spacing of street lights and Sec. 26-107(e) to include LED fixtures as an alternative option for street lighting.

**DEPARTMENTAL CLEARANCES:**

Public Works  
Finance  
City Attorney

**ATTACHED SUPPORTING DOCUMENTS:**

Oncor Street Light Analysis  
Ordinance

**SUBDIVISION STREET LIGHT COUNTS AND AVERAGES**

SUBDIVISION NAME	NUMBER OF STREET LIGHTS POLE	AVERAGE DISTANCE BETWEEN STREET LIGHTS	CITY COUNCIL DISTRICT
LEON HEIGHTS	18	550	1
HILLANDALE	18	400	1
LAKEVIEW PARK SUBDIVISION 2ND REPLAT	20	358	1
YOWELL RANCH	17	607	2
THE MEADOWS	33	367	2
WHITE ROCK ESTATES PHASE ONE	28	454	2
SPLAWN RANCH and COSPER RIDGE ESTATES	44	428	3
JASPER HEIGHTS	23	445	3
TRIMMIER ESTATES PHASE FOUR	13	586	3
ROBIN HOOD ESTATES	12	432	4
GOODNIGHT RANCH	24	675	4
THE LANDING AT CLEAR CREEK PHASE III	15	465	4

### Street Lights Measured Along Streets

Street Name	Street Type	Limits	Number of Street Lights Pole	Avg Distance between Street Lights	Council District
Hoover Ave (E and W)	Local	Entire Street	6	357	1
60th St	Collector (Residential)	Entire Street	14	431	1
Bluestem Ln	Local	Entire Street	5	674	2
Zephyr Rd	Collector	Entire Street	26	401	2
Westcliff Rd	Minor Arterial	Entire Street	52	344	1
Chippendale Dr	Local	Entire Street	5	624	3
10th St	Collector (Commercial)	Entire Street	28	290	3 and 4
Verde Dr	Local	Entire Street	10	278	4
Florence Rd	Collector (Commercial)	Entire Street	26	464	3
Robinett Rd	Minor Arterial	Entire Street	20	491	4
N WS Young Dr	Minor Arterial	Rancier Ave to Westcliff RD	13	585	1
W Elms Rd	Minor Arterial	Florence Rd to Dustin Ct	15	434	3 and 4
Illinois Ave	Collector (Commercial)	SWS Young Dr to E CTE	8	811	2
2nd St (N and S)	Collector (Commercial)	Rancier Ave to Hallmark	23	228	3
Glennwood Dr	Local	Entire Street	10	542	2
Andover Dr	Local	Entire Street	12	327	3
Causeway Ct	Local	Entire Street	6	614	4
Edgefield St	Collector (Residential)	Entire Street	23	426	4
Lake Rd	Collector (Residential)	Entire Street	28	410	1
Old Fm 440	Collector (Residential)	Entire Street	31	392	3

**AN ORDINANCE AMENDING SECTION 26-107, STREET LIGHTING, OF THE CODE OF ORDINANCES OF THE CITY OF KILLEEN, TEXAS; AMENDING STREET LIGHTING DISTANCE REQUIREMENT AND PROVIDING FOR ADDITIONAL TYPES OF STREET LIGHTS; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Killeen, Texas is a home-rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code;

**WHEREAS**, the City of Killeen has declared the application and enforcement of the City's subdivision and development regulations to be necessary for the promotion of the public safety, health, convenience, comfort, prosperity and general welfare of the City; and,

**WHEREAS**, the City Council desires to create subdivision and development regulations that will help ensure that future development is safe, orderly, and visually appealing; and,

**WHEREAS**, the City Council desires to provide adequate street lighting for the protection of the public and property; and,

**WHEREAS**, the City Council desires to provide acceptable design standards for street lights in the City of Killeen to achieve high quality and safe living environments; and,

**WHEREAS**, the City Council desires to amend subdivision and development regulations to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality;

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

**SECTION I.** That Chapter 26, Section 26-107, of the City of Killeen Code of Ordinances is hereby amended to read as follows:

Sec. 26-107. - Street lighting.

- (a) Adequate street lighting shall be provided for the protection of the public and property and shall be installed in all new subdivisions within the corporate limits of the city of Killeen.
- (b) Street lights will be installed at intersections, curves, dead ends, cul-de-sacs and where spacing exceeds ~~twelve hundred (1,200)~~ six hundred (600) feet.
- (c) A street light plan shall be submitted with the construction plans required by section 26-81 of this chapter. The city engineer shall approve the street lighting plan.

- (d) The developer shall select and have installed all of the lines, poles, luminaries and lamps required to comply with the approved street light plan. The minimum acceptable design for street lights in the city of Killeen shall be embedded round fiberglass poles with post top lantern style fixtures. The city reserves the right to require round tapered galvanized steel poles with cobra head fixtures when essential to provide the necessary degree of illumination. All street light infrastructures shall be in dedicated utility easements or rights of way. Installation procedures and acceptable standards for street lights shall be governed by the design and specification standards of the electric utility company serving the subdivision. The use of special non-standard poles or fixtures from sources other than the electric utility shall not be accepted for dedication to the public.
- (e) Street lights on local and collector streets shall be at least 100-watt high pressure sodium vapor or 35-45 watt LED or equivalent. Street lights on major collectors and arterials shall be at least 250-watt high pressure sodium vapor or 65-75 watt LED or equivalent.
- (f) The developer shall be responsible for the cost of street light installation including the cost of service lines to supply electricity to the street lights and all engineering costs not borne by the electrical service provider. Developers may decrease their installation costs by completing all or part of the installation of street lighting to include the necessary trenching and installation of conduit to the location of required street light placement, as acceptable to the electric utility provider and as required by the street lighting plan.
- (g) Once satisfactorily installed, approved, and accepted, the street lights shall be dedicated to public use with maintenance of the street light being provided by the electric utility company serving the area. The electric utility company providing service to the area shall furnish electric energy to installed and dedicated street lights. The city of Killeen will pay the energy costs of dedicated street lights located within the city.
- (h) Extraterritorial jurisdiction (ETJ) - A street lighting plan shall be developed for subdivisions in the ETJ and any utility easements required to execute the plan shall be dedicated for public use. Installation of street lights will not be required; however, in preparation for future street light installation, necessary trenching and installation of conduit to the location of required street light placement will be accomplished by the developer, as required by the street lighting plan.

**SECTION II.** That all ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

**SECTION III.** That should any section or part of any section, paragraph or clause of this ordinance be declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, force or effect of any other section or sections or part of a section or paragraph of this ordinance.

**SECTION IV.** That the Code of Ordinances of the City of Killeen, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

**SECTION V.** That this ordinance shall be effective on February 1, 2021.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this 26<sup>th</sup> day of January, 2021, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 *et seq.*

**APPROVED**

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Jose L. Segarra, MAYOR

**ATTEST:**

**APPROVED AS TO FORM:**

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Lucy C. Aldrich, CITY SECRETARY

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Traci S. Briggs, CITY ATTORNEY

ORD \_\_\_\_\_

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



## ORDINANCE TO AMEND STREETLIGHT CODES

OR-21-002

January 19, 2021

# Background

2

- ❑ Chapter 26 of the Code of Ordinances provides development standards for street lighting
- ❑ Maximum streetlight spacing is 1,200 feet
- ❑ Existing Average spacing is 400-600 feet
  - ▣ Streetlights required at intersections, curves, and in cul-de-sacs
- ❑ Typical streetlight spacing standard is 300-600 feet
- ❑ Proposed amendment includes an option for LED fixtures
- ❑ Development standards used to evaluate need for additional lighting in existing neighborhoods, when requested by a resident
- ❑ Oncor charges a monthly rate per streetlight, which includes installation



# Alternatives

4

- ❑ Do not amend the ordinance and continue with a maximum streetlight spacing of 1,200 feet
- ❑ Amend the ordinance to specify an alternative maximum spacing
- ❑ Amend the ordinance to reduce the maximum streetlight spacing to 600 feet and include LED fixtures as an alternative

# Recommendation

5

- Amend Chapter 26 of the Code of Ordinances to decrease the maximum streetlight spacing from 1,200 feet to 600 feet and include LED fixtures as an alternative option for street lighting



# City of Killeen

## Legislation Details

<b>File #:</b>	PH-21-007	<b>Version:</b>	1	<b>Name:</b>	Budget Amendment
<b>Type:</b>	Ordinance/Public Hearing	<b>Status:</b>		<b>Status:</b>	Public Hearings
<b>File created:</b>	11/13/2020	<b>In control:</b>		<b>In control:</b>	City Council Workshop
<b>On agenda:</b>	1/19/2021	<b>Final action:</b>		<b>Final action:</b>	
<b>Title:</b>	HOLD a public hearing and consider an ordinance amending the FY 2021 Annual Budget of the City of Killeen to authorize the carry forward of FY 2020 expenditure budgets to the FY 2021 budget and adjust revenue and expenditure accounts in multiple operating, special revenue, internal service, and capital improvement project funds.				
<b>Sponsors:</b>	Finance Department				
<b>Indexes:</b>	Budget Amendments				
<b>Code sections:</b>					
<b>Attachments:</b>	<a href="#">Staff Report</a> <a href="#">Ordinance</a> <a href="#">Presentation</a>				

Date	Ver.	Action By	Action	Result
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## STAFF REPORT

**DATE:** January 19, 2021  
**TO:** Kent Cagle, City Manager  
**FROM:** Jonathan Locke, Executive Director of Finance  
**VIA:** Miranda Drake, Director of Budget  
**SUBJECT:** Budget Amendment

### **BACKGROUND AND FINDINGS:**

This budget amendment predominantly addresses four major initiatives that include carrying forward funds from FY 2020 to FY 2021 for contracts and commitments that were not completed in FY 2020; appropriating funds for specific programs and grants; recognizing funds to be reimbursed for fire deployments and a TML insurance claim on the Transfer Station; and appropriating the Water & Sewer Revenue and Refunding Bonds issued in November 2020.

#### Carry Forward -

City Charter (Article VII, Section 71) states that all appropriations shall lapse at the end of the fiscal year to the extent that they shall not have been expended or lawfully encumbered. During the course of a fiscal year, there are contracts and commitments that are entered into by the City that begin in the current fiscal year and are completed in the next fiscal year.

A number of outstanding contracts and commitments for projects and/or services were not completed nor received by the City prior to the close of the fiscal year ended September 30, 2020. In order to complete contracted projects and/or services, FY 2020 appropriations need to be carried forward to the FY 2021 Annual Budget.

<b>FY 2020 Carry Forwards</b>	<b>Revenue Budget</b>
General Fund	\$54,809
Internal Service Funds	316,917
Aviation Fund	30,000
Drainage Fund	9,018
Airport Improvement Grant (AIP) Fund	1,916,149
<b>TOTAL</b>	<b>\$2,326,893</b>

<b>FY 2020 Carry Forwards</b>	<b>Expenditure Budget</b>
General Fund	\$581,754
Internal Service Funds	316,917

Aviation Fund	30,000
Water and Sewer Fund	42,011
Solid Waste Fund	81,781
Special Revenue Funds	207,437
Capital Improvement Funds	12,757,277
<b>TOTAL</b>	<b>\$14,017,177</b>

Programs and Grants-

There are five programs and grants addressed in this budget amendment:

1. Recreation Services entered into an agreement with Tivity Health to join the Silver Sneaker Health & Fitness Program in FY 2021. This budget amendment includes recognizing the associated revenues and expenditures estimated to be received in FY 2021.
2. Due to effects of COVID on the Hotel Occupancy Fund, City departments no longer receive a fee waiver to rent space at the Killeen Civic and Conference Center (KCCC). This budget amendment includes appropriating \$2,400 to rent a room at the KCCC for the employee awards banquet.
3. In recent past, Airport Improvement Program (AIP) grants requiring a grant match have been transferred from the Passenger Facility Charge (PFC) fund to the AIP grant fund. It has been determined this creates unnecessary hardship in accounting for grant activity. This budget amendment resolves the situation by returning the grant match and associated expense back to the Passenger Facility Charge (PFC) fund.
4. The budget amendment includes appropriating the Edward Byrne Memorial Justice Assistance Grant (JAG) for FY 2020. On November 10, 2020, the City Council approved the submission of the grant and authorized the City Manager to execute the interlocal agreement. Of the \$74,921 grant, \$37,835 will go to the City of Killeen to purchase computerized audio/visual equipment to improve training at the department's police academy; \$16,858 to the City of Temple; and \$20,228 to Bell County.
5. In addition, this budget amendment appropriates fund balance for the Federal and State Seizure funds. These funds are restricted in their use according to federal and state law.

<b>FY 2021 Programs/Grants/Miscellaneous</b>	<b>Revenue Budget</b>
General Fund	\$7,650
Special Revenue Funds	77,371
Airport Improvement Grant (AIP) Fund	(695,000)
<b>TOTAL</b>	<b>(\$609,979)</b>

<b>FY 2021 Programs/Grants/Miscellaneous</b>	<b>Expenditure Budget</b>
General Fund	\$7,650
Special Revenue Funds	566,047

Airport Improvement Grant (AIP) Fund	(695,000)
Passenger Facility Charge (PFC) Fund	(200,000)
<b>TOTAL</b>	<b>(\$321,303)</b>

Reimbursements -

There are two reimbursements to be recognized in this budget amendment:

1. The City of Killeen Fire Department is part of the Texas Intrastate Fire Mutual Aid System (TIFMAS) and the Texas A&M Engineering Extension Service (TEEX) Texas Task Force 1. Both groups require specialized training for specific rescue missions. Depending on the mission, the employees with the necessary qualifications are then deployed.

Due to multiple recent natural disasters, the Fire Department deployed several employees to assist with the California wildfires, hurricane Delta, and tropical cyclone Zeta. The City of Killeen will receive reimbursement from the applicable agencies for these expenditures. This budget amendment recognizes the expenditures and associated reimbursements related to the fire deployments.

2. Appropriating the revenue and offsetting expense for insurance proceeds received from Texas Municipal League for the Transfer Station Fire that occurred on August 18, 2020.

<b>FY 2021 Reimbursements</b>	<b>Revenues</b>
General Fund	\$177,047
Solid Waste Fund	309,362
<b>TOTAL</b>	<b>\$486,409</b>

<b>FY 2021 Reimbursements</b>	<b>Expenditures</b>
General Fund	\$177,047
Solid Waste Fund	309,362
<b>TOTAL</b>	<b>\$486,409</b>

Water & Sewer Bond Issue -

In November 2020, the City issued \$19 million in bonds (proceeds totaled \$22.2 million due to \$3.2 million bond premium) to address several water and sewer infrastructure projects and refunded nearly \$24 million in bonds to save on interest costs. This budget amendment recognizes the bond proceeds and creates the budget for the water and sewer infrastructure projects.

<b>FY 2021 Water &amp; Sewer Bond Issue</b>	<b>Revenue Budget</b>
Water & Sewer Bond Fund	\$22,231,476
Water & Sewer Fund	23,957,191
<b>TOTAL</b>	<b>\$46,188,667</b>

<b>FY 2021 Water &amp; Sewer Bond Issue</b>	<b>Expense Budget</b>
Water & Sewer Bond Fund	\$22,231,476
Water & Sewer Fund	23,957,191
<b>TOTAL</b>	<b>\$46,188,667</b>

### **THE ALTERNATIVES CONSIDERED:**

- 1) Do not approve the ordinance amending the FY 2021 Annual Budget.
- 2) Approve the ordinance amending the FY 2021 Annual Budget.

### **Which alternative is recommended? Why?**

Option 2 is recommended to approve the ordinance amending the FY 2021 Annual Budget.

### **CONFORMITY TO CITY POLICY:**

The City's Financial Governance Policies, Section V. Budget Administration (B)(1) states that City Council may amend or change the budget by ordinance.

### **FINANCIAL IMPACT:**

Upon approval, expenditure accounts will be amended in the FY 2021 Budget as follows:

- General Fund - increase of \$239,506 in revenues and \$766,451 in expenditures. Net result is a decrease of \$526,945 in fund balance.
- Water and Sewer Fund - increase of \$23,957,161 in revenues and \$23,999,202 in expenses. The bond refunding accounts for the majority of the increase in revenue and expense. Net result is a decrease of \$42,011 in fund balance.
- Solid Waste Fund - increase of \$309,362 in revenues and \$391,143 increase in expenses. Net result is a decrease of \$81,781 in fund balance.
- Drainage Fund - increase of \$9,018 in revenues for the sale of vehicle to General Fund.
- Aviation Fund - increase of \$30,000 in revenues and \$30,000 in expenses.
- Special Revenue Funds - increase of \$77,371 in revenues and \$773,484 in expenses.
- Internal Service Funds - increase of \$316,917 in revenues and \$316,917 in expenses.
- Capital Improvement Project Funds - increase of \$23,452,625 in revenues and \$34,093,753 in expenses. \$22.2 million of this amount is for the new Water & Sewer bond issue.

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

N/A

### **Is this a one-time or recurring expenditure?**

N/A

**Is this expenditure budgeted?**

N/A

**If not, where will the money come from?**

N/A

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

N/A

**RECOMMENDATION:**

City Council approve the ordinance amending the FY 2021 Annual Budget.

**DEPARTMENTAL CLEARANCES:**

Finance

Legal

**ATTACHED SUPPORTING DOCUMENTS:**

Ordinance

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KILLEEN, TEXAS, AMENDING THE FY 2021 ANNUAL BUDGET OF THE CITY OF KILLEEN TO AUTHORIZE THE CARRY FORWARD OF FY 2020 EXPENDITURE BUDGETS TO THE FY 2021 BUDGET AND ADJUST REVENUE AND EXPENDITURE ACCOUNTS IN MULTIPLE OPERATING, SPECIAL REVENUE, INTERNAL SERVICE, AND CAPITAL IMPROVEMENT PROJECT FUNDS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING A SAVINGS CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, a budget for operating the municipal government of the City of Killeen for the Fiscal Year October 1, 2020 to September 30, 2021, has been adopted by City Council in accordance with the City Charter; and

**WHEREAS**, it is the desire of the Killeen City Council to amend the FY 2021 Annual Budget; and

**WHEREAS**, the budget amendment requires City Council approval;

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

**SECTION 1.** That Ordinance 20-043, adopting a budget for operating the municipal government of the City of Killeen for the Fiscal year October 1, 2020 to September 30, 2021, be amended as to the portion of said budget as follows:

**Revenues:**

Account Number	Description	Original Budget	Budget Change	Amended Budget
010-0000-331.01-01	USDOJ	\$ 54,116	\$ 24,515	\$ 78,631
010-0000-331.01-01	USDOJ	78,631	30,294	108,925
010-0000-331.02-04	Fire / Other Grants	-	144,147	144,147
010-0000-334.02-05	Fire / TEEEX - Task Force	-	32,900	32,900
010-0000-347.10-01	Silver Sneakers	-	7,650	7,650
207-0000-332.01-01	USDOJ (JAG 20 Grant)	87,102	74,921	162,023
208-0000-392.01-01	Sale of Assets	-	2,450	2,450
363-0000-393.01-01	Bond Proceeds	-	19,050,000	19,050,000
363-0000-393.02-06	Premium	-	3,181,476	3,181,476
524-0000-332.15-02	USDOT-FAA	6,255,000	1,916,149	8,171,149
524-0000-391.05-29	Transfer In from Fund 529 - PFC Fund	695,000	(695,000)	-
527-0000-334.15-02	Aviation / TXDOT	50,000	30,000	80,000
540-0000-392.02-01	Insurance Proceeds	50,000	309,362	359,362
550-0000-393.02-01	Bond Proceeds	-	23,755,000	23,755,000
550-0000-393.02-06	Premium	-	202,191	202,191
575-0000-391.03-49	Transfer In from Fund 349	-	9,018	9,018
627-0000-331.01-01	USDOJ	-	173,211	173,211
627-0000-331.01-01	USDOJ	173,211	143,706	316,917
	Total	\$ 7,443,060	\$ 48,391,990	\$ 55,835,050

**Expenditures:**

<b>Account Number</b>	<b>Description</b>	<b>Original Budget</b>	<b>Budget Change</b>	<b>Amended Budget</b>
010-1005-416.47-11	Legal Services (City Attorney)	\$ 50,000	\$ 31,506	\$ 81,506
010-2010-415.46-40	Computer Equip/Software (Finance)	5,411	2,700	8,111
010-2305-418.44-55	Facilities Rental	-	2,400	2,400
010-2305-418.47-01	Consulting (HR)	173,925	14,271	188,196
010-3040-429.41-60	Food Supplies	8,000	7,650	15,650
010-3215-423.40-05	Full-Time Salaries	836,238	(2,400)	833,838
010-3215-423.50-32	Contract Labor (Library)	59,904	8,512	68,416
010-3229-426.42-10	Buildings (KAAC)	61,714	32,390	94,104
010-3258-426.61-02	Buildings (Building Services)	-	34,808	34,808
010-6035-441.40-15	Overtime (Police)	1,200,000	15,001	1,215,001
010-6035-441.40-15	Overtime (Police)	1,215,001	10,000	1,225,001
010-6035-441.41-63	Ammunition (Police)	50,000	15,072	65,072
010-6050-441.41-20	Uniforms & Clothing (Police)	47,782	32,775	80,557
010-6050-441.41-63	Ammunition (Police)	-	42,045	42,045
010-7001-442.44-30	Travel & Training (Fire)	2,700	2,300	5,000
010-7001-442.47-01	Consulting (Fire)	-	9,267	9,267
010-7070-442.40-15	Overtime (Fire Operations)	214,890	141,262	356,152
010-7070-442.40-15	Overtime (Fire Operations)	356,152	10,000	366,152
010-7070-442.40-86	Firefighter Retirement & Relief	2,208,571	18,364	2,226,935
010-7070-442.40-87	Social Security	886,180	8,758	894,938
010-7070-442.40-88	Medicare	207,252	2,048	209,300
010-7070-442.40-89	Workers Compensation	267,973	1,722	269,695
010-7070-442.41-20	Uniforms & Clothing (Fire)	259,899	87,052	346,951
010-7070-442.41-65	Supplies (Fire)	35,700	39,627	75,327
010-7070-442.42-51	Vehicle Maintenance	242,225	68	242,293
010-7070-442.44-30	Training & Travel	39,095	4,824	43,919
010-7070-442.46-35	Equipment & Machinery (Fire)	18,000	25,424	43,424
010-7070-442.61-35	Equipment & Machinery (Fire)	6,000	49,519	55,519
010-9501-491.47-01	Consulting (Non-Departmental)	139,249	99,677	238,926
010-9575-491.41-75	Medical & Chemical	-	9,514	9,514
010-9575-491.41-75	Medical & Chemical	9,514	10,294	19,808
207-6000-441.46-35	Equipment & Machinery (Police Grant)	43,648	61,008	104,656
207-6000-441.46-40	Computer Equipment/Software	6,360	2,791	9,151

**Expenditures:**

<b>Account Number</b>	<b>Description</b>	<b>Original Budget</b>	<b>Budget Change</b>	<b>Amended Budget</b>
207-6000-441.55-43	Grants to Other Agencies	\$ 43,454	\$ 37,086	\$ 80,540
207-6000-441.61-40	Computer Equipment/Software	-	35,044	35,044
208-6000-441.50-20	Reserve Appropriation	-	148,737	148,737
208-7072-442.46-35	Equipment & Machinery	-	2,450	2,450
209-6000-441.42-43	Computer Software	-	2,960	2,960
209-6000-441.42-90	Repair & Maintenance	-	1,315	1,315
209-6000-441.44-30	Travel and Training	-	4,858	4,858
209-6000-441.46-35	Machinery	-	17,867	17,867
209-6000-441.50-20	Reserve Appropriation	-	312,939	312,939
209-6000-441.61-40	Computer Equip/Software (Police Seizure)	-	42,800	42,800
214-2020-415.55-43	Grants to the Arts	84,000	74,043	158,043
233-3250-426.50-86	Families In Crisis	1,368,117	29,000	1,397,117
233-3250-426.50-86	Program Income Expense	1,397,117	586	1,397,703
349-8834-493.61-10	Motor Vehicles (Public Works)	137,075	204,880	341,955
349-8860-493.61-10	Motor Vehicles (Police)	1,729,971	1,174,753	2,904,724
349-8870-493.61-10	Motor Vehicles (Fire)	699,400	5,134,059	5,833,459
349-8895-493.50-20	Reserve Appropriation	-	226,114	226,114
349-8927-493.61-40	Computer Equipment/Software	2,000,000	8,957	2,008,957
349-8930-493.46-35	Equipment & Machinery (Parks Security Cameras)	-	27,336	27,336
349-8930-493.69-01	Design/Engineering (Recreation Services)	-	127,000	127,000
349-8930-493.69-03	Construction (LCP Playground)	-	223,372	223,372
349-8970-493.69-01	Design/Engineering (Central Fire Dormitory)	20,000	8,200	28,200
349-8970-493.69-01	Design/Engineering (Fire)	28,200	75,000	103,200
349-8970-493.69-01	Design/Engineering (Fire)	103,200	50,000	153,200
349-8970-493.69-03	Construction (Central Fire Dormitory)	110,000	57,890	167,890
349-8995-493.69-05	Contingency	-	727,830	727,830
349-9501-491.95-75	Transfer Out to Fund 575	-	9,018	9,018
363-8934-493.69-01	Design/Eng (Park St Booster Pump Station)	-	120,000	120,000
363-8934-493.69-01	Design/Eng (SWS Chaparral Pump Station)	120,000	448,500	568,500
363-8934-493.69-01	Design/Eng (24-IN Highway 195 Water Line)	568,500	908,500	1,477,000
363-8934-493.69-01	Design/Eng (Hwy 195 Ground Storage Tank)	1,477,000	289,800	1,766,800
363-8934-493.69-03	Construction (South Water Supply)	-	3,864,000	3,864,000
363-8934-493.69-03	Construction (Chaparral Rd WW Imprv)	3,864,000	1,840,000	5,704,000

**Expenditures:**

<b>Account Number</b>	<b>Description</b>	<b>Original Budget</b>	<b>Budget Change</b>	<b>Amended Budget</b>
363-8934-493.69-03	Construction (Park St Booster Pump Station)	\$ 5,704,000	\$ 811,040	\$ 6,515,040
363-8934-493.69-03	Construction (SWS Chaparral Pump Station)	6,515,040	4,195,200	10,710,240
363-8934-493.69-03	Construction (24-IN Highway 195 Water Line)	10,710,240	6,808,000	17,518,240
363-8934-493.69-03	Construction (Hwy 195 Ground Storage Tank)	17,518,240	1,932,000	19,450,240
363-8934-493.69-05	Contingency	-	791,681	791,681
363-9000-489.73-10	Issuance Costs	-	258,871	258,871
363-9000-489.73-11	Refunding Costs	-	3,891,075	3,891,075
375-8895-493.50-20	Reserve Appropriation	-	60,851	60,851
375-8934-493.69-01	Design/Engineering (Drainage CIP)	436,100	55,000	491,100
375-8995-493.69-05	Contingency	-	398,098	398,098
387-8834-493.61-10	Motor Vehicles (Public Works)	271,800	126,165	397,965
387-8895-493.50-20	Reserve Appropriation	-	373,948	373,948
387-8934-493.69-01	Design/Engineering	390,000	18,994	408,994
387-8995-493.69-05	Contingency	-	424,336	424,336
388-8834-493.61-10	Motor Vehicles (Public Works)	89,460	62,265	151,725
388-8895-493.50-20	Reserve Appropriation	-	163,589	163,589
524-0515-521.47-20	Engineering Services	-	8,000	8,000
524-0515-521.69-01	Design/Engineering (Repl Terminal HVAC System)	250,000	(25,000)	225,000
524-0515-521.69-02	Land/ROW (Airport Land Acquisition)	2,000,000	(200,000)	1,800,000
524-0515-521.69-03	Construction	4,700,000	99,499	4,799,499
524-0515-521.69-03	Construction	4,799,499	18,441	4,817,940
524-0515-521.69-03	Construction	4,817,940	2,300,000	7,117,940
524-0515-521.69-03	Construction (Airport Maintenance Facility)	7,117,940	(25,000)	7,092,940
524-0515-521.69-03	Construction (Perimeter Fence Upgrade)	7,092,940	(20,000)	7,072,940
524-0515-521.69-03	Construction (Repl Terminal HVAC System)	7,072,940	(425,000)	6,647,940
527-0505-521.60-05	Capital Outlay / Buildings	50,000	30,000	80,000
529-0510-521.40-05	Full-time Salaries (Admin Fees - Appl #9)	-	9,000	9,000
529-0510-521.40-05	Full-time Salaries (Admin Fees - Appl #10)	9,000	9,431	18,431
529-0510-521.40-82	Medical Insurance (Admin Fees - Appl #9)	-	900	900
529-0510-521.40-82	Medical Insurance (Admin Fees - Appl #10)	900	980	1,880
529-0510-521.40-83	Dental Insurance (Admin Fees - Appl #9)	-	15	15
529-0510-521.40-83	Dental Insurance (Admin Fees - Appl #10)	15	15	30
529-0510-521.40-84	Life Insurance (Admin Fees - Appl #9)	-	15	15

**Expenditures:**

<b>Account Number</b>	<b>Description</b>	<b>Original Budget</b>	<b>Budget Change</b>	<b>Amended Budget</b>
529-0510-521.40-84	Life Insurance (Admin Fees - Appl #10)	\$ 15	\$ 15	\$ 30
529-0510-521.40-85	Retirement - TMRS (Admin Fees - Appl #9)	-	1,900	1,900
529-0510-521.40-85	Retirement - TMRS (Admin Fees - Appl #10)	1,900	1,950	3,850
529-0510-521.40-87	Social Security (Admin Fees - Appl #9)	-	1,400	1,400
529-0510-521.40-87	Social Security (Admin Fees - Appl #10)	1,400	1,460	2,860
529-0510-521.40-88	Medicare (Admin Fees - Appl #9)	-	470	470
529-0510-521.40-88	Medicare (Admin Fees - Appl #10)	470	470	940
529-0510-521.40-89	Workers Compensation (Admin Fees - Appl #9)	-	15	15
529-0510-521.40-89	Workers Compensation (Admin Fees - Appl #10)	15	15	30
529-0510-521.47-30	Accounting Services (Admin Fees - Appl #9)	10,148	3,088	13,236
529-0510-521.47-30	Accounting Services (Admin Fees - Appl #10)	13,236	3,089	16,325
529-0510-521.65-41	PFC Projects	-	383,334	383,334
529-0510-521.65-41	PFC Projects (Admin Fees - Appl #9)	383,334	80,529	463,863
529-0510-521.65-41	PFC Projects (Admin Fees - Appl #10)	463,863	95,591	559,454
529-0510-521.65-41	PFC Projects (Repl Terminal HVAC System)	559,454	450,000	1,009,454
529-0510-521.65-41	PFC Projects (Airport Maint. Facility)	1,009,454	25,000	1,034,454
529-0510-521.65-41	PFC Projects (Perimeter Fencing Upgrade)	1,034,454	20,000	1,054,454
529-9595-492.95-24	Transfer Out to Fund 524 - AIP Grant Fund	695,000	(695,000)	-
540-3460-439.46-74	New Carts/Dumpsters	47,000	58,089	105,089
540-3460-439.47-01	Consulting	-	23,692	23,692
540-9501-491.44-85	Claims & Damages	50,000	309,362	359,362
550-3435-432.47-01	Consulting	5,000	4,511	9,511
550-3435-432.47-20	Engineering Services	45,000	37,500	82,500
550-9000-489.71-11	Escrow Agent	-	19,794,112	19,794,112
550-9000-489.73-10	Issuance Costs	-	235,888	235,888
627-2705-419.61-40	Computer Equip/Software	176,000	173,211	349,211
627-2705-419.61-40	Computer Equip/Software	349,211	143,706	492,917
				-
	<b>Total</b>	<b>\$ 106,792,425</b>	<b>\$ 60,370,950</b>	<b>\$ 167,163,375</b>

**SECTION II:** That the City Council finds that the public notice and public hearing requirements of Section 56 of the City Charter have been complied with prior to the enactment of this ordinance.

**SECTION III:** That should any section or part of any section or paragraph of this ordinance be declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, force or effect of any other section or sections or part of a section or paragraph of this ordinance.

**SECTION IV:** That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

**SECTION V:** That this ordinance shall be effective after its passage and publication according to law.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this 26<sup>th</sup> day of January, 2021, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 et seq.

**APPROVED**

\_\_\_\_\_  
Jose L. Segarra  
MAYOR

**ATTEST:**

**APPROVED AS TO FORM**

\_\_\_\_\_  
Lucy C. Aldrich  
City Secretary

\_\_\_\_\_  
Traci S. Briggs  
City Attorney



# BUDGET AMENDMENT

PH-21-007

January 19, 2021

# Budget Amendment Purpose

2

- ❑ Carry forward unspent budget for projects, services, and purchases that began in FY 2020 and not completed by the end of the fiscal year.
  - ▣ Unspent FY 2020 budget fell into fund balance
- ❑ Identified required budget amendments
  - ▣ Programs and grants
  - ▣ Reimbursements
  - ▣ Water & Sewer bond issue

# Carry Forward Budget Amendment

## Operational Funds

3

Fund	Revenues	Plus (+) Expenditures	Minus (-) Expenditures
General	\$54,809	\$581,754	\$-
Internal Service	316,917	316,917	-
Aviation	30,000	30,000	-
Water & Sewer	-	42,011	-
Solid Waste	<u>-</u>	<u>81,781</u>	<u>-</u>
Total	\$401,726	\$1,052,463	\$-

# Carry Forward Budget Amendment

## Fleet Replacement Program

4

Fund	Revenues	Plus (+) Expenditures	Minus (-) Expenditures
Governmental CIP	\$ -	\$6,748,824	\$-
Solid Waste CIP	-	225,854	-
Water & Sewer CIP	-	500,113	-
Drainage CIP	-	60,851	-
Drainage Fund	<u>9,018</u>	<u>-</u>	<u>=</u>
Total	\$9,018	\$7,535,642	\$-

# Carry Forward Budget Amendment

## Capital Improvement Program

5

Fund	Revenues	Plus (+) Expenditures	Minus (-) Expenditures
Governmental CIP	\$-	\$1,305,585	\$-
Water & Sewer CIP	-	443,330	-
Drainage CIP	=	<u>453,098</u>	=
Total	\$-	\$2,202,013	\$-

# Carry Forward Budget Amendment

## Capital Improvement Program – Aviation

6

Fund	Revenues	Plus (+) Expenditures	Minus (-) Expenditures
Airport Improvement Grant (AIP) Fund	\$1,916,149	\$2,425,940	\$-
Passenger Facility Charge (PFC) Fund	<u>          -</u>	<u>593,682</u>	<u>      =</u>
Total	\$1,916,149	\$3,019,622	\$-

# Carry Forward Budget Amendment

## Special Revenue Funds

7

Fund	Revenues	Plus (+) Expenditures	Minus (-) Expenditures
Hotel Occupancy Tax	\$-	\$74,043	\$-
Law Enforcement Grant	-	61,008	-
PD Federal Seizure	-	42,800	-
HOME	=	<u>29,586</u>	=
Total	\$-	\$207,437	\$-

# Carry Forward Budget Amendment Summary

8

Fund	Revenues	Plus (+) Expenditures	Minus (-) Expenditures
Operational Funds	\$401,726	\$1,052,463	\$-
Fleet Replacement Program	9,018	7,535,642	-
CIP Funds	-	2,202,013	-
CIP - Aviation	1,916,149	3,019,622	-
Special Revenue Funds	<u>-</u>	<u>207,437</u>	<u>=</u>
Total	\$2,326,893	\$14,017,177	\$-

# Programs & Grants

9

Description	Revenues	Plus (+) Expenditures	Minus (-) Expenditures
<b>General Fund:</b>			
Silver Sneakers Program	\$7,650	\$7,650	\$-
Human Resources	<u>      -</u>	<u>  2,400  </u>	<u>(2,400)</u>
Total	\$7,650	\$10,050	(\$2,400)

# Programs & Grants (cont'd)

10

Description	Revenues	Plus (+) Expenditures	Minus (-) Expenditures
<b>Airport Improvement Grant Fund:</b>			
Grant match from PFC Fund	<u>(\$695,000)</u>	<u>\$-</u>	<u>(\$695,000)</u>
Total	(\$695,000)	\$-	(\$695,000)
<b>Passenger Facility Charge (PFC) Fund:</b>			
Grant match to AIP Fund	<u>\$-</u>	<u>\$495,000</u>	<u>(\$695,000)</u>
Total	\$-	\$495,000	(\$695,000)

# Programs & Grants (cont'd)

11

Description	Revenues	Plus (+) Expenditures	Minus (-) Expenditures
<b>Law Enforcement Grant Fund:</b>			
JAG 2020 Grant	<u>\$74,921</u>	<u>\$74,921</u>	=
Total	\$74,921	\$74,921	-
<b>Police Seizure Funds:</b>			
Federal & State Seizure Funds	<u>\$2,450</u>	<u>\$491,126</u>	=
Total	\$2,450	\$491,126	-

# Reimbursements

12

Description	Revenues	Plus (+) Expenditures	Minus (-) Expenditures
<b>General Fund:</b>			
Fire Deployments	<u>\$177,047</u>	<u>\$177,047</u>	<u>\$-</u>
Total	\$177,047	\$177,047	\$-
<b>Solid Waste Fund:</b>			
TML Claim – Transfer Station Fire	<u>\$309,362</u>	<u>\$309,362</u>	<u>\$-</u>
Total	\$309,362	\$309,362	\$-

# Water & Sewer Bond Issue

13

Description	Revenues	Plus (+) Expenditures	Minus (-) Expenditures
Bond Fund	<u>\$22,231,476</u>	<u>\$22,231,476</u>	<u>\$-</u>
Total	\$22,231,476	\$22,231,476	\$-
W&S Fund – Refunding	<u>\$23,957,191</u>	<u>\$23,957,191</u>	<u>\$-</u>
Total	\$23,957,191	\$23,957,191	\$-

# Recommendation

14

City Council approve the ordinance amending the FY 2021 Annual Budget.