



## City of Killeen

### Regular City Council Meeting Agenda

October 8, 2013

Killeen City Hall

101 North College

City Council Chambers

5:00 P.M

#### Call to Order and Roll Call

___ Daniel A. Corbin, Mayor	___ Glenn Morrison
___ Elizabeth Blackstone	___ City Manager
___ Terry J. Clark	___ Kathryn H. Davis
___ Jared Foster	___ City Attorney
___ Wayne Gilmore	___ Dianna Barker
___ Steve Harris	___ City Secretary
___ Jonathan Okray	___ Sergeant-At-Arms
___ Jose Segarra	

Invocation

Pledge of Allegiance

#### Approval of Agenda

#### Consent Agenda

- CA-1 Consider minutes of Regular City Council Meeting of September 24, 2013.
- CA-2 Consider a memorandum/resolution authorizing the City Manager to enter into a contract to complete the Manhole Rehabilitation Phase 3 Project.
- CA-3 Consider a memorandum/resolution authorizing the City Manager to enter into a grant agreement with Texas Department of Transportation for reimbursable STEP grant funds.

- CA-4 Consider a request for a final plat by the Jesse M. Kern Estate c/o Clayton Winkler (**Case #13-026FS: Killeen (Watercrest) DTP VIII LLC Addition**) being a final plat of approximately 2.633 acres, part of the Thomas Robinette Survey, Abstract No. 686. This property is located west of the intersection of Watercrest Road and Robinette Road and is addressed as 4102 Watercrest Road, Killeen, Texas.
- CA-5 Consider a request for a final plat submitted by Hubert G. Collins and Patricia A. Collins (**Case #13-027FS: Collins Addition**) of approximately 2.448 acres, part of the Richard A. McGee Survey, Abstract No. 561. The property is located on the west right-of-way of S. Fort Hood Street (S.H. 195) west of the intersection of FM 2484, Killeen, Texas.
- CA-6 A. Consider a request for a final plat submitted by WBW Development, Ltd. (**Case #13-032FS: The Landing at Clear Creek Phase III**) of approximately 46.72 acres, being part of the John E. Maddera Survey, Abstract No. 600. The property is located southeast of the intersection of Clear Creek Road (S.H. 201) and Mohawk Drive, Killeen, Texas. (**Tabled from September 24, 2013 Council Meeting**)
- B. Consider a memorandum/resolution for a City/Owner Agreement to extend a 12-inch diameter water transmission main and to construct Mustang Creek Road and Prewitt Ranch Road as Minor Collector Streets as part of The Landing at Clear Creek Phase III Subdivision.
- C. Consider a memorandum/resolution expressing official intent by the City to reimburse for certain costs related to City/Owner Agreement-in-Principal to construct Mustang Creek Road and Prewitt Ranch Road.
- CA-7 Consider a memorandum/resolution rescheduling the City Council meeting of October 22, 2013.
- CA-8 Consider a memorandum/resolution authorizing the purchase of property located at 805 West Jasper Drive and authorizing the City Manager or Assistant City Manager to carry out the sale.

### Public Hearings / Ordinances

- PH-1 **HOLD** a public hearing and consider an ordinance requested by Sergio Dominguez (**Case #Z13-34**) to rezone approximately 0.675 acres, part of the A. Thompson Survey, Abstract No. 813, from R-2 (Two-Family Residential District) to R-2 (Two-Family Residential District) with CUP (Conditional Use Permit) for a manufactured home. The property is locally known as 405 Houston Street, Killeen, Texas.

### Ordinances / Resolutions

- OR-1 Consider a memorandum/resolution appointing members of the Killeen Volunteers, Inc. – Youth Advisory Commission and swear in.
- OR-2 Consider an ordinance approving a negotiated resolution with Atmos Energy Corp., Mid-Tex Division regarding the 2013 Annual Rate Review Mechanism and adopting tariffs with rate adjustments.
- OR-3 Consider an ordinance amending Chapter 31 of the Code of Ordinances of the City of Killeen; amending Article V, creating Division 11, Masonry and Design Standards.

OR-4 Consider a memorandum/resolution appointing members to various boards, commissions and committees.

## Adjournment

### CLOSED MEETINGS

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.

### AMERICANS WITH DISABILITIES ACT

This meeting is being conducted in accordance with the Texas Open Meetings Law [V.T.C.A., Government Code, § 551.001 et seq.]. This meeting is being conducted in accordance with the Americans with Disabilities Act [42 USC 12101 (1991)]. The facility is wheelchair accessible and handicap parking is available. Requests for sign interpretive services are available upon requests received at least 48 hours prior to the meeting. To make arrangements for those services, please call 254-501-7700, City Manager's Office, or TDD 1-800-734-2989.

## Future Workshop Items

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

## Notice of Meetings

The Mayor and/or City Council have been invited to attend and/or participate in the following meetings/conferences/events. Although a quorum of the members of the City Council may or may not be available to attend this meeting, this notice is being posted to meet the requirements of the Texas Open Meetings Act and subsequent opinions of the Texas Attorney General's Office.

**City of Killeen**  
Regular City Council Meeting  
Killeen City Hall  
September 24, 2013 at 5:00 p.m.

Presiding: Mayor Daniel A. Corbin

Attending: Mayor Pro-Tem Elizabeth Blackstone, Council members Terry Clark, Jared Foster, Wayne Gilmore, Steve Harris, Jonathan Okray, and Jose Segarra

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

Mr. William Gadsen gave the invocation, and Councilmember Segarra led everyone in the pledge of allegiance.

**Approval of Agenda**

*Motion was made by Mayor Pro-Tem Blackstone to approve the agenda tabling CA-8. Motion seconded by Councilmember Clark. The motion carried unanimously.*

**Consent Agenda**

- CA-1 Consider minutes of Regular City Council Meeting of September 10, 2013.
- CA-2 Consider a memorandum/resolution adjusting the three-quotation exemption memorandum within the approved Purchasing Policy.  
**Staff comments:** Karlene Jessie - Staff requests approval of an updated three (3) quotation exemption memorandum to include rental of election equipment and purchases through national cooperatives. Because of a buyout by a major vendor, the city will not be able to secure the three (3) required quotations. Revising the three-quotation exemption memorandum in this manner will expedite the process.
- CA-5 Consider a memorandum/resolution accepting a Texas Department of Transportation Routine Airport Maintenance Program (RAMP) Grant for Killeen-Fort Hood Regional Airport.  
**Staff comments:** Matthew VanValkenburg - Staff has applied for, and TxDOT has offered the City of Killeen, a RAMP grant of \$50,000 for use at Killeen-Fort Hood Regional Airport. This grant will be used to match an equal amount of airport enterprise fund money to fund \$100,000 worth of airport maintenance at Killeen-Fort Hood Regional Airport. Staff recommends the City Council accept the TxDOT Routine Airport Maintenance Program grant, TxDOT Project No. AM2014FHOO, in the

amount of \$50,000, adopt all assurances, statements, representations, covenants and agreements incorporated into this grant agreement, and authorize the City Manager to execute the agreement as accepted by the City.

- CA-6 Consider a memorandum/resolution accepting a Texas Department of Transportation Routine Airport Maintenance Program (RAMP) Grant for Skylark Field.  
**Staff comments:** Matthew VanValkenburg - Staff has applied for, and TxDOT has offered the City of Killeen, a RAMP grant of \$11,000 for use at Skylark Field. This grant will be used to match an equal amount of airport enterprise fund money to fund \$22,000 of airport maintenance expenses at Skylark Field. Staff recommends the City Council accept the TxDOT Routine Airport Maintenance Program grant, TxDOT Project No. AM2014KILE, in the amount of \$11,000, adopt all assurances, statements, representations, covenants and agreements incorporated into this grant agreement, and authorize the City Manager to execute the agreement as accepted by the City.
- CA-7 Consider a memorandum/resolution approving a lease renewal for office space at 207 and 209 W. Avenue D.  
**Staff comments:** Kathryn Davis - The City currently leases property at 207 (Suites A and B) and 209 W. Avenue D, which is occupied by the print shop and purchasing. The current lease expires on September 30, 2013.  
The owner has agreed to maintain the monthly lease payments per month for the upcoming term. Staff believes a one-year lease is currently in the best interest of the city. Any damages to the property are covered by the city. Staff recommends the City Council authorize the City Manager to execute a one-year lease for 207 (Suites A and B) and 209 W. Avenue D, beginning October 1, 2013.
- CA-9 Consider a request for a final plat submitted by the Margaret Dorothy Stefek Marital Trust (**Case #13-028FS: Stefek Trust Addition, Phase One**) of approximately 1.373 acres, being part of the Azra Webb Survey, Abstract No. 857. The property is located on the east right-of-way of S. Fort Hood Street (S. H. 195), across from Leifester Circle, Killeen, Texas.  
**Staff comments:** Tony McIlwain - Mitchell & Associates, Inc. submits this request on behalf of the Margaret Dorothy Stefek Marital Trust for Stefek Trust Addition, Phase One, being a plat consisting of 1.373 acres. The property is zoned B-5 (Business District) and the applicant is platting the property into 2 lots and a 60' right-of-way for commercial development. The plat has met the city's subdivision regulations. The Planning and Zoning Commission voted to approve plat case #13-028FS: Stefek Trust Addition, Phase One by a vote of 5 to 0.
- CA-10 Consider a request for a final plat submitted by D and Sc Enterprises, Inc. (**Case #13-031FS: Prairie View Estates, Phase Three**) of approximately 28.099 acres, being part of the W. H. Cole Survey, Abstract No. 200. The property is located on the north right-of-way of Chaparral Road, east of the Soldiers Hospitality House, Killeen, Texas.  
**Staff comments:** Tony McIlwain - Mitchell & Associates, Inc. submits this request on behalf of D and Sc Enterprises, Inc. for Prairie View Estates Phase Three, being a final plat consisting of 28.099 acres. The property is zoned R-1 (Single Family Residential

District) and the applicant is platting the property into 64 lots and three blocks for residential development. There have been no changes since the preliminary plat. The Planning and Zoning Commission voted to approve plat case #13-031FS: Prairie View Estates Phase Three by a vote of 5 to 0.

*Motion was made by Mayor Pro-Tem Blackstone to approve CA-1, CA-2, CA-5, CA-6, CA-7, CA-9, and CA-10. Motion was seconded by Councilmember Segarra; motion carried unanimously.*

CA-3 Consider a memorandum/resolution approving Bid Recommendation - Bid No. 13-31 uniform services for Aviation, Public Works, Community Services, and Support Services through Zip Cleaners.

**Staff comments:** Karlene Jessie & Stuart McLennan - consideration of the City's requirement for uniform services. Uniform services addressed by this contract include uniform rental, personal protection equipment, and cleaning of uniforms and accessory items (e.g., floor mats, dust mops, and shop towels). The contract awarded under this bid will commence on October 1, 2013. Three (3) bids were received at the close of the bidding process. All vendors were members of State of Texas COOPs. The committee evaluated the bids and unanimously chose Zip Cleaners as the best overall value. Zip Cleaners was the high-bidder, 37% higher than the low bidder. Documented performance, however, clearly shows that Zip Cleaners is the best value. Committee chose best value over lowest price.

*Motion was made by Mayor Pro-Tem Blackstone to approve CA-3. Motion was seconded by Councilmember Gilmore; motion carried 5 to 2 with Councilmember Okray and Councilmember Harris opposing.*

CA-4 Consider a memorandum/resolution to adopt an amendment to the 2011 Drainage Design Manual.

**Staff comments:** Kristina Ramirez - The current Drainage Design Manual (DDM) was adopted by Council on November 8, 2011 (CCM/R 11-107). Since November of 2011, stakeholders, citizens, and various city staff have provided comments and suggestions on how to improve the adopted Drainage Design Manual (DDM). The current DDM sets the allowable design flow at the top of curb for the 25-year frequency storm (Q25). This design point mainly affects the design of local residential roads. The design of collector and arterial roads are typically controlled by the required clear lane width for the road classification. The stakeholders also recommended the addition of a maximum velocity requirement of seven feet per second for the areas above top of curb and a definition for the term intersection. Based on the depth of clearance for emergency response vehicles and the recommended additions mentioned above, the stakeholders recommended that the design flow be amended to Q25 with four inches above top of curb. Council felt pedestrian traffic needs to be more heavily considered.

*Motion was made by Councilmember Gilmore to approve CA-4. Motion was seconded by Councilmember Segarra; motion carried 4 to 3 with Councilmember Okray, Councilmember Clark, and Councilmember Harris opposing.*

CA-8 Consider a request for a final plat submitted by WBW Development, Ltd. (Case #13-032FS: The Landing at Clear Creek Phase III) of approximately 46.72 acres, being part of the John E. Maddera Survey, Abstract No. 600. The property is located southeast of the intersection of Clear Creek Road (S.H. 201) and Mohawk Drive, Killeen, Texas.  
*Item pulled pending further research.*

CA-11 Consider a memorandum/resolution ratifying the City Manager's execution of an interlocal agreement between the City of Killeen and Harker Heights for a Home Chemical Collection Event.

**Staff comments:** Glenn Morrison - The City of Killeen, in conjunction with the City of Harker Heights, hosted a Home Chemical Collection event September 21, 2013. Due to the timing of the event, it was necessary to secure the City Manager's signature to an interlocal agreement between the respective cities prior to securing formal authorization of the same. The purpose of this action is to secure City Council's ratification of the City Manager's approval.

*Motion was made by Mayor Pro-Tem Blackstone to approve CA-11. Motion was seconded by Councilmember Clark; motion carried unanimously.*

CA-12 Consider a memorandum/resolution authorizing entering into a reclaimed water supply agreement with Bell County Water Control & Improvement District No. 1.

**Staff comments:** Scott Osburn - City staff has been exploring uses for reclaimed water and potential reclaimed water projects with Bell County Water Control & Improvement District No. 1 ("District") for the past several years. Mr. Osborn gave a brief overview of the contents of the proposed reclaim agreement. Staff recommends that the City Council authorize the City Manager to enter into a reclaimed water supply agreement with Bell County Water Control & Improvement District No. 1 and authorize the City Manager to execute any and all change orders within the amounts authorized by state and local law.

*Motion was made by Councilmember Clark to approve CA-12. Motion was seconded by Mayor Pro-Tem Blackstone; motion carried 5 to 2 with Councilmember Okray and Councilmember Harris opposing.*

### **Public Hearings / Ordinances**

PH-1 **HOLD** a public hearing and consider a final plat submitted by Texas Triple Investments, L.L.C. (**Case #13-022RS: Killeen (Hooten) DTP VIII**), being a replat of Lot 1, Block 1, Miro Kim Addition. The property is located on the north right-of-way of E. Rancier Avenue (FM 439) and is locally known as 4501 E. Rancier Avenue, Killeen, Texas.

The City Secretary read the Ordinance caption.

**Staff comments:** The property is zoned B-5 (Business District) and the applicant is replatting the property into one commercial lot for a proposed Dollar General retail

store. The plat does meet city requirements. The Planning and Zoning Commission voted to approve plat case #13-022RS: Killeen (Hooten) DTP VIII by a vote of 6 to 0.

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

*Motion was made by Councilmember Segarra to approve PH-1. Motion was seconded by Councilmember Okray; motion carried unanimously.*

PH-2 **HOLD** a public hearing and consider an ordinance requested by the Killeen Chaparral Development, L.L.C. and RSBP Developers, Inc. (**Case #Z13-27**) to rezone approximately 199.5 acres, part of the A. H. Wood Survey, Abstract No. 886, part of J.B. Harris Survey, Abstract No. 452, and the W.E. Hall Survey, Abstract No. 1116, from 'A' (Agricultural District), SR-1 (Suburban Residential Single-Family District) and AR-1 (Agricultural Single Family Residential District) to P.U.D. (Planned Unit Development) for single family residential use. The property is located on the north right-of-way of Chaparral Road near the Killeen/Harker Heights city limits. The City Secretary read the ordinance caption.

The City Secretary read the Ordinance caption.

**Staff comments:** Tony McIlwain - Killeen Chaparral Development, L.L.C. and RSBP Developers, Inc. are the applicants. The property owner wants to construct single family residence. Approximately 67 acres would be set aside for green space. Mr. McIlwain briefly went over the residential conditions of the proposed development. The staff notified four (4) surrounding property owners within a 200' notification boundary regarding this request and no responses were received. The Planning and Zoning Commission recommended approval of the P.U.D. (Planned Unit Development) by a vote of 6 to 0.

Mayor Corbin opened the public hearing.

Gary Purser, Jr. - 6503 Wells Fargo. Mr. Purser stated the property would be developed in a nice area. Part of the property is in the flood way but the land is usable. He has spent time and money clearing the land and intends to work with the city and community on the development.

With no one else appearing, Mayor Corbin closed the public hearing.

*Motion was made by Councilmember Foster to approve PH-2 with the amendment that the masonry and landscape requirements of SR-1 zoning be adopted. Motion was seconded by Councilmember Okray; motion carried unanimously.*

PH-3 **HOLD** a public hearing and consider an ordinance requested by Billy W. & Myong C. Jones (**Case #Z13-30**) to rezone part of Lot 7, Block 1, Myong Jones Corner, from B-5 (Business District) to RC-1 (Restaurant and Alcohol Sales District) to allow the on-premises sale and consumption of alcohol for a Meños Mexican Restaurant. The property is locally known as 1510-A S. Fort Hood Street, Killeen, Texas.

The City Secretary read the ordinance caption.

**Staff comments:** Tony McIlwain - The request is consistent with the Comprehensive Plan. The owners want to open a second restaurant location. The staff notified six (6) surrounding property owners within a 200' notification boundary regarding this request. Staff has received no protests. The Planning and Zoning Commission recommended approval of the applicant's request limited to the footprint of the existing restaurant by a vote of 6 to 0. The occurrence of the RC-1 alcohol zoning will not be within three hundred (300) feet of a church, public or private school or public or private hospital.

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

*Motion was made by Councilmember Segarra to approve PH-3. Motion was seconded by Councilmember Gilmore; motion carried unanimously.*

PH-4 **HOLD** a public hearing and consider an ordinance requested by RSBP Developers, Inc. (**Case #Z13-31**) to rezone Lots 1-14, Block 1, and Lots 1-6, Block 2, Purser Crossing, Phase Three, from R-1 (Single Family Residential District) to R-2 (Two Family Residential District). All of the properties are located on Lineage Loop, immediately east of Bunny Trail, Killeen, Texas.

The City Secretary read the ordinance caption.

**Staff comments:** Tony McIlwain - This request is to allow for duplex development. RSBP Developers is the applicant.

The property is located east of Bunny Trail, south of John Helen Drive, Killeen, Texas. The request is consistent with the Comprehensive Plan Land Use Map.

The staff notified six (6) surrounding property owners within a 200' notification boundary regarding this request. Staff has received no protests.

The Planning and Zoning Commission recommended approval of the applicant's zoning request by a vote of 6 to 0.

Mayor Corbin opened the public hearing.

Gary Purser, Jr. - 6503 Wells Fargo. Mr. Purser spoke in favor of this request.

With no one else appearing, Mayor Corbin closed the public hearing.

*Motion was made by Councilmember Clark to approve PH-4. Motion was seconded by Mayor Pro-Tem Blackstone; motion carried unanimously.*

PH-5 **A. HOLD** a public hearing and consider an ordinance to amend the Comprehensive Plan's future land use map (FLUM) (**Case #FLUM Z13-32**) from 'Rural' to 'General Commercial' for approximately 2.439 acres. The property is located on the west right-

of-way of S. Fort Hood Street (S.H. 195) across from the intersection of FM 2484, Killeen, Texas.

The City Secretary read the ordinance caption.

**Staff comments:** Tony McIlwain - The Planning and Zoning Commission recommended approval of amending the FLUM from 'Rural' to 'General Commercial'. Mr. McIlwain gave a brief overview of the proposition.

Mayor Corbin opened the public hearing.

Mr. David Olson with Mitchell & Associates spoke in favor of this request.

With no one else appearing, Mayor Corbin closed the public hearing.

*Motion was made by Councilmember Gilmore to approve PH-5A. Motion was seconded by Councilmember Okray; motion carried unanimously.*

**B. HOLD** a public hearing and consider an ordinance requested by Hubert G. and Patricia A. Collins (**Case #Z13-32**) to rezone approximately 1.339 acres, being part of the Richard A. McGee Survey, Abstract No. 561, from 'A' (Agricultural District) to B-3 (Local Business District). The property is located on the west right-of-way of S. Fort Hood Street (S.H. 195) across from the intersection of FM 2484, Killeen, Texas.

The City Secretary read the ordinance caption.

**Staff comments:** Tony McIlwain - The staff notified two (2) surrounding property owners within a 200' notification boundary regarding this request. Staff has received no protests. The Planning and Zoning Commission recommended approval of the applicant's B-3 zoning request by a vote of 6 to 0.

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

*Motion was made by Councilmember Clark to approve PH-5B. Motion was seconded by Councilmember Okray; motion carried unanimously.*

### **Ordinances / Resolutions**

OR-1 Consider a memorandum/resolution appointing members to various boards, commissions and committees.

**Staff comments:** Stuart McLennan - The City of Killeen makes annual appointments to the boards, commissions, and committees in September of each year and throughout the year as vacancies occur.

In order to make appointments and reappointments, City Council action is required. The following listing represents opportunities for both.

\*Indicates service on the same board, commission, or committee for six years or more.

Animal Advisory Committee

Current Member	Status	New Member	Special Qualifications
Laura Szeremi, DVM	Term Expired		Licensed Vet

*Motion was made by Councilmember Okray to re-appoint Laura Szeremi to the Animal Advisory Committee. Motion was seconded by Councilmember Gilmore; motion carried unanimously.*

Arts Commission

Current Member	Status	New Member	Special Qualifications
Miok Doranski*	Term Expired		At-large member
Peggy French*	Term Expired		At-large member
Ed Maunakea, Jr.*	Term Expired		Music/Radio/TV/Sound
Julia Villaronga*	Term Expired		At-large member
VACANCY (Troy Summerill)	Resigned		At-large member

*Motion was made by Councilmember Foster to appoint Michael Bartoszik to Ed Maunakea's seat. Motion was seconded by Mayor Pro-Tem Blackstone; motion carried unanimously.*

*Motion was made by Mayor Pro-Tem Blackstone to appoint Catherine Mason to Julia Villaronga's seat. Motion was seconded by Councilmember Foster; motion carried unanimously.*

*Motion was made by Councilmember Okray to appoint Ralph Cossey to Miok Doranski's seat. Motion was seconded by Mayor Pro-Tem Blackstone; motion carried unanimously.*

*Motion was made by Councilmember Gilmore to appoint Alan Badger to Troy Summerill's vacated seat. Motion was seconded by Councilmember Foster; motion carried unanimously.*

*Motion was made by Councilmember Harris to appoint Anthony Cooper to Peggy French's seat. Motion was seconded by Councilmember Gilmore; motion carried unanimously.*

Board of Adjustments and Appeals (Construction Board)

Current Member	Status	New Member	Special Qualifications
Lee Mitchell*	Term Expired		General Contractor
Eugene Kim (filled unexpired term)	Term Expired		Alternate General Contractor
Berilyn Varnado	Term Expired		Alternate General Contractor

*Motion was made by Councilmember Gilmore to re-appoint Lee Mitchell and Eugene Kim. Motion was seconded by Councilmember Okray; motion carried unanimously.*

Board of Adjustments and Appeals (Fire Prevention Code)

Current Member	Status	New Member	Special Qualifications
Randy Doyle*	Term Expired		
Thomas Shelley*	Term Expired		

*Motion was made by Councilmember Gilmore to re-appoint Randy Doyle and Thomas Shelley. Motion was seconded by Councilmember Okray; motion carried unanimously.*

Board of Adjustments and Appeals (Zoning)

Current Member	Status	New Member	Special Qualifications
Randy Doyle*	Term Expired		
Thomas Shelley*	Term Expired		
Robbie Tolliver*	Term Expired		
Dr. Alvin Dillard	Term Expired		Alternate

*Motion was made by Councilmember Clark to re-appoint Alvin Dillard to the Alternate position. Motion was seconded by Councilmember Harris. No vote was taken. Motion was made by Councilmember Gilmore to amend previous motion by appointing Alvin Dillard as a Board member. Motion was seconded by Councilmember Clark; motion carried unanimously.*

*Motion was made by Councilmember Gilmore to appoint Ronald Blackman to Thomas Shelley's seat. Motion was seconded by Councilmember Okray; motion carried unanimously.*

*Motion was made by councilmember Clark to appoint Walter Autry to Robbie Tolliver's seat. Motion was seconded by Councilmember Gilmore; motion carried unanimously.*

Civil Service Commission

Current Member	Status	New Member	Special Qualifications
T. J. Jones*	Term Expired		See your chart.

Community Development Advisory Committee

Current Member	Status	New Member	Special Qualifications
Ralph Cossey	Term Expired		
Herbert Moffett*	Term Expired		
Ashley Whitworth (filled unexpired term)	Term Expired		
Rudy Norman	Term Expired		
TaNeika Driver (filled unexpired term)	Term Expired		

*Motion was made by Councilmember Foster to re-appoint Ashley Whitworth and TaNeika Driver-Moultrie. Motion was seconded by Councilmember Clark; motion carried unanimously.*

*Motion was made by Councilmember Harris to appoint Ramon Alvarez and Sharon Dockrey in Herbert Moffett and Rudy Norman's seats. Motion was withdrawn.*

*Motion was made by Councilmember Foster to appoint Ramon Alvarez to fill Herbert Moffett's seat. Motion was seconded by Mayor Pro-Tem Blackstone; motion carried unanimously.*

*Motion was made by Mayor Pro-Tem Blackstone to re-appoint Rudy Norman and Ralph Cossey. Motion was seconded by Councilmember Clark; motion carried unanimously.*

Heritage Preservation Board

<b>Current Member</b>	<b>Status</b>	<b>New Member</b>	<b>Special Qualifications</b>
Dawn Harris*	Term Expired		
Michelle Lee*	Term Expired		
Robin DeHart (filled unexpired term)	Term Expired		

Killeen Housing Authority

<b>Current Member</b>	<b>Status</b>	<b>New Member</b>	<b>Special Qualifications</b>
Brockley Moore*	Term Expired		
Genevieve Hyde*	Term Expired		
VACANCY (Roy Sampson)	Term Expired		

Sister Cities Board of Directors

<b>Current Member</b>	<b>Status</b>	<b>New Member</b>	<b>Special Qualifications</b>
Doris Owens	Term Expired		Citizen Representative
VACANT			Citizen Representative

*Motion was made by Councilmember Clark to re-appoint Doris Owens. Motion was seconded by Mayor Pro-Tem Blackstone; motion carried unanimously.*

*Motion was made by Councilmember Gilmore to appoint Minerva Verdejo to the VACANT seat. Motion was seconded by Councilmember Segarra; motion carried unanimously.*

Killeen Volunteers, Inc.

<b>Current Member</b>	<b>Status</b>	<b>New Member</b>	<b>Special Qualifications</b>
Juanita Borth*	Term Expired		Citizen Rep
Marcus Carr*	Term Expired		Citizen Rep
Lawrence Holly	Term Expired		Citizen Rep
Ronda McClarren*	Term Expired		Citizen Rep
VACANCY (Larry Egly)	Resigned		Citizen Rep
VACANCY (Lottie Osanyingbemi)	Resigned		Citizen Rep

*Motion was made by Councilmember Segarra to appoint TaNeika Driver-Moultrie to a VACANCY seat. Motion was seconded by Councilmember Foster; motion carried unanimously.*

*Motion was made by Councilmember Segarra to re-appoint Lawrence Holly. Motion was seconded by Councilmember Gilmore; motion carried unanimously.*

Planning & Zoning Commission

Current Member	Status	New Member	Special Qualifications
Robert Hicks, Sr.*	Term Expired		
Craig Langford*	Term Expired		
Terry Traina*	Term Expired		

Each Councilmember nominated individuals for the three positions. Those nominated were Anthony Cooper, Kirk Latham, Eugene Kim, Alvin Dillard, Charlie Gidrie, Ramon Alvarez, Miok Doranski, and Peter Beronio.

*Motion was made by Councilmember Okray to appoint Anthony Cooper, Alvin Dillard, and Ramon Alvarez to the P&Z Commission. Motion was seconded by Councilmember Clark; motion carried unanimously.*

Senior Citizens Advisory Board

Current Member	Status	New Member	Special Qualifications
Juanita Borth	Term Expired		
Katherine Gordon*	Term Expired		
Lucille Jump*	Term Expired		
Klaus Adam	Term Expired		

Tree Advisory Board

Current Member	Status	New Member	Special Qualifications
Shanna Havens	Resigned		
Eric Shephard*	Term Expired		

*Motion was made by Mayor Pro-Tem Blackstone to table appointment of the rest of the open positions until the next Council meeting. Motion was seconded by Councilmember Segarra; motion carried unanimously.*

OR-2 Consider a memorandum/resolution appointing Councilmembers to various boards, commissions, and commission sub-committees.

**Staff comments:** The City of Killeen has various boards, commissions, and commissions sub-committees. All of these are appointed by the Mayor and City Council.

***Killeen Economic Development Corp.***

Current Member	Status	New Member	Comments
Daniel Corbin (filled unexpired term)	Term Expired		City Representative

*Motion was made by Mayor Pro-Tem Blackstone to re-appoint Daniel Corbin. Motion was seconded by Councilmember Gilmore; motion carried unanimously.*

***Tax Increment Reinvestment Zone Number Two Board***

<b>Current Member</b>	<b>Status</b>	<b>New Member</b>	<b>Comments</b>
Jared Foster (filled unexpired term)	Term Expired		City Representative
Jose Segarra (filled unexpired term)	Term Expired		City Representative

*Motion was made by Councilmember Gilmore to re-appoint Jose Segarra and Jared Foster. Motion was seconded by Mayor Pro-Tem Blackstone; motion carried unanimously.*

***Central Texas Council of Governments***

<b>Current Member</b>	<b>Status</b>	<b>New Member</b>	<b>Comments</b>
Daniel Corbin	Term Expired		Elected Official Representative
Elizabeth Blackstone(filled unexpired term)	Term Expired		Elected Official Representative Alt

*Motion was made by Councilmember Segarra to re-appoint Daniel Corbin and Elizabeth Blackstone. Motion was seconded by Councilmember Clark; motion carried unanimously.*

***Development District Board of Central Texas***

<b>Current Member</b>	<b>Status</b>	<b>New Member</b>	<b>Comments</b>
Kathy Gilmore	Resigned		Bell County/Private Sector

***Killeen Volunteers, Inc. Board of Directors***

<b>Current Member</b>	<b>Status</b>	<b>New Member</b>	<b>Comments</b>
Elizabeth Blackstone(filled unexpired term)	Term Expired		Council Representative
Jared Foster (filled unexpired term)	Term Expired		Council Representative

*Motion was made by Councilmember Okay to re-appoint Elizabeth Blackstone and appoint Jose Segarra as the City Council Ex-officio. Motion was seconded by Councilmember Clark; motion carried unanimously.*

**Adjournment**

With no further business, upon motion being made by Councilmember Okay, seconded by Mayor Pro-Tem Blackstone, and unanimously approved, the meeting was adjourned at 7:53 p.m.

\_\_\_\_\_  
Daniel A. Corbin, Mayor

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



**RECOMMENDATION**

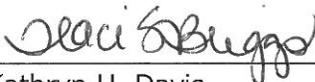
Recommend that the City Council authorize the City Manager to enter into a contract with Insituform Technologies, LLC in the amount of \$296,072.91 to complete the Manhole Rehabilitation Phase 3 Project. Staff also recommends that the City Manager be expressly authorized to execute any and all change orders within the amounts set by state and local law.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this the 8<sup>th</sup> day of October, 2013, 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**

\_\_\_\_\_  
Daniel A. Corbin  
MAYOR

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

\_\_\_\_\_  
Dianna Barker  
CITY SECRETARY



## Phase 3 Manhole Rehabilitation Proposal Tabulation Basins 2, 9, 11, 13, 19, 21, 24, 25, 26, 28, 33, 34 and 35

Item	Rehabilitaiton Method Description	Unit	Quantity
1	Rehab 1001: Raise Manhole to Grade -Unpaved	Each	14
2	Rehab 1010: Install Inflow Protector Insert	Each	43
3	Rehab 1012: Install Missing Mainline Cleanout Cap	Each	449
4	Rehab 1015: Seal Chimney	Each	1
5	Rehab 1020: Realign and Seal Manhole Ring & Cover (Rebuild Chimney as required)-Unpaved	Each	67
6	Rehab 1021: Realign and Seal Manhole Ring & Cover (Rebuild Chimney as required)-Paved	Each	2
7	Rehab 1022: Replace Manhole Ring & Cover (Rebuild Chimney as required) - Unpaved	Each	4
8	Rehab 1023: Replace Manhole Ring & Cover (Rebuild Chimney as required) -Paved	Each	1
9	Rehab 1024: Replace Manhole Lid	Each	10
10	Rehab 1026: Replace Cleanout Casting/Cover (Unpaved)	Each	5
11	Rehab 1028: Replace Cleanout Casting/Cover (Paved)	Each	12
12	Rehab1040: Clean Manhole, Remove any Roots, Repair as Needed and Coat (total Sq.Ft.)		
12a	Condition 1	Sq. Ft.	1562.2
12b	Condition 2	Sq. Ft.	7375.3
13	Rehab 1047: Stop I/I, Clean, Repair Pipe Seal and/or Injection Grouting	Each	19
14	Rehab 1110: Reconstruct 4 ft. diameter Manhole Bench & Invert	Each	2
15	Rehab 1205: Repair Chimney and Coat (total Sq. Ft.)		
15a	Condition 1	Sq. Ft.	21
	Performance & Payment Bond	LS	1

Fuquay		Insituform	
Unit Cost	Estimated Cost	Unit Cost	Estimated Cost
\$ 650.00	\$ 9,100.00	\$ 675.00	\$ 9,450.00
\$ 320.00	\$ 13,760.00	\$ 280.00	\$ 12,040.00
\$ 90.00	\$ 40,410.00	\$ 100.00	\$ 44,900.00
\$ 500.00	\$ 500.00	\$ 640.00	\$ 640.00
\$ 650.00	\$ 43,550.00	\$ 675.00	\$ 45,225.00
\$ 650.00	\$ 1,300.00	\$ 1,380.00	\$ 2,760.00
\$ 650.00	\$ 2,600.00	\$ 640.00	\$ 2,560.00
\$ 650.00	\$ 650.00	\$ 1,380.00	\$ 1,380.00
\$ 900.00	\$ 9,000.00	\$ 175.00	\$ 1,750.00
\$ 1,050.00	\$ 5,250.00	\$ 500.00	\$ 2,500.00
\$ 1,050.00	\$ 12,600.00	\$ 600.00	\$ 7,200.00
\$ 11.50	\$ 17,965.30	\$ 11.50	\$ 17,965.30
\$ 20.50	\$ 151,193.65	\$ 17.98	\$ 132,607.89
\$ 250.00	\$ 4,750.00	\$ 360.00	\$ 6,840.00
\$ 550.00	\$ 1,100.00	\$ 500.00	\$ 1,000.00
\$ 11.50	\$ 241.50	\$ 11.50	\$ 241.50
\$ 7,380	\$ 7,380.06	\$ 7,013.22	\$ 7,013.22
Total	\$ 321,350.51	Total	\$ 296,072.91



7333 Monroe Rd.  
Houston, Texas 77061

Tel: (713) 845-3002  
Fax: (713) 980-0782  
www.insituform.com

September 6, 2013

# Buyboard Proposal

**Mr. Steve Kana, P.E.**  
**Project Engineer / Water & Sewer**  
City of Killeen  
101 N.College  
Killeen, Tx 76541

Re: **Phase 3 Manhole Rehabilitation**  
Basins 2, 9, 11, 13, 19, 21, 24, 25, 26, 28, 33, 34 and 35

Insituform Technologies, LLC. herein proposes to furnish all labor, materials, equipment for the referenced project (as detailed in the project scope of work and location maps presented by the City of Killeen) utilizing the Texas Statewide Cooperative Purchasing Contract #354-10 administered through the BuyBoard.

## Assumptions and Qualifications

Unless otherwise superseded by the City of Killeen, the pricing in this proposal assumes that all Technical Specifications set forth by the BuyBoard will be strictly adhered to. Any changes to these specifications must be noted and agreed upon by both parties prior to finalizing the proposal pricing. Workable access to manholes and the pipe shall be provided by the City of Killeen.

Water shall be provided at no cost to Insituform Technologies, LLC. for all construction phases of this project. Insituform Technologies, LLC. will follow all required deposit, backflow prevention, and metering procedures.

## Proposal Terms and Conditions

Unless otherwise superseded by the City of Killeen, the Terms and Conditions from the Texas Statewide Cooperative Purchasing Contract apply and are available upon request from the BuyBoard. Any changes to these conditions must be noted and agreed upon by both parties.

## Proposal Pricing

\* **Items and Price Schedule Attached Herein**

Offered By:

Accepted By:

INSITUFORM TECHNOLOGIES, LLC.

TIM NAYLOR  
512-677-8732

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
ORGANIZATION

**Insituform® Buyboard Proposal – Phase 3 Manhole Rehabilitation**  
**Basins 2, 9, 11, 13, 19, 21, 24, 25, 26, 28, 33, 34 and 35**

**\* THE SCHEDULE OF PAY ITEMS WAS PROVIDED BY THE CITY OF KILLEEN. THE PRICES BELOW ARE SUBJECT TO THE CONDITION THAT THE QUANTITY FOR ITEM #3 SHALL NOT BE EXCEEDED AND THAT ITEMS #10, 12A AND 12B SHALL BE UTILIZED IN FULL. ANY CHANGES TO THESE CONDITIONS MAY RESULT IN A RENEGOTIATING OF THE ABOVE STATED UNIT PRICES TO A RATE THAT IS MUTUALLY AGREEABLE BY ALL PARTIES.**

				Insituform	
Item	Rehabilitaiton Method Description	Unit	Quantity	Unit Cost	Estimated Cost
1	Rehab 1001: Raise Manhole to Grade -Unpaved	Each	14	\$ 875.00	\$ 9,450.00
2	Rehab 1010: Install Inflow Protector Insert	Each	43	\$ 280.00	\$ 12,040.00
3	Rehab 1012: Install Missing Mainline Cleanout Cap	Each	449	\$ 100.00	\$ 44,900.00
4	Rehab 1015: Seal Chimney	Each	1	\$ 840.00	\$ 840.00
5	Rehab 1020: Realign and Seal Manhole Ring & Cover (Rebuild Chimney as required)-Unpaved	Each	67	\$ 875.00	\$ 45,225.00
6	Rehab 1021: Realign and Seal Manhole Ring & Cover (Rebuild Chimney as required)-Paved	Each	2	\$ 1,380.00	\$ 2,760.00
7	Rehab 1022: Replace Manhole Ring & Cover (Rebuild Chimney as required) - Unpaved	Each	4	\$ 840.00	\$ 2,560.00
8	Rehab 1023: Replace Manhole Ring & Cover (Rebuild Chimney as required) -Paved	Each	1	\$ 1,380.00	\$ 1,380.00
9	Rehab 1024: Replace Manhole Lid	Each	10	\$ 175.00	\$ 1,750.00
10	Rehab 1028: Replace Cleanout Casting/Cover (Unpaved)	Each	5	\$ 500.00	\$ 2,500.00
11	Rehab 1029: Replace Cleanout Casting/Cover (Paved)	Each	12	\$ 600.00	\$ 7,200.00
12	Rehab 1040: Clean Manhole, Remove any Roots, Repair as Needed and Coat (total Sq Ft.)				
12a	Condition 1	Sq. Ft.	1562.2	\$ 11.50	\$ 17,965.30
12b	Condition 2	Sq. Ft.	7375.3	\$ 17.98	\$ 132,807.85
13	Rehab 1047: Stop III, Clean, Repair Pipe Seal and/or Injection Grouting	Each	19	\$ 360.00	\$ 6,840.00
14	Rehab 1110: Reconstruct 4 ft. diameter Manhole Bench & Invert	Each	2	\$ 500.00	\$ 1,000.00
15	Rehab 1205: Repair Chimney and Coat (total Sq. Ft.)				
15a	Condition 1	Sq. Ft.	21	\$ 11.50	\$ 241.50
	Performance & Payment Bond	LS	1	\$ 7,013.22	\$ 7,013.22
				<b>Total</b>	<b>\$ 296,072.91</b>

**CITY COUNCIL MEMORANDUM FOR RESOLUTION**

**AGENDA ITEM**

**TXDOT SPEED STEP GRANT**

**ORIGINATING DEPARTMENT**

**POLICE DEPARTMENT**

**BACKGROUND INFORMATION**

The City of Killeen Police Department has applied for and received grant funds from the Texas Department of Transportation to conduct selective traffic enforcement activities on an overtime basis in previous years. This year TXDOT has authorized the City of Killeen a grant for the purpose of conducting a combined program which includes the Speed program and Impaired Driver Mobilizations (IDM) program. If accepted, the City of Killeen is obligated to provide matching funds in the amount of \$51,043.96 and TXDOT will reimburse \$81,600.00 to meet the total award amount of \$132,643.96

**DISCUSSION/CONCLUSION**

The grant monies will be used to pay officers' salaries on an overtime basis and vehicle mileage to work speed enforcement on designated portions of US Highway 190, Central Texas Expressway, Elms Road, WS Young Dr., Clear Creek Road, and Trimmier Road. These roads were selected based on analysis of compliance with posted speed laws and the percentage of non-compliance identified that present the greatest safety risk to the general driving public. The Impaired Driver Mobilization program is approved city wide.

Officers working this detail will not respond to routine calls for service and will concentrate their activities on aggressive enforcement of speed and IDM violations. The overall objective of this program is to reduce the number of alcohol and speed related crashes and increase the speed compliance rate in the city. This grant will run from October 1, 2013 to September 30, 2014.

**FISCAL IMPACT**

If the entire amount of the grant is used, approximately \$39,668.96 in local matching funds will be required to pay salary costs and fringe benefits not covered by the grant. An estimated \$11,375.00 in matching funds will be required to pay mileage cost for vehicle operation. These funds will be drawn from the department's current operational funding for salaries/benefits and vehicle supplies.

**RECOMMENDATION**

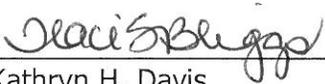
Staff recommends the City Council approves this resolution and authorizes the City Manager to sign an agreement with TXDOT on behalf of the City of Killeen for receipt of up to \$81,600.00 in reimbursable STEP grant funds.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this the 8<sup>th</sup> day of October, 2013, 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**

\_\_\_\_\_  
Daniel A. Corbin  
MAYOR

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

\_\_\_\_\_  
Dianna Barker  
CITY SECRETARY

# Texas Traffic Safety eGrants

## Fiscal Year 2014

**Organization Name:** City of Killeen - Police Department

**Legal Name:** City of Killeen

**Payee Identification Number:** 17460015047000

**Project Title:** STEP Comprehensive

**ID:** 2014-KilleenP-S-1YG-0052

**Period:** 10/01/2013 to 09/30/2014

## TEXAS TRAFFIC SAFETY PROGRAM GRANT AGREEMENT

THE STATE OF TEXAS  
THE COUNTY OF TRAVIS

THIS AGREEMENT IS MADE BY and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the Department and the, **City of Killeen** hereinafter called the Subgrantee, and becomes effective then fully executed by both parties. For the purpose of this agreement, the Subgrantee is designated as a(n) **Local Government**.

AUTHORITY: Texas Transportation Code, Chapter 723, the Traffic Safety Act of 1967, and the Highway Safety Performance Plan for the Fiscal Year 2014.

Name of the Federal Agency: **National Highway Traffic Safety Administration**

Contract Number: **584EGF6113**

CFDA Number: **20.600**

CFDA Title: **State and Community Highway Safety Grant Program**

Funding Source: **Section 402**

DUNS: **068980739**

Project Title: **STEP Comprehensive**

This project is **Not Research and Development**

Grant Period: This Grant becomes effective on **10/01/2013** or on the date of final signature of both parties, whichever is later, and ends on **09/30/2014** unless terminated or otherwise modified.

Total Awarded: **\$132,643.96**

Amount Eligible for Reimbursement by the Department: **\$81,600.00**

Match Amount provided by the Subgrantee: **\$51,043.96**

### TEXAS TRAFFIC SAFETY PROGRAM GRANT AGREEMENT

The signatory of the Subgrantee hereby represents and warrants that she/he is an officer of the organization for which she/he has executed this agreement and that she/he has full and complete authority to enter into this agreement on behalf of the organization.

#### THE SUBGRANTEE

#### THE STATE OF TEXAS

City of Killeen

[Legal Name of Agency]

Executed for the Executive Director and  
Approved for the Texas Transportation  
Commission for the purpose and effect of  
activating and/or carrying out orders, established  
policies or work programs approved and  
authorized by the Texas Transportation  
Commission

By:

By:

\_\_\_\_\_  
[Authorized Signature]

\_\_\_\_\_  
[District Engineer Texas Department of  
Transportation]

Glenn Morrison

[Name]

\_\_\_\_\_  
[Name]

City Manager

[Title]

\_\_\_\_\_  
[Title]

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

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

Under the authority of Ordinance or  
Resolution Number (for local government)  
(If Applicable)

By:

\_\_\_\_\_  
Director, Traffic Operations Division Texas  
Department of Transportation (Not required for  
local project grants under \$100,000.00)

\_\_\_\_\_  
[Resolution Number]

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

Texas Traffic Safety Program

GRANT AGREEMENT GENERAL TERMS AND CONDITIONS

**ARTICLE 1. COMPLIANCE WITH LAWS**

The Subgrantee shall comply with all federal, state, and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this agreement, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination laws and regulations, and licensing laws and regulations. When required, the Subgrantee shall furnish the Department with satisfactory proof of compliance.

**ARTICLE 2. STANDARD ASSURANCES**

The Subgrantee assures and certifies that it will comply with the regulations, policies, guidelines, and requirements, including 49 CFR Part 18; 49 CFR Part 19 (OMB [Office of Management and Budget] Circular A-110); 49 CFR Part 225 (OMB Circular A-87); OMB Circular A-102; OMB Circular A-21; OMB Circular A-122; OMB Circular A-133; and the Department's Traffic Safety Program Manual, as they relate to the application, acceptance, and use of federal or state funds for this project. Also, the Subgrantee assures and certifies that:

- A. It possesses legal authority to apply for the grant; and that a resolution, motion, or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained in the application, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide any additional information that may be required.
- B. It and its subcontractors will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), as amended, and in accordance with that Act, no person shall discriminate, on the grounds of race, color, sex, national origin, age, religion, or disability.
- C. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970, as amended; 42 USC (United States Code) §§4601 et seq.; and United States Department of Transportation (USDOT) regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR, Part 24, which provide for fair and equitable treatment of persons displaced as a result of federal and federally assisted programs.
- D. It will comply with the provisions of the Hatch Political Activity Act, which limits the political activity of employees. (See also Article 25, Lobbying Certification.)
- E. It will comply with the federal Fair Labor Standards Act's minimum wage and overtime requirements for employees performing project work.
- F. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

City of Killeen - Police Department  
STEP

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- G. It will give the Department the access to and the right to examine all records, books, papers, or documents related to this Grant Agreement.
- H. It will comply with all requirements imposed by the Department concerning special requirements of law, program requirements, and other administrative requirements.
- I. It recognizes that many federal and state laws imposing environmental and resource conservation requirements may apply to this Grant Agreement. Some, but not all, of the major federal laws that may affect the project include: the National Environmental Policy Act of 1969, as amended, 42 USC §§4321 et seq.; the Clean Air Act, as amended, 42 USC §§7401 et seq. and sections of 29 USC; the Federal Water Pollution Control Act, as amended, 33 USC §§1251 et seq.; the Resource Conservation and Recovery Act, as amended, 42 USC §§6901 et seq.; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 USC §§9601 et seq. The Subgrantee also recognizes that the U.S. Environmental Protection Agency, USDOT, and other federal agencies have issued, and in the future are expected to issue, regulations, guidelines, standards, orders, directives, or other requirements that may affect this Project. Thus, it agrees to comply, and assures the compliance of each contractor and each subcontractor, with any federal requirements that the federal government may now or in the future promulgate.
- J. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 USC §4012a(a). Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where that insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any form of direct or indirect federal assistance.
- K. It will assist the Department in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470 et seq.), Executive Order 11593, and the Antiquities Code of Texas (National Resources Code, Chapter 191).
- L. It will comply with Chapter 573 of the Texas Government Code by ensuring that no officer, employee, or member of the Subgrantee's governing board or the Subgrantee's subcontractors shall vote or confirm the employment of any person related within the second degree of affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise that person. This prohibition shall not apply to the employment of a person described in Section 573.062 of the Texas Government Code.
- M. It will ensure that all information collected, assembled, or maintained by the applicant relative to this project shall be available to the public during normal business hours in compliance with Chapter 552 of the Texas Government Code, unless otherwise expressly provided by law.
- N. If applicable, it will comply with Chapter 551 of the Texas Government Code, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.

### ARTICLE 3. COMPENSATION

- A. The method of payment for this agreement will be based on actual costs incurred up to and not to exceed the limits specified in the Project Budget. The amount included in the Project Budget will be deemed to be an estimate only and a higher amount can be reimbursed, subject to the conditions specified in paragraph B of this Article. If the Project Budget specifies that costs are based on a specific rate, per-unit cost, or other method of payment, reimbursement will be based on the specified method.
- B. All payments will be made in accordance with the Project Budget.
1. The Subgrantee's expenditures may overrun a budget category (I, II, or III) in the approved Project Budget without a grant (budget) amendment, as long as the overrun does not exceed a total of five (5) percent per year of the maximum amount eligible for reimbursement (TxDOT) in the attached Project Budget for the current fiscal year. This overrun must be off-set by an equivalent underrun elsewhere in the Project Budget.
  2. If the overrun is five (5) percent or less, the Subgrantee must provide written notification to the Department, through the TxDOT Electronic Grants Management System (*eGrants*), prior to the Request for Reimbursement being approved. The notification must indicate the amount, the percent over, and the specific reason(s) for the overrun.
  3. Any overrun of more than five (5) percent of the amount eligible for reimbursement (TxDOT) in the attached Project Budget requires an amendment of this Grant Agreement.
  4. The maximum amount eligible for reimbursement shall not be increased above the Grand Total TxDOT Amount in the approved Project Budget, unless this Grant Agreement is amended, as described in Article 5 of this agreement.
  5. For Selective Traffic Enforcement Program (STEP) grants *only*: In the Project Budget, Subgrantees are not allowed to use underrun funds from the TxDOT amount of (100) Salaries, Subcategories A, "Enforcement," or B, "PI&E Activities," to exceed the TxDOT amount listed in Subcategory C, "Other." Also, Subgrantees are not allowed to use underrun funds from the TxDOT amount of (100) Salaries, Subcategories A, "Enforcement," or C, "Other," to exceed the TxDOT amount listed in Subcategory B, "PI&E Activities." The TxDOT amount for Subcategory B, "PI&E Activities," or C, "Other," can only be exceeded within the five (5) percent flexibility, with underrun funds from Budget Categories II or III.
- C. To be eligible for reimbursement under this agreement, a cost must be incurred in accordance with the Project Budget, within the time frame specified in the Grant Period of this Grant Agreement, attributable to work covered by this agreement, and which has been completed in a manner satisfactory and acceptable to the Department.
- D. Federal or TxDOT funds cannot supplant (replace) funds from any other sources. The term "supplanting," refers to the use of federal or TxDOT funds to support personnel or an activity already supported by local or state funds.
- E. Payment of costs incurred under this agreement is further governed by one of the following

cost principles, as appropriate, outlined in:

1. OMB Circular A-21, Cost Principles for Educational Institutions;
  2. 49 CFR Part 225 (OMB Circular A-87), Cost Principles for State, Local, and Indian Tribal Governments; or,
  3. OMB Circular A-122, Cost Principles for Nonprofit Organizations.
- F. The Subgrantee agrees to submit monthly or quarterly Requests for Reimbursement, as designated in this Grant Agreement, within thirty (30) days after the end of the billing period. The Request for Reimbursement and appropriate supporting documentation must be submitted through *eGrants*.
- G. The Subgrantee agrees to submit the final Request for Reimbursement under this agreement within forty-five (45) days of the end of the grant period.
- H. Payments are contingent upon the availability of appropriated funds.
- I. Project agreements supported with federal or TxDOT funds are limited to the length of this Grant Period specified in this Grant Agreement. If the Department determines that the project has demonstrated merit or has potential long-range benefits, the Subgrantee may apply for funding assistance beyond the initial agreement period. Preference for funding will be given to those projects for which the Subgrantee has assumed some cost sharing, those which propose to assume the largest percentage of subsequent project costs, and those which have demonstrated performance that is acceptable to the Department.

#### **ARTICLE 4. LIMITATION OF LIABILITY**

Payment of costs incurred under this agreement is contingent upon the availability of funds. If at any time during this Grant Period, the Department determines that there is insufficient funding to continue the project, the Department shall notify the Subgrantee, giving notice of intent to terminate this agreement, as specified in Article 11 of this agreement. If at the end of a federal fiscal year, the Department determines that there is sufficient funding and performance to continue the project, the Department may notify the Subgrantee to continue this agreement.

#### **ARTICLE 5. AMENDMENTS**

This agreement may be amended prior to its expiration by mutual written consent of both parties, utilizing the Grant Agreement Amendment in *eGrants*. Any amendment must be executed by the parties within the Grant Period, as specified in this Grant Agreement.

#### **ARTICLE 6. ADDITIONAL WORK AND CHANGES IN WORK**

- A. If the Subgrantee is of the opinion that any assigned work is beyond the scope of this agreement and constitutes additional work, the Subgrantee shall promptly notify the Department in writing through *eGrants*. If the Department finds that such work does constitute additional work, the Department shall advise the Subgrantee and a written amendment to this agreement will be executed according to Article 5, Amendments, to provide compensation for doing this work on the same basis as the original work. If performance of the additional work will cause the maximum amount payable to be exceeded, the work will not be performed before a written grant amendment is executed.

- B. If the Subgrantee has submitted work in accordance with the terms of this agreement but the Department requests changes to the completed work or parts of the work which involve changes to the original scope of services or character of work under this agreement, the Subgrantee shall make those revisions as requested and directed by the Department. This will be considered as additional work and will be paid for as specified in this Article.
- C. If the Subgrantee submits work that does not comply with the terms of this agreement, the Department shall instruct the Subgrantee to make any revisions that are necessary to bring the work into compliance with this agreement. No additional compensation shall be paid for this work.
- D. The Subgrantee shall make revisions to the work authorized in this agreement that are necessary to correct errors or omissions, when required to do so by the Department. No additional compensation shall be paid for this work.
- E. The Department shall not be responsible for actions by the Subgrantee or any costs incurred by the Subgrantee relating to additional work not directly associated with or prior to the execution of an amendment.

#### ARTICLE 7. REPORTING AND MONITORING

- A. Not later than thirty (30) days after the end of each reporting period, the Subgrantee shall submit a performance report through *eGrants*. For short-term projects, only one report submitted by the Subgrantee at the end of the project may be required. For longer projects, the Subgrantee will submit reports at least quarterly and preferably monthly. The frequency of the performance reports is established through negotiation between the Subgrantee and the program or project manager. For Selective Traffic Enforcement Programs (STEPS), performance reports must be submitted monthly.
- B. The performance report will include, as a minimum: (1) a comparison of actual accomplishments to the objectives established for the period, (2) reasons why established objectives and performance measures were not met, if appropriate, and (3) other pertinent information, including, when appropriate, an analysis and explanation of cost underruns, overruns, or high unit costs.
- C. The Subgrantee shall promptly advise the Department in writing, through *eGrants*, of events that will have a significant impact upon this agreement, including:
  - 1. Problems, delays, or adverse conditions, including a change of project director or other changes in Subgrantee personnel, that will materially affect the ability to attain objectives and performance measures, prevent the meeting of time schedules and objectives, or preclude the attainment of project objectives or performance measures by the established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Department or federal assistance needed to resolve the situation.
  - 2. Favorable developments or events that enable meeting time schedules and objectives sooner than anticipated or achieving greater performance measure output than originally projected.
- D. The Subgrantee shall submit the Final Performance Report through *eGrants* within thirty (30) days after completion of the grant.

#### **ARTICLE 8. RECORDS**

The Subgrantee agrees to maintain all reports, documents, papers, accounting records, books, and other evidence pertaining to costs incurred and work performed under this agreement (called the "Records"), and shall make the Records available at its office for the time period authorized within the Grant Period, as specified in this Grant Agreement. The Subgrantee further agrees to retain the Records for four (4) years from the date of final payment under this agreement, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.

Duly authorized representatives of the Department, the USDOT, the Office of the Inspector General, Texas State Auditor, and the Comptroller General shall have access to the Records. This right of access is not limited to the four (4) year period but shall last as long as the Records are retained.

#### **ARTICLE 9. INDEMNIFICATION**

- A. To the extent permitted by law, the Subgrantee, if other than a government entity, shall indemnify, hold, and save harmless the Department and its officers and employees from all claims and liability due to the acts or omissions of the Subgrantee, its agents, or employees. The Subgrantee also agrees, to the extent permitted by law, to indemnify, hold, and save harmless the Department from any and all expenses, including but not limited to attorney fees, all court costs and awards for damages incurred by the Department in litigation or otherwise resisting claims or liabilities as a result of any activities of the Subgrantee, its agents, or employees.
- B. To the extent permitted by law, the Subgrantee, if other than a government entity, agrees to protect, indemnify, and save harmless the Department from and against all claims, demands, and causes of action of every kind and character brought by any employee of the Subgrantee against the Department due to personal injuries to or death of any employee resulting from any alleged negligent act, by either commission or omission on the part of the Subgrantee.
- C. If the Subgrantee is a government entity, both parties to this agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds, as well as the acts and deeds of its contractors, employees, representatives, and agents.

#### **ARTICLE 10. DISPUTES AND REMEDIES**

This agreement supercedes any prior oral or written agreements. If a conflict arises between this agreement and the Traffic Safety Program Manual, this agreement shall govern. The Subgrantee shall be responsible for the settlement of all contractual and administrative issues arising out of procurement made by the Subgrantee in support of work under this agreement. Disputes concerning performance or payment shall be submitted to the Department for settlement, with the Executive Director or his or her designee acting as final referee.

#### ARTICLE 11. TERMINATION

- A. This agreement shall remain in effect until the Subgrantee has satisfactorily completed all services and obligations described in this agreement and these have been accepted by the Department, unless:
1. This agreement is terminated in writing with the mutual consent of both parties; or
  2. There is a written thirty (30) day notice by either party; or
  3. The Department determines that the performance of the project is not in the best interest of the Department and informs the Subgrantee that the project is terminated immediately.
- B. The Department shall compensate the Subgrantee for only those eligible expenses incurred during the Grant Period specified in this Grant Agreement that are directly attributable to the completed portion of the work covered by this agreement, provided that the work has been completed in a manner satisfactory and acceptable to the Department. The Subgrantee shall not incur nor be reimbursed for any new obligations after the effective date of termination.

#### ARTICLE 12. INSPECTION OF WORK

- A. The Department and, when federal funds are involved, the USDOT, or any of their authorized representatives, have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this agreement and the premises in which it is being performed.
- B. If any inspection or evaluation is made on the premises of the Subgrantee or its subcontractor, the Subgrantee shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in a manner that will not unduly delay the work.

#### ARTICLE 13. AUDIT

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

#### ARTICLE 14. SUBCONTRACTS

A subcontract in excess of \$25,000 may not be executed by the Subgrantee without prior written concurrence by the Department. Subcontracts in excess of \$25,000 shall contain all applicable terms and conditions of this agreement. No subcontract will relieve the Subgrantee of its responsibility under this agreement.

#### **ARTICLE 15. GRATUITIES**

- A. Texas Transportation Commission policy mandates that employees of the Department shall not accept any benefit, gift, or favor from any person doing business with or who, reasonably speaking, may do business with the Department under this agreement. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Department's Executive Director.
- B. Any person doing business with or who reasonably speaking may do business with the Department under this agreement may not make any offer of benefits, gifts, or favors to Department employees, except as mentioned here above. Failure on the part of the Subgrantee to adhere to this policy may result in termination of this agreement.

#### **ARTICLE 16. NONCOLLUSION**

The Subgrantee warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Subgrantee, to solicit or secure this agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this agreement. If the Subgrantee breaches or violates this warranty, the Department shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, contingent fee, or gift.

#### **ARTICLE 17. CONFLICT OF INTEREST**

The Subgrantee represents that it or its employees have no conflict of interest that would in any way interfere with its or its employees' performance or which in any way conflicts with the interests of the Department. The Subgrantee shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the Department's interests.

#### **ARTICLE 18. SUBGRANTEE'S RESOURCES**

- A. The Subgrantee certifies that it presently has adequate qualified personnel in its employment to perform the work required under this agreement, or will be able to obtain such personnel from sources other than the Department.
- B. All employees of the Subgrantee shall have the knowledge and experience that will enable them to perform the duties assigned to them. Any employee of the Subgrantee who, in the opinion of the Department, is incompetent or whose conduct becomes detrimental to the work, shall immediately be removed from association with the project.
- C. Unless otherwise specified, the Subgrantee shall furnish all equipment, materials, supplies, and other resources required to perform the work.

#### **ARTICLE 19. PROCUREMENT AND PROPERTY MANAGEMENT**

The Subgrantee shall establish and administer a system to procure, control, protect, preserve, use, maintain, and dispose of any property furnished to it by the Department or purchased pursuant to this agreement in accordance with its own procurement and property management procedures, provided that the procedures are not in conflict with (1) the Department's

procurement and property management standards and (2) the federal procurement and property management standards provided by:

- A. 49 CFR, Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," or
- B. 49 CFR, Part 19 (OMB Circular A-110), "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

#### **ARTICLE 20. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

Upon completion or termination of this Grant Agreement, whether for cause or at the convenience of the parties, all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, etc. prepared by the Subgrantee, and equipment and supplies purchased with grant funds shall, at the option of the Department, become the property of the Department. All sketches, photographs, calculations, and other data prepared under this agreement shall be made available, upon request, to the Department without restriction or limitation of their further use.

- A. Intellectual property consists of copyrights, patents, and any other form of intellectual property rights covering any databases, software, inventions, training manuals, systems design, or other proprietary information in any form or medium.
- B. All rights to Department. The Department shall own all of the rights (including copyrights, copyright applications, copyright renewals, and copyright extensions), title and interests in and to all data, and other information developed under this contract and versions thereof unless otherwise agreed to in writing that there will be joint ownership.
- C. All rights to Subgrantee. Classes and materials initially developed by the Subgrantee without any type of funding or resource assistance from the Department remain the Subgrantee's intellectual property. For these classes and materials, the Department payment is limited to payment for attendance at classes.

#### **ARTICLE 21. SUCCESSORS AND ASSIGNS**

The Department and the Subgrantee each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of the other party in respect to all covenants of this agreement. The Subgrantee shall not assign, sublet, or transfer interest and obligations in this agreement without written consent of the Department through *eGrants*.

#### **ARTICLE 22. CIVIL RIGHTS COMPLIANCE**

- A. Compliance with regulations: The Subgrantee shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the USDOT: 49 CFR, Part 21; 23 CFR, Part 200; and 41 CFR, Parts 60-74, as they may be amended periodically (called the "Regulations"). The Subgrantee agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented by the U.S. Department of Labor regulations (41 CFR, Part 60).
- B. Nondiscrimination: The Subgrantee, with regard to the work performed during the period of

this agreement, shall not discriminate on the grounds of race, color, sex, national origin, age, religion, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment.

- C. Solicitations for subcontracts, including procurement of materials and equipment: In all solicitations either by competitive bidding or negotiation made by the Subgrantee for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the Subgrantee of the Subgrantee's obligations under this agreement and the regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, age, religion, or disability.
- D. Information and reports: The Subgrantee shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the USDOT to be pertinent to ascertain compliance with the Regulations or directives. Where any information required of the Subgrantee is in the exclusive possession of another who fails or refuses to furnish this information, the Subgrantee shall certify that to the Department or the USDOT, whichever is appropriate, and shall set forth what efforts the Subgrantee has made to obtain the requested information.
- E. Sanctions for noncompliance: In the event of the Subgrantee's noncompliance with the nondiscrimination provision of this agreement, the Department shall impose such sanctions as it or the USDOT may determine to be appropriate.
- F. Incorporation of provisions: The Subgrantee shall include the provisions of paragraphs A. through E. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives. The Subgrantee shall take any action with respect to any subcontract or procurement that the Department may direct as a means of enforcing those provisions, including sanctions for noncompliance. However, in the event a Subgrantee becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Subgrantee may request the Department to enter into litigation to protect the interests of the state; and in addition, the Subgrantee may request the United States to enter into such litigation to protect the interests of the United States.

#### **ARTICLE 23. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

- A. The parties shall comply with the DBE Program requirements established in 49 CFR Part 26.
- B. The Subgrantee shall adopt, in its totality, the Department's federally approved DBE program.
- C. The Subgrantee shall set an appropriate DBE goal consistent with the Department's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Subgrantee shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Subgrantee shall follow all other parts of the Department's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas

Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity and attachments found at web address  
[http://txdot.gov/business/business\\_outreach/mou.htm](http://txdot.gov/business/business_outreach/mou.htm).

- E. The Subgrantee shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Subgrantee shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of USDOT-assisted contracts. The Department's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Subgrantee of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).
- F. Each contract the Subgrantee signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

#### ARTICLE 24. DEBARMENT AND SUSPENSION

- A. The Subgrantee certifies, to the best of its knowledge and belief, that it and its principals:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
  2. Have not within the three (3) year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local public transaction or contract under a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  3. Are not presently indicted or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in paragraph A. 2. of this Article; and
  4. Have not, within the three (3) year period preceding this agreement, had one or more federal, state, or local public transactions terminated for cause or default.
- B. Where the Subgrantee is unable to certify to any of the statements in this Article, the Subgrantee shall attach an explanation to this agreement.

- C. The Subgrantee is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Subgrantee certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549.
- D. The Subgrantee shall require any party to a subcontract or purchase order awarded under this Grant Agreement to certify its eligibility to receive federal grant funds, and, when requested by the Department, to furnish a copy of the certification.

#### **ARTICLE 25. LOBBYING CERTIFICATION**

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

- A. No federally appropriated funds have been paid or will be paid by or on behalf of the Subgrantee to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the party to this agreement shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The Subgrantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### **ARTICLE 26. CHILD SUPPORT CERTIFICATION**

Under Section 231.006, Texas Family Code, the Subgrantee certifies that the individual or business entity named in this agreement is not ineligible to receive the specified grant, loan, or payment and acknowledges that this agreement may be terminated and payment may be withheld if this certification is inaccurate. If the above certification is shown to be false, the Subgrantee is liable to the state for attorney's fees and any other damages provided by law or the agreement. A child support obligor or business entity ineligible to receive payments because of a payment delinquency of more than thirty (30) days remains ineligible until: all arrearages have been paid; the obligor is in compliance with a written repayment agreement

or court order as to any existing delinquency; or the court of continuing jurisdiction over the child support order has granted the obligor an exemption from Subsection (a) of Section 231.006, Texas Family Code, as part of a court-supervised effort to improve earnings and child support payments.

#### **ARTICLE 27. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT REQUIREMENTS**

A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms:  
<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.

B. The Subgrantee agrees that it shall:

1. Obtain and provide to the State a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is: <https://www.bpn.gov/ccr/default.aspx>;
2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the Federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
3. Report the total compensation and names of its top five (5) executives to the State if:
  - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
  - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

#### **ARTICLE 28. SINGLE AUDIT REPORT**

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- B. If threshold expenditures of \$500,000 or more are met during the Subgrantee's fiscal year, the Subgrantee must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at [http://www.txdot.gov/contact\\_us/audit.htm](http://www.txdot.gov/contact_us/audit.htm).
- C. If expenditures are less than \$500,000 during the Subgrantee's fiscal year, the Subgrantee must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY \_\_\_\_\_."
- D. For each year the project remains open for federal funding expenditures, the Subgrantee

will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

#### **ARTICLE 29. BUY AMERICA ACT**

The Subgrantee will comply with the provisions of the Buy America Act (49 U.S.C. 5323(j)), which contains the following requirements:

Only steel, iron and manufactured products produced in the United States may be purchased with Federal funds unless the Secretary of Transportation determines that such domestic purchases would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. Clear justification for the purchase of non-domestic items must be in the form of a waiver request submitted to and approved by the Secretary of Transportation.

#### **ARTICLE 30. RESTRICTION ON STATE LOBBYING**

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

### RESPONSIBILITIES OF THE SUBGRANTEE

- A. Carry out all performance measures established in the grant, including fulfilling the law enforcement objectives by implementing the Operational Plan contained in this Grant Agreement.
- B. Submit all required reports to the Department (TxDOT) fully completed with the most current information, and within the required times, as defined in Article 3 and Article 7 of the General Terms and Conditions of this Grant Agreement. This includes reporting to the Department on progress, achievements, and problems in monthly Performance Reports and attaching necessary source documentation to support all costs claimed in Requests for Reimbursement (RFR).
- C. Attend Department-approved grant management training.
- D. Attend meetings according to the following:
  - 1. The Department will arrange for meetings with the Subgrantee to present status of activities and to discuss problems and the schedule for the following quarter's work.
  - 2. The project director or other appropriate qualified persons will be available to represent the Subgrantee at meetings requested by the Department.
- E. Support grant enforcement efforts with public information and education (PI&E) activities. Salaries being claimed for PI&E activities must be included in the budget.
- F. When applicable, all newly developed PI&E materials must be submitted to the Department for written approval, through the TxDOT Electronic Grants Management System (eGrants) system messaging, prior to final production. Refer to the Traffic Safety Program Manual regarding PI&E procedures.
- G. For out of state travel expenses to be reimbursable, the Subgrantee must have obtained the written approval of the Department, through eGrants system messaging, prior to the beginning of the trip. Grant approval does not satisfy this requirement. For Department district-managed grants, the Subgrantee must have obtained written Department district approval, through eGrants system messaging, for travel and related expenses if outside of the district boundaries.
- H. Maintain verification that all expenses, including wages or salaries, for which reimbursement is requested is for work exclusively related to this project.
- I. Ensure that this grant will in no way supplant (replace) funds from other sources. Supplanting refers to the use of federal funds to support personnel or any activity already supported by local or state funds.
- J. Ensure that each officer working on the STEP project will complete an officer's daily report form. The form should include at a minimum: name, date, badge or identification number, type of grant worked, grant site number, mileage (including starting and ending mileage),

City of Killeen - Police Department  
STEP

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hours worked, type of citation issued or arrest made, officer and supervisor signatures.

- K. Ensure that no officer above the rank of Lieutenant (or equivalent title) will be reimbursed for enforcement duty, unless the Subgrantee received specific written authorization from the Department, through eGrants system messaging, prior to incurring costs.
- L. Subgrantee may work additional STEP enforcement hours on holidays or special events not covered under the Operational Plan. However, additional work must be approved in writing by the Department, through eGrants system messaging, prior to enforcement. Additional hours must be reported in the Performance Report for the time period for which the additional hours were worked.
- M. If an officer makes a STEP-related arrest during the shift, but does not complete the arrest before the shift is scheduled to end, the officer can continue working under the grant to complete that arrest.
- N. Subgrantees with a traffic unit will utilize traffic personnel for this grant, unless such personnel are unavailable for assignment.
- O. Prior to conducting speed enforcement, the Subgrantee must select and survey enforcement sites that comply with existing state mandated speed limits in accordance with the Texas Transportation Code, Sections 545.352 through 545.356.
- P. Officers assigned to speed sites should be trained in the use of radar or laser speed measurement devices.
- Q. The Subgrantee should have a safety belt use policy. If the Subgrantee does not have a safety belt use policy in place, a policy should be implemented, and a copy maintained for verification during the grant year.
- R. Officers working DWI enforcement must be trained in the National Highway Traffic Safety Administration/International Association of Chiefs of Police Standardized Field Sobriety Testing (SFST). In the case of a first year subgrantee, the officers must be trained, or scheduled to be SFST trained, by the end of the grant year. For second or subsequent year grants, all officers working DWI enforcement must be SFST trained.
- S. The Subgrantee should have a procedure in place for contacting and using drug recognition experts (DREs) when necessary.
- T. The Subgrantee is encouraged to use the DWI On-line Reporting System available through the Buckle Up Texas Web site at [www.buckleuptexas.com](http://www.buckleuptexas.com).

**RESPONSIBILITIES OF THE DEPARTMENT**

- A. Monitor the Subgrantee's compliance with the performance obligations and fiscal requirements of this Grant Agreement using appropriate and necessary monitoring and inspections, including but not limited to:
  - 1. review of periodic reports
  - 2. physical inspection of project records and supporting documentation
  - 3. telephone conversations
  - 4. e-mails and letters
  - 5. quarterly review meetings
  - 6. eGrants
  
- B. Provide program management and technical assistance.
  
- C. Attend appropriate meetings.
  
- D. Reimburse the Subgrantee for all eligible costs as defined in the project budget. Requests for Reimbursement will be processed up to the maximum amount payable as indicated in the project budget.
  
- E. Perform an administrative review of the project at the close of the grant period to:
  - 1. Ascertain whether or not the project objectives were met
  - 2. Review project accomplishments (performance measures completed, targets achieved)
  - 3. Document any progress towards self-sufficiency
  - 4. Account for any approved Program Income earned and expended
  - 5. Identify exemplary performance or best practices

**Program Element Selection**

**STEP Year Long**

- X DWI            DWI: Driving While Intoxicated
  
- X Speed            Speed: Speed Enforcement
  
- OP            OP: Occupant Protection (Safety Belt and Child Safety Seat)
  
- ITC            ITC: Intersection Traffic Control

**STEP WAVE**

- DWI            Jurisdiction wide (DWI enforcement effort must be focused at locations where there is an over-representation of alcohol-related crashes and/or DWI arrests)
  
- Speed            Jurisdiction wide (Speed enforcement should be focused on areas where there is at least a 50% noncompliance with the posted speed limits and/or a higher number of speed-related crashes)
  
- OP            Jurisdiction wide

**STEP CMV**

- Speed, OP and HMV            CMV: Commercial Motor Vehicle; HMV: Hazardous Moving Violations

### Goals and Strategies

**Goal:** To increase effective enforcement and adjudication of traffic safety-related laws to reduce crashes, fatalities, and injuries.

**Strategy:** Increase and sustain high visibility enforcement of traffic safety-related laws.

**Strategy:** Increase public education and information campaigns regarding enforcement activities.

**Goal:** To reduce the number of alcohol impaired and driving under the influence of alcohol and other drug-related crashes, injuries, and fatalities.

**Strategy:** Increase and sustain high visibility enforcement of DWI laws.

**Goal:** To reduce the number of speed-related crashes, injuries, and fatalities.

**Strategy:** Increase and sustain high visibility enforcement of speed-related laws.

I agree to the above goals and strategies.

**Baseline Information**

**Baseline Year (12 months)** From 12/1/2011 to 11/30/2012

<b>Baseline Measure</b>	<b>Baseline Number</b>	
Number of Driving While Intoxicated (DWI) arrests	341	
Number of speed citations	8231	
	<b>Baseline Number</b>	<b>Month/Year of Survey</b>
Percentage of speed compliance	26.3 %	12/2012

**Law Enforcement Objective/Performance Measure**

<b>Objective/Performance Measure</b>	<b>Target Number</b>
<b>1. Number and type citations/arrests to be issued under STEP</b>	
a. Increase DWI arrests by	130
b. Increase speed citations by	5160
<b>2. Proposed total number of traffic related crashes</b>	
a. Reduce the number of alcohol-related crashes to	180
b. Reduce the number of speed-related crashes to	150
<b>3. Increase speed compliance</b>	
a. Increase the speed compliance rate to	30%
<b>4. Number of Enforcement Hours</b>	2500
<b>Step Indicator</b>	<b>3</b>

**Note:** Nothing in this agreement shall be interpreted as a requirement, formal or informal, that a peace officer issue a specified or predetermined number of citations in pursuance of the Subgrantee's obligations hereunder. In addition to the STEP enforcement activities, the subgrantee must maintain baseline non-STEP funded citation and arrest activity due to the prohibition of supplanting.

**PI&E Objective Performance/Measure**

Object/Performance Measure	Target Number
<b>Support Grant efforts with a public information and education (PI&amp;E) program</b>	
a. Conduct presentations	5
b. Conduct media exposures (e.g. news conferences, news releases, and interviews)	5
c. Conduct community events (e.g. health fairs, booths)	3
d. Produce the following number of public information and education materials	0
e. Number of public information and education materials distributed	400

Operational Plan

Page Title: Killeen 2014 Comprehensive STEP

<u>Site Number</u>	<u>Type (Speed, OP, ITC)</u>	<u>Site Description (include Miles Per Hour)</u>	<u>Survey Results (Compliance Percentage)</u>	<u>Enforcement Period (Days &amp; Times)</u>
1.1	IDM	Citywide	%	Daily, Monday-Sunday 8PM-6AM
2.2	Speed	US Hwy 190 Between the east city limits and the west city limits. Posted speed limit is 60mph. Approximately 5.4 miles of Roadway	30%	Daily, Monday-Sunday 4AM-11PM
3.3	Speed	See attached OP Order	35%	Daily, Monday-Sunday 4AM-11PM
4.4	Speed	Elms RD between FT Hood st and FM 3470. Posted speed limit is 40. Approximately 3 miles of roadway.	36.1%	Daily, Monday-Sunday 4AM-11PM
5.5	Speed	WS Yound DR from Stagecoach RD north till it becomes Westcliff RD, then Westcliff RD to 38th ST. Posted speed limit is 40mph for approximately 2.6 miles and 30mph for approximately 4.7 miles.	11.5%	Daily, Monday-Sunday 4AM-11PM
6.6	Speed	See Attached OP Order	22.05%	Daily, Monday-Sunday 4AM-11PM
		Trimmier RD from South City Limits north to Hallmark Ave. The posted limit		Daily, Monday-

City of Killeen - Police Department  
STEP

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7.7	Speed	is 45mph for approximately 1.9 miles, 40mph for approximately 2.6 miles and 30mph for approximately 1.5 miles.	23.7%	Sunday 4AM-11PM
-----	-------	--	-------	--------------------

### Budget Summary

Budget Category		TxDOT	Match	Total
<b>Category I - Labor Costs</b>				
(100)	Salaries:	\$81,600.00	\$18,614.00	\$100,214.00
(200)	Fringe Benefits:	\$0	\$21,054.96	\$21,054.96
	<b>Sub-Total:</b>	\$81,600.00	\$39,668.96	\$121,268.96
<b>Category II - Other Direct Costs</b>				
(300)	Travel:	\$0	\$11,375.00	\$11,375.00
(400)	Equipment:	\$0	\$0	\$0
(500)	Supplies:	\$0	\$0	\$0
(600)	Contractual Services:	\$0	\$0	\$0
(700)	Other Miscellaneous:	\$0	\$0	\$0
	<b>Sub-Total:</b>	\$0	\$11,375.00	\$11,375.00
<b>Total Direct Costs:</b>		\$81,600.00	\$51,043.96	\$132,643.96
<b>Category III - Indirect Costs</b>				
(800)	Indirect Cost Rate:	\$0	\$0	\$0
<b>Summary</b>				
	<b>Total Labor Costs:</b>	\$81,600.00	\$39,668.96	\$121,268.96
	<b>Total Direct Costs:</b>	\$0	\$11,375.00	\$11,375.00
	<b>Total Indirect Costs:</b>	\$0	\$0	\$0
<b>Grand Total</b>		\$81,600.00	\$51,043.96	\$132,643.96
	<b>Fund Sources (Percent Share):</b>	61.52%	38.48%	
Salary and cost rates will be based on the rates submitted by the Subgrantee in its grant application in Egrants.				



Form 2109 (rev. 01/08/2007)

# TRAFFIC SAFETY OPERATIONAL PLAN

Project Fiscal Year: 2014

Subgrantee: City of Killeen

Project Title: Comprehensive STEP

Site Type & Identifier	Site Description	Survey Compliance Rates (if applicable)	Enforcement Period
1 IDM	Citywide		Daily, Monday-Sunday 8:00PM-6:00AM
2 Speed	US Hwy 190 between the east city limits and west city limits. Posted speed limit is 60 mph for approximately 5.4 miles of roadway.		Daily, Monday-Sunday 4:00AM-11:00PM
3 Speed	Central Texas Expressway (US Hwy 190 frontage road) from the east city limits to the west city limits. Posted speed limit is 45mph for approximately 3.7 miles and 35mph for approximately 1.7 miles.		Daily, Monday-Sunday 4:00AM-11:00PM
4 Speed	Elms RD between FT Hood ST (TX 195) and FM 3470. Posted speed limit is 40mph for approximately 3 miles.		Daily, Monday-Sunday 4:00AM-11:00PM
5 Speed	WS Young DR from Stagecoach rd north till it becomes Westcliff RD, then Westcliff RD to 38 <sup>th</sup> ST. Posted speed limit is 40mph for approximately 2.6 miles and 30mph for approximately 4.7 miles		Daily, Monday-Sunday 4:00AM-11:00PM
6 Speed	Clear Creek RD (TX 201) from FT Hood ST (TX 195) to the north City Limits (Watercrest RD). The posted speed limit is 60mph for approximately 3.8 miles, 55mph for approximately 1.5miles, 50mph for approximately 1.5miles and 35mph for approximately 0.5miles		Daily, Monday-Sunday 4:00AM-11:00PM
7 Speed	Trimmer RD from the South City Limits north to Hallmark Ave. The posted speed limit is 45mph for approximately 1.9 miles, 40mph for approximately 2.6miles and 30mph for approximately 1.5miles.		Daily, Monday-Sunday 4:00AM-11:00PM

**Note:** Any modifications made to the Operational Plan after the grant is executed do not require an amendment to the Grant Agreement. However, the Subgrantee must follow the Operational Plan modification procedures found in the Operational Plan Instructions before any enforcement is conducted in the related sites. For Speed and Occupant

TxDOT Form 2109 (rev. 01/08/2007)

Subgrantee:

Project Title:

Project Fiscal Year:

Protection sites, survey data must be submitted to support the Operational Plan. It is recommended that subgrantees follow the "Speed Survey Protocol and Instructions" and the "Occupant Restraint Survey Protocol" found on the Buckle Up Texas website: <http://www.buckleuptexas.com>.

Regular 10-8-13  
Item # CA-4

## CITY COUNCIL MEMORANDUM FOR RESOLUTION

### AGENDA ITEM

**Plat Case #13-026FS: Killeen (Watercrest)  
DTP VIII LLC Addition**

### ORIGINATING DEPARTMENT

**Planning and Development Services**

### BACKGROUND INFORMATION

John Cowan & Associates, Inc. submits this request for Killeen (Watercrest) DTP VIII LLC Addition, being a final plat of approximately 2.633 acres, part of the Thomas Robinett Survey, Abstract No. 686, Killeen, Texas. The property is zoned B-3 (Local Business District) and the applicant is platting the property into two commercial lots. A Dollar General retail store will be constructed upon Lot 1.

### DISCUSSION/CONCLUSION

Staff advised the Planning and Zoning Commission that the plat had met all provisions of Chapter 26 of the Killeen Code of Ordinances. Staff recommended that the Planning and Zoning Commission approve the plat.

### FISCAL IMPACT

None

### RECOMMENDATION

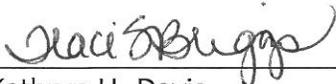
The Planning and Zoning Commission voted to approve plat case #13-026FS: Killeen (Watercrest) DTP VIII LLC Addition by a vote of 7 to 0.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this the 8<sup>th</sup> day of October, 2013, 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**

\_\_\_\_\_  
Daniel A. Corbin  
MAYOR

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

\_\_\_\_\_  
Dianna Barker  
CITY SECRETARY

**PLANNING AND ZONING COMMISSION MEETING  
MINUTES  
SEPTEMBER 23, 2013**

**CASE #13-026FS  
KILLEEN (WATERCREST) DTP VIII L.L.C. ADDITION**

**Consider a final plat submitted by the Jessie M. Kern Estate c/o Clayton Winkler [Case #13-026FS: Killeen (Watercrest) DTP VIII L.L.C. Addition] being a final plat of approximately 2.663 acres, being part of the Thomas Robinette Survey, Abstract No. 686. The property is located west of the intersection of Watercrest Road and Robinette Road, and is addressed as 4102 Watercrest Road, Killeen, Texas.**

Commissioner Hicks motioned to approve the consent agenda, Commissioner Dorroh seconded the motion. The motion passed 7-0.

Chairman Frederick stated that the consent agenda is approved and the plat cases will be heard by City Council on October 8, 2013.



CITY OF KILLEEN - PLAT APPLICATION CASE # \_\_\_\_\_

Plat Title: ALTA/ACSM Land Title Survey for GBT Realty

Type:  Preliminary  Final  Replat  Minor  Amended

Name(s) of Property Owner (s): Jessie M. Kern Estate C/O ~~Ronald Parker~~ Clayton Winkler

Address: 600 N. 10th Street Email: \_\_\_\_\_

City: Killeen State: Texas Zip: 76541

Home Phone: (254) 526-5567 Business Phone: ( ) Cell Phone: \_\_\_\_\_

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

Type of Ownership:  Sole Ownership  Partnership  Corporation  Other

Recorded Copy of Warranty Deed: Is a copy of the appropriate deed(s) attached? YES / NO

Name of Developer: GBT Realty

Address: 9010 Overlook Blvd email: cunderwood@gbtrealty.com

City: Brentwood State: TN Zip: 37027

Name of Engineer/Surveyor: John Cowan & Associates

Address: 2012 Anthony Drive

City: Tyler State: TX Zip: 75701

Home Phone: ( ) Business Phone: (903) 581-2238 Cell Phone: \_\_\_\_\_

Is the Property:  Within City Limits  Within ETJ (5.0 miles)

Proposed Land Use: Retail Store

Total Acreage: 2.633 Number of Lots: 2 Current Zoning: B-3 Proposed Zoning B-3

Is there a simultaneous rezoning of any part of this property? No No

Address/ Location of Property to be Platted: 4102 Watercrest Road, Killeen, Tx 76541

Legal Description: 2.633 acres, part of the Thomas Robinett Survey, A-686 Bell County, Texas

Replats and Amendments: During the preceding five (5) years, was the platted property limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot? Yes/No During the preceding five (5) years, was any lot in the preceding plat limited by deed restrictions to residential use for not more than two residential units per lot? Yes/No Attach a copy of applicable deed restrictions or a (notarized) letter from the applicant stating that no deed restrictions apply.

What is the reason for the replat / amendment? Never been platted

Owner(s) must initial

- \_\_\_\_\_ I hereby certify that all fees/charges owed by me/us to the City concerning any prior plats and/or subdivisions have been paid in full as of the date of this application.
- \_\_\_\_\_ I understand that attendance at the Development Review Committee meeting is mandatory. My failure to attend or my agent's failure to attend will result in rescheduling the meeting of the Development Review Committee and delay processing of the application.
- \_\_\_\_\_ I understand that I must obtain approval from both Planning and Zoning Commission and City Council (except in the case of minor plats) prior to the plat being recorded with the Clerk of Bell County.

APPOINTMENT OF AGENT

As owner of the subject property, I hereby appoint the person designated below to act for me, as my agent in this request.

Name of Agent: John Cowan & Associates

Mailing Address: 2012 Anthony Drive Email: pcornett@jcowaninc.com

City: Tyler State: TX Zip: 75701

Home Phone: ( ) Business Phone: (903) 581-2238 Fax: (903) 561-0600

Email: tlamb@jcowaninc.com

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

be the point of contact between myself and the City; make legally binding representations of fact and commitments of every kind on my behalf; grant legally binding waivers of rights and releases of liabilities of every kind on my behalf; consent to legally binding modifications, conditions, and exceptions on my behalf; and, to execute documents on my behalf which are legally binding on me.

I understand that the City will deal only with a fully authorized agent. If at any time it should appear that my agent has less than full authority to act, then the application may be suspended and I will have to personally participate in the disposition of the application. I understand that all communications related to this application, are part of an official proceeding of City government and, that the City will rely upon statements made by my agent. Therefore, I agree to hold harmless and indemnify the City of Killeen, its officers, agents, employees, and third parties who act in reliance upon my agent's words and actions from all damages, attorney fees, interest and costs arising from this matter. If my property is owned by a corporation, partnership, venture, or other legal entity, then I certify that I have legal authority to make this binding appointment on behalf of the entity, and every reference herein to "I", "my," or "me" is a reference to the entity.

Signature of Agent [Handwritten Signature] Title Owner

Printed/Typed Name of Agent Philip W. Cornett Title Owner

Signature of Property Owner [Handwritten Signature] Title

Printed/Typed Name of Property Owner Clayton Winkler Title Independent Executor

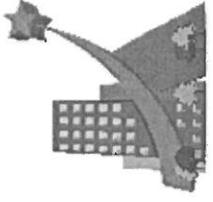
Signature of Property Owner Title

Printed/Typed Name of Property Owner Title

Signature of Property Owner Title

Printed/Typed Name of Property Owner Title

\* Applications must be signed by the individual applicant, each partner of a partnership, or by an authorized officer of a corporation or association.



**PLANNING AND DEVELOPMENT SERVICES**

**PLAT CASE:**

#13-026 FS

**SUBDIVISION NAME:**

KILLEEN WATERCREST  
REPLAT

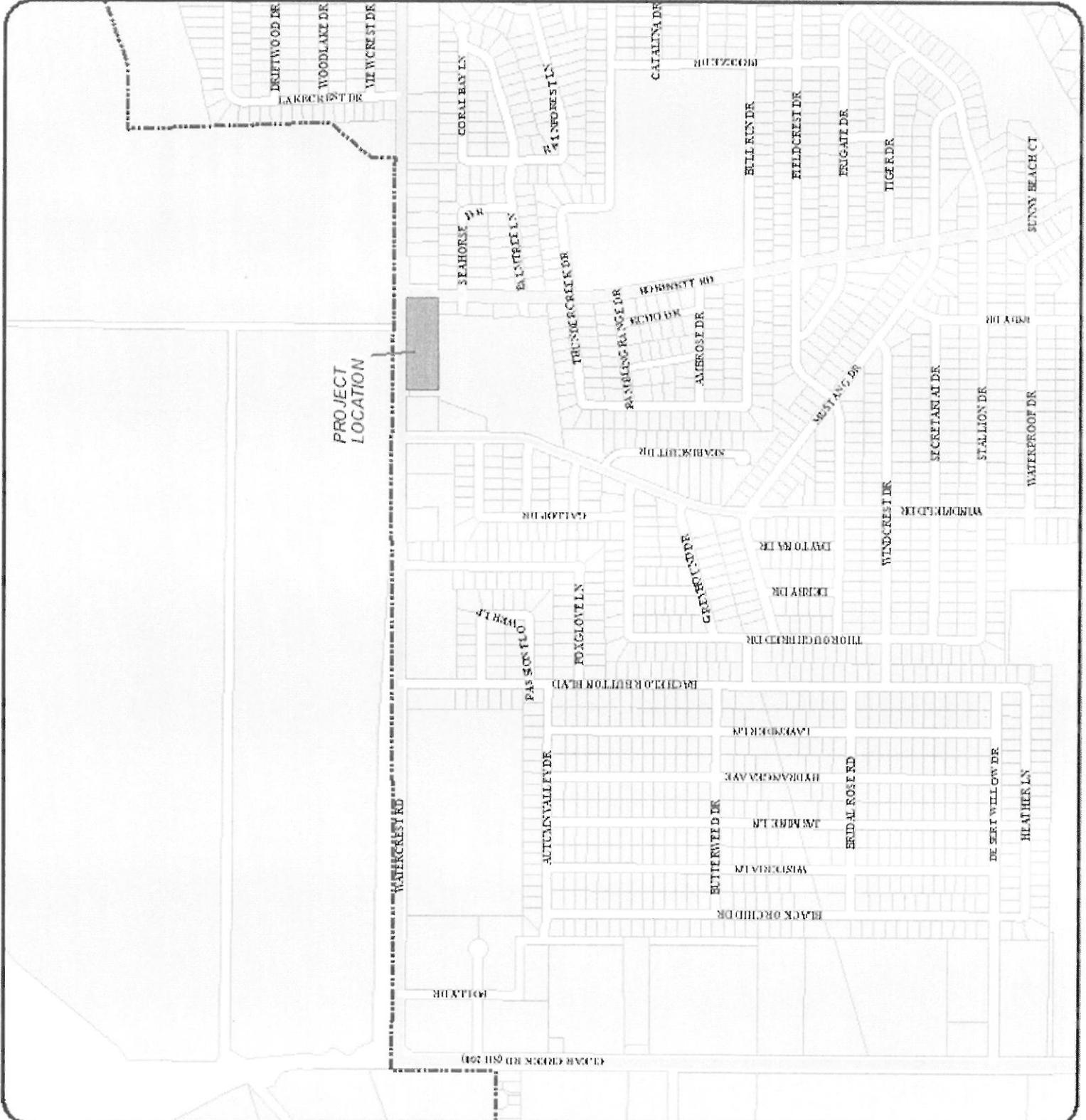
**PROPERTY OWNER:**

ESTATE OF  
JESSIE KERN

Maple  
Plat Case 2012  
City of Appleton  
Prepared by GSA Online Review



Date: 9/5/2013



PROJECT  
LOCATION

CLARK FOREN RD (SH 208)

WATERCREST RD

DEFTWOOD DR  
WOODLAKE DR  
LAKECREST DR  
NEWCREST DR

CORAL BAY LN

WINDFOREST LN

CATALINA DR

SEAHORSE DR

WINDCREST LN

THUNDERCREEK DR

RAMBLING RANGE DR

WINDCREST LN

ALBROSE DR

WINDCREST LN

WINDCREST LN

DEVOTRA DR

DEVOTRA DR

WINDCREST LN

SECRETARIAT DR

STALLION DR

WATERPROOF DR

SUNNY BEACH CT

PASADENA DR

FOXGLOVE LN

WINDCREST LN

WINDCREST LN

WINDCREST LN

WINDCREST LN

THOROUGHBRID DR

AUTUMN VALLEY DR

WINDCREST LN

EUTHERVED DR

WINDCREST LN

BLACK ORCHID DR

WINDCREST LN



**CITY COUNCIL MEMORANDUM FOR RESOLUTION**

**AGENDA ITEM**

**Plat Case #13-027FS  
Collins Addition**

**ORIGINATING DEPARTMENT**

**Planning and Development Services**

**BACKGROUND INFORMATION**

Mitchell & Associates, Inc. submits this request on behalf of Glenn and Patricia Collins for *Collins Addition*, being a final plat consisting of 2.448 acres, part of the Richard A. McGee Survey, Abstract No. 561, Killeen, Texas. The property is located on the west right-of-way of S. Fort Hood Street (S.H. 195), west of the intersection of FM 2484. The property is currently zoned B-3 (Local Business District) and the applicant is platting the property into two (2) lots.

**DISCUSSION/CONCLUSION**

Staff advised the Planning and Zoning Commission that the plat had met all provisions of Chapter 26 of the Killeen Code of Ordinances. Staff recommended that the Planning and Zoning Commission approve the plat.

**FISCAL IMPACT**

None

**RECOMMENDATION**

The Planning and Zoning Commission approved the plat by a vote of 7 to 0.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this the 8<sup>th</sup> day of October, 2013, 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**

\_\_\_\_\_  
Daniel A. Corbin  
MAYOR

**APPROVED AS TO FORM:**

*Kathryn H. Davis*  
\_\_\_\_\_  
Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

\_\_\_\_\_  
Dianna Barker  
CITY SECRETARY

**PLANNING AND ZONING COMMISSION MEETING  
MINUTES  
SEPTEMBER 9, 2013**

**CASE #13-027FMS  
COLLINS ADDITION**

**Consider a final plat submitted by Hubert G. Collins and Patricia A. Collins being a final minor plat of approximately 2.448 acres, part of the Richard A McGee Survey, Abstract No. 561. The property is located on the west right-of-way of S. Fort Hood Street (S.H. 195) across from FM 2484, Killeen, Texas.**

Commissioner Hicks motioned to approve the consent agenda, Commissioner Dorroh seconded the motion. The motion passed 7-0.

Chairman Frederick stated that the consent agenda is approved and the plat cases will be heard by City Council on October 8, 2013.



CITY OF KILLEEN  
PLAT APPLICATION

CASE #:  
13-027FMS

Plat Name Collins Addition

Type: Preliminary ( ) Final ( ) Replat ( ) Minor ( ) Amended (X)

Name(s) of Property Owner (s): Hubert G. Collins & Patricia A. Collins

Address: 13245 SH 195

City: Killeen State: TX Zip: 76542

Home Phone: ( ) N/A Business Phone: (254) 291-4222 Cell Phone: \_\_\_\_\_

Type of Ownership:  Sole Ownership  Partnership  Corporation  Other

Recorded Copy of Warranty Deed: Is a copy of the appropriate deed(s) attached? **YES**

Name of Developer: Same As Above

Address: Same As Above

City: Same As Above State: Same As Above Zip: Same as Above-

Name of Engineer/Surveyor: Mitchell & Associates, Inc.

Address: 102 N College

City: Killeen State: Texas Zip: 76540

Home Phone: ( ) N/A Business Phone: (254) 634-5541 Cell Phone: N/A

Is the Property:  Within City Limits  Within ETJ (5.0 miles)

Proposed Land Use: Business

Total Acreage: Number of Lots: 2 Current Zoning: A Proposed Zoning B-3

Is there a simultaneous rezoning of any part of this property? **Yes**

Address/ Location of Property to be Platted: 13245 SH 195 Killeen, TX. 76542

Legal Description: Collins Addition

Replats and Amendments: During the preceding five (5) years, was the platted property limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot? N/A During the preceding five (5) years, was any lot in the preceding plat limited by deed restrictions to residential use for not more than two residential units per lot? N/A Attach a copy of applicable deed restrictions or a (notarized) letter from the applicant stating that no deed restrictions apply.

What is the reason for the replat / amendment? \_\_\_\_\_

Owner(s) must initial:

PC I hereby certify that all fees/charges owed by me/us to the City concerning any prior plats and/or subdivisions have been paid in full as of the date of this application.

PC I understand that attendance at the Development Review Committee meeting is mandatory. My failure to attend or my agent's failure to attend will result in rescheduling the meeting of the Development Review Committee and delay processing of the application.

PC I understand that I must obtain approval from both Planning and Zoning Commission and City Council (except in the case of minor plats) prior to the plat being recorded with the Clerk of Bell County.

APPOINTMENT OF AGENT

As owner of the subject property, I hereby appoint the person designated below to act for me, as my agent in this request.

Name of Agent: Mitchell & Associates, Inc.

Mailing Address: P.O. Box 1088 / 102 N College

City : Killeen State: Texas Zip: 76540

Home Phone: ( ) N/A Business Phone: (254) 634-5541

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

be the point of contact between myself and the City; make legally binding representations of fact and commitments of every kind on my behalf; grant legally binding waivers of rights and releases of liabilities of every kind on my behalf; consent to legally binding modifications, conditions, and exceptions on my behalf; and, to execute documents on my behalf which are legally binding on me.

**I understand that the City will deal only with a fully authorized agent.** If at any time it should appear that my agent has less than full authority to act, then the application may be suspended and I will have to personally participate in the disposition of the application. I understand that all communications related to this application, are part of an official proceeding of City government and, that the City will rely upon statements made by my agent. Therefore, **I agree to hold harmless and indemnify the City of Killeen, its officers, agents, employees, and third parties who act in reliance upon my agent's words and actions from all damages, attorney fees, interest and costs arising from this matter.** If my property is owned by a corporation, partnership, venture, or other legal entity, then I certify that I have legal authority to make this binding appointment on behalf of the entity, and every reference herein to "I", "my," or "me" is a reference to the entity.

Signature of Agent [Signature] Title Agent

Printed/Typed Name of Agent Mitchell & Associates, Inc. Date 24 July 13

Signature of Property Owner \_\_\_\_\_ Title Owner

Printed/Typed Name of Property Owner Hubert G. Collins Date 29 July 13

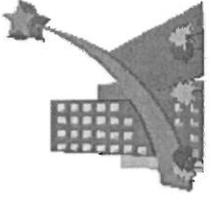
Signature of Property Owner Patricia A. Collins Title Owner

Printed/Typed Name of Property Owner Patricia A. Collins Date \_\_\_\_\_

Signature of Property Owner \_\_\_\_\_ Title \_\_\_\_\_

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

\* Applications must be signed by the individual applicant, each partner of a partnership, or by an authorized officer of a corporation or association.



**PLANNING AND  
DEVELOPMENT SERVICES**

**PLAT CASE:**

#13-027FMS

**SUBDIVISION NAME:**

COLLINS ADDITION

**PROPERTY OWNER:**

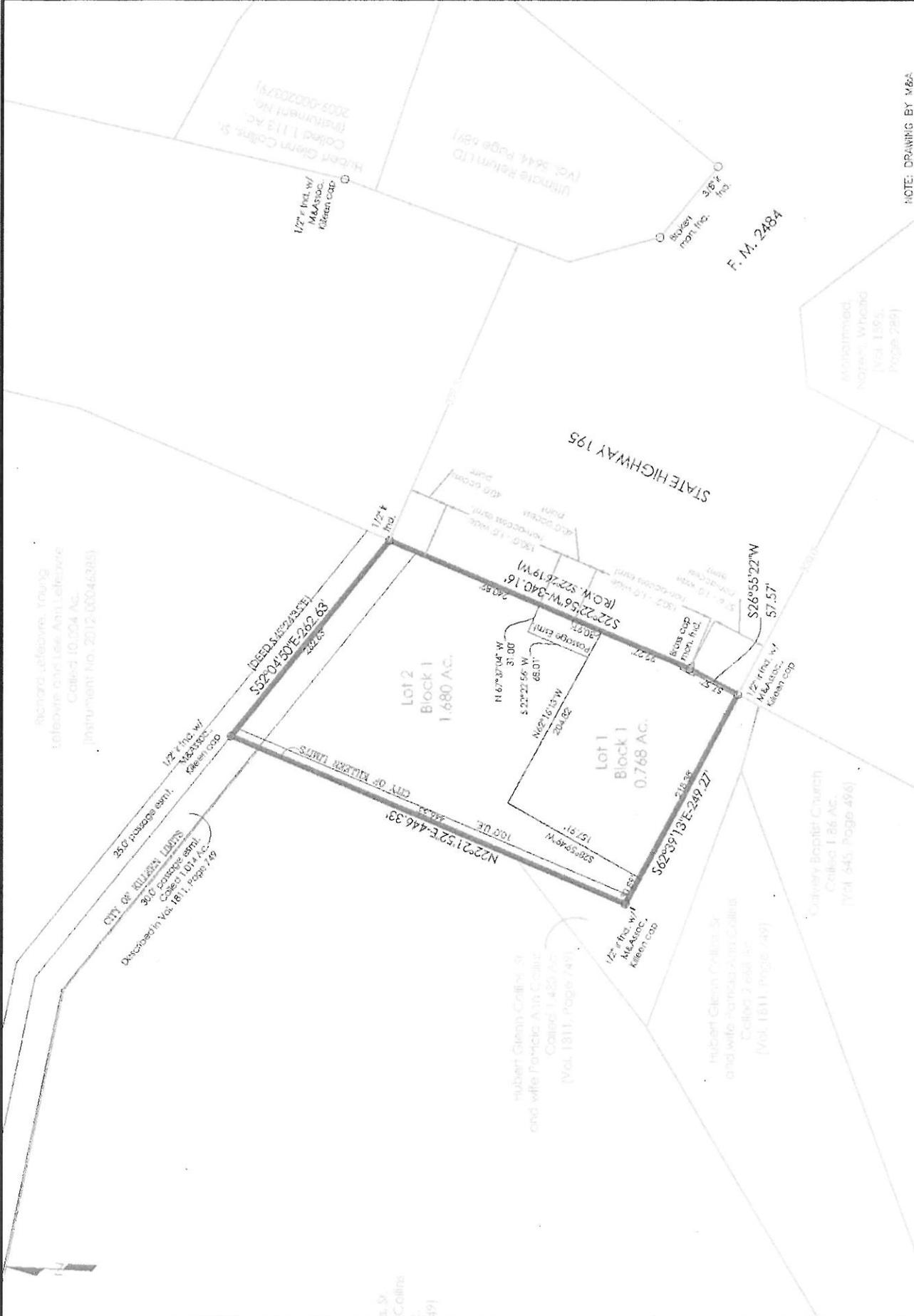
HUBERT AND PATRICIA  
COLLINS

Scale:  
Plat Case 2013  
City Limits  
Proposition 65 Drinking Water



Date: 9/3/2013





Records, telephone, tracing  
 telephone and Lee Ann telephone  
 called 10,004 AC.  
 Instrument No. 2012-00046285

CITY OF KILLEEN, TEXAS  
 3/17 Conveyance  
 Called 1.01 AC.  
 Discussed in Vol. 1811, Page 749

Hubert Glenn Collins, Sr.  
 and wife Patricia Ann Collins  
 Called 1.420 AC.  
 (Vol. 1811, Page 749)

Lot 2  
 Block 1  
 1.680 AC.

Lot 1  
 Block 1  
 0.768 AC.

Hubert Glenn Collins, Sr.  
 and wife Patricia Ann Collins  
 Called 2.668 AC.  
 (Vol. 1811, Page 749)

Calvary Baptist Church  
 Called 1.86 AC.  
 (Vol. 545, Page 494)

NOTE: DRAWING BY M&A

**CITY OF KILLEEN**  
 PLANNING/MAPPING  
 P.O. BOX 1379  
 KILLEEN, TEXAS 76940-1379



**COLLINS ADDITION**

**PLAT CASE #13-027FMS**

DATE: 09/03/13

LOTS: 2

APPROX: 2.448

**CITY COUNCIL MEMORANDUM FOR RESOLUTION**

**AGENDA ITEM**

**Plat Case #13-032FS  
The Landing at Clear Creek Phase III**

**ORIGINATING DEPARTMENT**

**Planning and Development Services**

**BACKGROUND INFORMATION**

Yalgo, L.L.C. submits this request on behalf of WBW Development, Ltd for a final plat of approximately 46.72 acres, being known as The Landing at Clear Creek Phase III. The property is part of the J. E. Maddera Survey, Abstract No. 600, Killeen, Texas. The property is located on the east right-of-way of Clear Creek Road (S.H. 201), south of the Landing at Clear Creek, Phase II. The property is zoned R-1 (Single Family Residential District) and the applicant is platting the property into 179 residential lots and 3 tracts. The subdivision has two points of access from Mustang Creek Road (as platted in previous phases of The Landing at Clear Creek) and Prewitt Ranch Road (directly onto S.H. 201).

**DISCUSSION/CONCLUSION**

Staff advised the Planning and Zoning Commission that the plat had met all provisions of Chapter 26 of the Killeen Code of Ordinances. Staff recommended that the Planning and Zoning Commission approve the plat.

**FISCAL IMPACT**

None

**RECOMMENDATION**

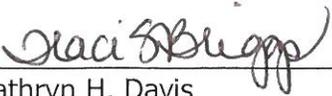
The Planning and Zoning Commission voted to approve plat case #13-032FS: The Landing at Clear Creek Phase III by a vote of 5 to 0.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this the 8<sup>th</sup> day of October, 2013, 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**

\_\_\_\_\_  
Daniel A. Corbin  
MAYOR

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
for Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

\_\_\_\_\_  
Dianna Barker  
CITY SECRETARY



CITY OF KILLEEN - PLAT APPLICATION

CASE # \_\_\_\_\_

Plat Title: THE LANDING AT CLEAR CREEK PHASE III

Type:  Preliminary  Final  Replat  Minor  Amended

Name(s) of Property Owner (s): WBN DEVELOPMENT, LTD.

Address: 3000 ILLINOIS AVE STE 100 Email: \_\_\_\_\_

City: KILLEEN State: TX Zip: 76543

Home Phone: ( ) \_\_\_\_\_ Business Phone: (254) 953-5353 Cell Phone: \_\_\_\_\_

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

Type of Ownership:  Sole Ownership  Partnership  Corporation  Other

Recorded Copy of Warranty Deed: Is a copy of the appropriate deed(s) attached? YES / NO

Name of Developer: W&B DEVELOPMENT

Address: SAME AS OWNER email: \_\_\_\_\_

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

Name of Engineer/Surveyor: YALGO, LLC

Address: 3000 ILLINOIS AVE STE 100

City: KILLEEN State: TX Zip: 76543

Home Phone: ( ) \_\_\_\_\_ Business Phone: (254) 953-5353 Cell Phone: \_\_\_\_\_

Is the Property:  Within City Limits  Within ETJ (5.0 miles)

Proposed Land Use: Residential

Total Acreage: 46.71 Number of Lots: 182 Current Zoning: R1 Proposed Zoning R1

Is there a simultaneous rezoning of any part of this property? No

Address/ Location of Property to be Platted: SE of the intersection of Clear Creek Rd. and Mohawk Dr.

Legal Description: SEE FIELD NOTES

Replats and Amendments: During the preceding five (5) years, was the platted property limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot? Yes/No During the preceding five (5) years, was any lot in the preceding plat limited by deed restrictions to residential use for not more than two residential units per lot? Yes/No Attach a copy of applicable deed restrictions or a (notarized) letter from the applicant stating that no deed restrictions apply.

What is the reason for the replat / amendment? N/A

Owner(s) must initial:

I hereby certify that all fees/charges owed by me/us to the City concerning any prior plats and/or subdivisions have been paid in full as of the date of this application.

I understand that attendance at the Development Review Committee meeting is mandatory. My failure to attend or my agent's failure to attend will result in rescheduling the meeting of the Development Review Committee and delay processing of the application.

I understand that I must obtain approval from both Planning and Zoning Commission and City Council (except in the case of minor plats) prior to the plat being recorded with the Clerk of Bell County.

APPOINTMENT OF AGENT

As owner of the subject property, I hereby appoint the person designated below to act for me, as my agent in this request.

Name of Agent: WFB Development

Mailing Address: 3000 Illinois Ave Ste 100 Email: \_\_\_\_\_

City: Killeen State: TX Zip: 76543

Home Phone: ( ) \_\_\_\_\_ Business Phone: (254) 95-5353 Fax: ( ) \_\_\_\_\_

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

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

be the point of contact between myself and the City; make legally binding representations of fact and commitments of every kind on my behalf; grant legally binding waivers of rights and releases of liabilities of every kind on my behalf; consent to legally binding modifications, conditions, and exceptions on my behalf; and, to execute documents on my behalf which are legally binding on me.

I understand that the City will deal only with a fully authorized agent. If at any time it should appear that my agent has less than full authority to act, then the application may be suspended and I will have to personally participate in the disposition of the application. I understand that all communications related to this application, are part of an official proceeding of City government and, that the City will rely upon statements made by my agent. Therefore, I agree to hold harmless and indemnify the City of Killeen, its officers, agents, employees, and third parties who act in reliance upon my agent's words and actions from all damages, attorney fees, interest and costs arising from this matter. If my property is owned by a corporation, partnership, venture, or other legal entity, then I certify that I have legal authority to make this binding appointment on behalf of the entity, and every reference herein to "I", "my," or "me" is a reference to the entity.

Signature of Agent [Signature] Title President

Printed/Typed Name of Agent Bruce Whitis ~~Date~~ Title \_\_\_\_\_

Signature of Property Owner [Signature] Title President

Printed/Typed Name of Property Owner Bruce Whitis ~~Date~~ Title \_\_\_\_\_

Signature of Property Owner \_\_\_\_\_ Title \_\_\_\_\_

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

Signature of Property Owner \_\_\_\_\_ Title \_\_\_\_\_

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

\* Applications must be signed by the individual applicant, each partner of a partnership, or by an authorized officer of a corporation or association.

APPOINTMENT OF AGENT

As owner of the subject property, I hereby appoint the person designated below to act for me, as my agent in this request.

Name of Agent: Yalgo, LLC

Mailing Address: 3000 Illinois Ave Ste 100 Email: \_\_\_\_\_

City: Killeen State: TX Zip: 76543

Home Phone: ( ) \_\_\_\_\_ Business Phone: (254) 953-5353 Fax: ( ) \_\_\_\_\_

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

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

be the point of contact between myself and the City; make legally binding representations of fact and commitments of every kind on my behalf; grant legally binding waivers of rights and releases of liabilities of every kind on my behalf; consent to legally binding modifications, conditions, and exceptions on my behalf; and, to execute documents on my behalf which are legally binding on me.

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Signature of Agent [Signature] Title President

Printed/Typed Name of Agent Bruce Whitis ~~Date~~ Title

Signature of Property Owner [Signature] Title President

Printed/Typed Name of Property Owner Bruce Whitis ~~Date~~ Title

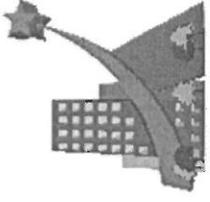
Signature of Property Owner \_\_\_\_\_ Title \_\_\_\_\_

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

Signature of Property Owner \_\_\_\_\_ Title \_\_\_\_\_

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

\* Applications must be signed by the individual applicant, each partner of a partnership, or by an authorized officer of a corporation or association.



**PLANNING AND  
DEVELOPMENT SERVICES**

**PLAT CASE:**

#1 3-032 FS

**SUBDIVISION NAME:**

THE LANDING AT  
CLEAR CREEK PHASE III

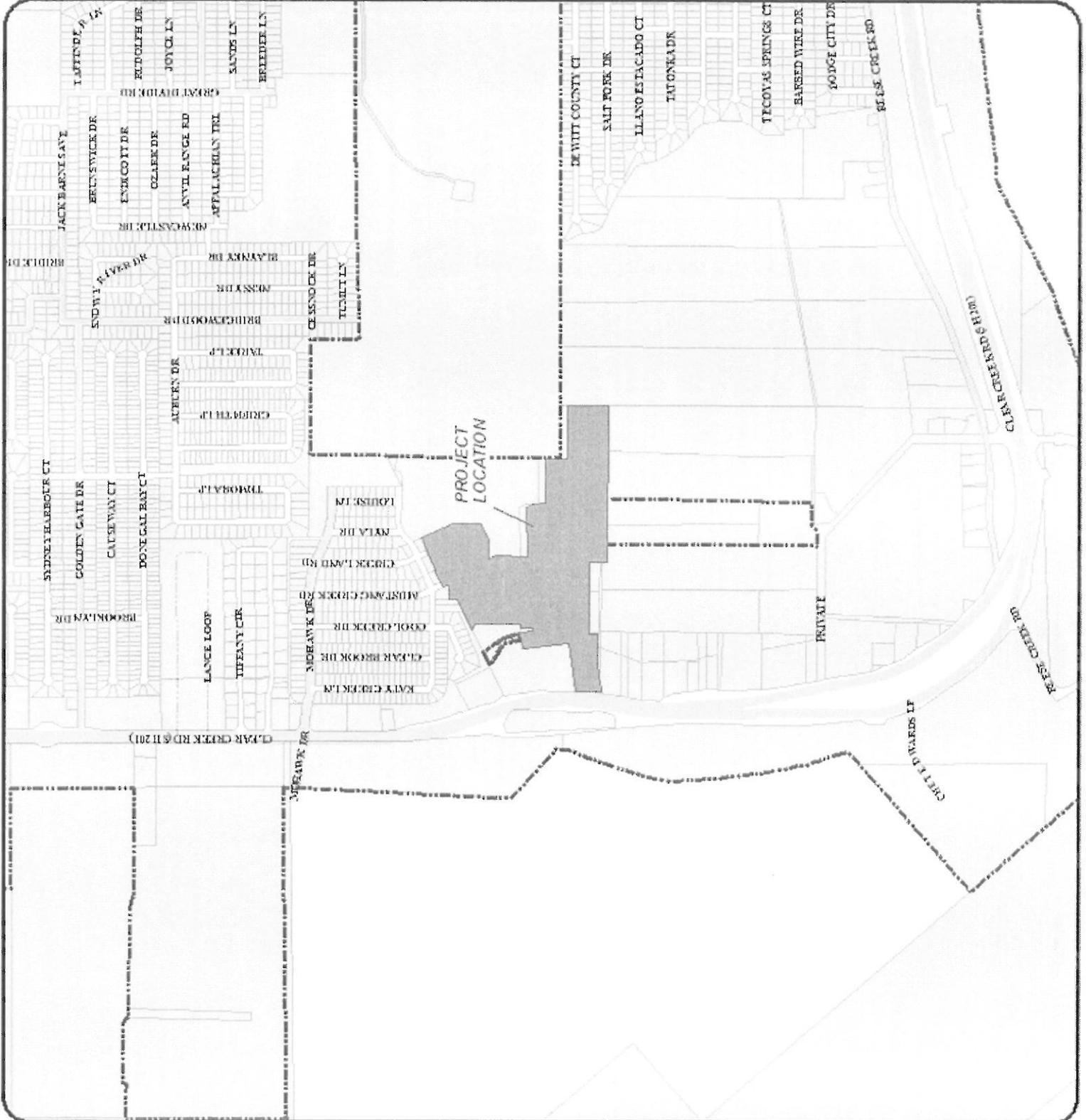
**PROPERTY OWNER:**

WSW DEVELOPMENT

Legend  
Shaded Area: Project Location  
Dashed Line: Property Boundary  
Solid Line: Easement



Date: 9/4/2013





NOTE: DRAWING BY VALGO, LLC

**CITY OF KILLEEN**  
 PLANNING/MAPPING  
 P.O. BOX 1129  
 KILLEEN, TEXAS 76540-1129



**THE LANDING AT CLEAR CREEK PHASE III**

PLAT CASE #13-032FS

DATE: 09/03/13

LOTS: 182

APPROX: 16.7 acres

**CITY COUNCIL MEMORANDUM FOR RESOLUTION**

**AGENDA ITEM**

**City/Owner Agreement-In-Principal to extend a 12-inch diameter water transmission main and to construct Mustang Creek Road and Prewitt Ranch Road as Minor Collector Streets as part of The Landing at Clear Creek Phase III Subdivision.**

**ORIGINATING DEPARTMENT**

**Public Works/Engineering**

**BACKGROUND INFORMATION**

The developer of The Landing at Clear Creek Phase III Subdivision has agreed to participate with the City of Killeen to increase the size of certain infrastructure for public benefit. In association with the plat application for the proposed subdivision, the developer has provided an agreement-in-principal and a formal cost proposal for a specific public improvement project. The subdivision abuts "The Landing at Clear Creek Phase II" and "Killeen ISD Elementary School 33" Subdivisions to the north; the Goodnight Ranch Addition Phase Thirteen Subdivision to the east; homestead and agricultural properties to the south; and State Highway 201 to the west.

**DISCUSSION/CONCLUSION**

**Process Summary**

Section 26-85 of the Killeen Code of Ordinances defines the process wherein the City may enter into an agreement with a developer to construct public improvements, not including a building, related to land development. Under such an agreement, the developer constructs the improvements and the City participates in project costs within prescribed limits.

To begin the process, the developer submits a letter of intent seeking City cost participation - in this specific case, for the material over-sizing of a potable water main and interconnected local streets. The request for City cost participation must be in association with a proposed subdivision of land. Through review of appropriate documentation, City staff and the developer come to a mutual understanding of project scope and over-sizing (i.e., not infrastructure required to support the proposed development itself, but additional material and labor required to meet a defined public need or provide a regional benefit).

The developer performs the public improvement project under the terms and conditions of an agreement-in-form approved by the City Attorney. This standard form of agreement conforms to Local Government Code requirements for City participation and was adopted by City Council Resolution (CCM/R 02-112R). In support of the proposed agreement, the developer must provide a detailed quantity take-off presenting the differential costs for over-sizing public infrastructure. This is accomplished by a standard form of cost tabulation requested by Public Works staff to evaluate whether the developer-proposed project costs are reasonable and reflect current industry standards.

The developer must clearly delineate public benefits and provide discrete over-sizing costs for the proposed project. A project evaluation is performed by Public Works/Engineering staff, which includes a vetting of all proposed unit costs and rates. The sources of construction cost data for review and comparison include other recent city-owner agreement project costs for similar work (among local developers), as well as bid tabulations from recent similar capital improvement projects advertised by the City. On occasion, staff evaluation of project costs includes a review of regional or national cost indices for infrequently-performed or unique construction. City staff may also pursue best-value negotiations with the developer that may include, but not necessarily be limited to, alternate utility alignments or alternate materials.

Once a mutual project understanding is achieved, the proposed project and cost participation summary is submitted to the developer for concurrence. Under past standing protocol, an owner-executed agreement is forwarded directly to the City Council for consideration. Agreements are often considered concurrent with a plat application for the subdivision in which the proposed project would be constructed; however, Killeen Code of Ordinances Section 26-85(b)(5) allows consideration of a city-owner agreement at any time during the development process.

## **Project Summary**

### *Water Public Improvements*

The 2012 Water and Wastewater Master Plan identifies a need to over-size water lines that will serve future growth in the southwestern portion of the City, and to provide for looped distribution mains throughout new development in the City's Airport Pressure Plane. The City previously extended a 16-inch diameter water transmission main along State Highway 201 south of Stan Schlueter to serve development at the western perimeter of the City. This transmission main currently terminates just east of the Killeen-Fort Hood Regional Airport near Oakalla Road.

Design and construction of 2012 Water and Wastewater Master Plan Project 6W (the continuation of the State Highway 201 water transmission main) is targeted for completion in the 2013 - 2015 bond project cycle. The Project 6W transmission main provides for looping of distribution mains and improved service to the former West Bell County Water Supply Corporation service area acquired by the City in 2008. Looping will be accomplished through further extension of the State Highway 201 transmission main and a series of interconnections to this main.

An 8-inch diameter water distribution main needed to serve the proposed subdivision would be over-sized to a 12-inch diameter water transmission main to support planned distribution

system needs and ongoing development pressure. In accordance with the City's Code of Ordinances Section 26-111, the City can participate with the developer in over-sizing water lines greater than 8-inches in diameter. The attached City/Owner Agreement reflects the cost to construct 2,810 linear feet of 12-inch diameter transmission main with appurtenances (\$75,563.02). The proposed project costs were reviewed by staff. They are reasonable and reflect current industry construction costs.

#### *Transportation Public Improvements*

The City's Thoroughfare Plan defines the necessary transportation network for the City of Killeen and establishes a framework for the orderly development of this network through desired roadway alignments, connections, and transportation system linkages. As the City grows, it becomes necessary to implement elements of the Thoroughfare Plan accordingly.

In accordance with the City's Development Code, a developer is required to provide (at the developer's sole cost) a 36-foot back-of-curb to back-of-curb pavement sections for all public streets within a subdivision. This pavement section represents the profile of a Local Residential Street.

Based upon the pattern of development defined by the first two phases of The Landing at Clear Creek Subdivision, as well as that proposed for the remainder of the development, there was a need to enhance mobility within the local street network east of State Highway 201 and south of Mohawk Road. Specifically, the need shifted from restricted commercial frontage along State Highway 201 into the larger residential development to the east. To meet this need, the City Council approved construction of a north-south collector street extending from Mohawk Road south through The Landing at Clear Creek Subdivision.

Mustang Creek Road was constructed as a 44-foot back-of-curb to back-of-curb pavement section with additional public storm drainage improvements within Phases I and II of The Landing at Clear Creek Subdivision. In accordance with the City's Development Code, a developer is required to extend existing streets in accordance with the City's current approved Thoroughfare Plan at a level of service that preserves the continuity of the City's collector and arterial street network. The proposed further extension of Mustang Creek Road as a Minor Collector Street within The Landing at Clear Creek Phase III Subdivision achieves this goal.

The current approved Thoroughfare Plan also identifies an east-west Collector Street affecting The Landing at Clear Creek Phase III Subdivision. The purpose of this collector street is to provide additional access and alternate routes of traffic relief for this rapidly growing development corridor. This thoroughfare is intended to preserve the level of service of the arterial and collector system in the southwestern portion of the City as this area continues to build out, and to enhance mobility along the State Highway 201 corridor.

The east-west collector will connect to the recently approved Goodnight Ranch Addition Phase Thirteen Subdivision, and the future extension of Bridgewood Drive, a future north-south collector street. The proposed extension of Prewitt Ranch Road as a Minor Collector Street within The Landing at Clear Creek Phase III Subdivision preserves the level of service of the City's arterial and collector system along the State Highway 201 corridor.

The attached City/Owner Agreement reflects the cost to widen 1,209 linear feet of Mustang Creek Road and 2,795 linear feet of Prewitt Ranch Road to 44-foot width with associated storm drainage improvements (\$476,469.45). The proposed project costs were reviewed by staff. They are reasonable and reflect current industry construction costs.

**FISCAL IMPACT**

Funding in the amount of \$75,563.02 for the construction of the water utility public improvements is available in Water & Sewer Bond Account 386-3495-800.54-86 for 2012 Water and Wastewater Master Plan Project 6W.

Funding in the amount of \$116,102.77 for the widening of Mustang Creek Road and Prewitt Ranch Road, with associated storm drainage improvements, is available in Bond Account 339-3490-800.5663, for City/Owner Agreement Participation. The remaining balance of the project cost in the amount of \$360,366.68 is proposed to be funded from the General Fund through an amendment to the FY 2013-2014 Fiscal Year Budget. Upon approval of this resolution, a budget amendment will be presented to the City Council for approval.

**RECOMMENDATION**

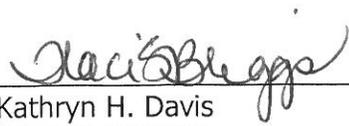
Recommend that the City Council agree to construct a 12-inch diameter potable water transmission main and to construct Mustang Creek Road and Prewitt Ranch Road as Minor Collector Streets, in association with The Landing at Clear Creek Phase III, and to authorize the City Manager to execute a City/Owner Agreement for these Public Improvements.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this the 8<sup>th</sup> day of October, 2013, 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**

\_\_\_\_\_  
Daniel A. Corbin  
MAYOR

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

\_\_\_\_\_  
Dianna Barker  
CITY SECRETARY

**WBW Development  
City-Owner Agreement Cost Participation Evaluation  
The Landing Phase 3; Waterline Oversizing**

**Waterline Over-sizing**

Trenching & Pipe Bedding (12" vs. 8")	2810 lf	\$0.00	\$0.00
Water Line (12" C900 vs. 8" C-900)	2810 lf	\$18.06	\$50,748.60
11-1/4 Deg Bend (12" vs. 8")	1 ea	\$645.00	\$645.00
22-1/2 Deg Bend (12" vs. 8")	4 ea	\$655.00	\$2,620.00
TS&V (16" x 12" vs. 8")	1 ea	\$2,630.00	\$2,630.00
Gate Valve (12" vs. 8")	3 ea	\$1,215.00	\$3,645.00
Tee (12" x 6" vs. 8" x 6")	1 ea	\$495.00	\$495.00
Tee (12" x 8" vs. 8" x 8")	1 ea	\$515.00	\$515.00
Flush Assembly (12" vs. 8") (with 90 deg and 12" GV)	1 ea	\$645.00	\$645.00
FH (12" Tee vs. 8" Tee)	5 ea	\$495.00	\$2,475.00
Engineering (15%)			\$9,662.79
Maintenance Security for oversizing (2% of 15% = 0.3%)			\$193.26
Performance Security entire Arterial (2% of 100%= 2.0%)			\$1,288.37

**Over-sizing Sub-Total** \$75,563.02

**WBW Development**  
**City-Owner Agreement Cost Participation Evaluation**  
**The Landing Phase 3; Mustang Creek Extension**

<u>Residential to Arterial Over-sizing</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
Cut/Fill Subgrade (44' vs. 36' w/ embank or cut)	896	CY	\$4.06	\$3,632.37
Prepare Subgrade (8' W x 1209' L)	1075	sy	\$2.29	\$2,463.14
Flex Base (2" @ 40' + 4' fill under curbs)	5373	sy	\$2.28	\$12,244.39
Flex Base (14.5" @ 8' W x 1209' L)	1075	sy	\$18.26	\$19,619.62
HMAC (1.5" @ 8' W x 1209' L)	1075	sy	\$13.85	\$14,887.86
HMAC 1.5" to 2" depth (40' W X 1209'L)	5373	sy	\$4.61	\$24,788.28
Storm Pipe (18" Dia. RCP)	44	lf	\$62.70	\$2,758.80
Storm Pipe (24" Dia. RCP)	78	lf	\$75.90	\$5,920.20
Storm Pipe (30" Dia. RCP)	89	lf	\$93.50	\$8,321.50
Storm Pipe (18" Dia. HDPE)	4	lf	\$22.99	\$91.96
Storm Pipe (24" Dia. HDPE)	40	lf	\$42.90	\$1,716.00
Storm Pipe (30" Dia. HDPE)	455	lf	\$60.28	\$27,427.40
Storm Pipe (36" Dia. HDPE)	148	lf	\$78.32	\$11,591.36
Storm Pipe Coupling (24" Dia.) (RCP to HDPE)	1	ea	\$1,243.00	\$1,243.00
Storm Pipe Fitting (30" to 24" Reducer)	1	ea	\$1,045.67	\$1,045.67
Storm Pipe Fitting (30" Dia. 45 Deg Bend)	2	ea	\$776.71	\$1,553.43
Storm Pipe Fitting (36" X 30" WYE)	1	ea	\$1,862.95	\$1,862.95
Storm Pipe Fitting (48" X 30" WYE)	1	ea	\$2,688.36	\$2,688.36
Storm Inlet or Junction Box (10')	8	ea	\$4,818.00	\$38,544.00
Concrete Apron	-240	sf	\$7.15	-\$1,716.00
Engineering (15%)				\$27,102.64
Maintenance Security for oversized (2% of 15% = 0.3%)				\$542.05
Performance Security entire Arterial (2% of 100%= 2.0%)				\$3,613.69

**Streets & Drainage Sub-Total** \$211,942.66

**WBW Development**  
**City-Owner Agreement Cost Participation Evaluation**  
**The Landing Phase 3; Prewitt Ranch Road**

<u>Residential to Arterial Over-sizing</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
Cut/Fill Subgrade (44' vs. 36' w/ embank or cut)	2830	CY	\$4.06	\$11,476.48
Prepare Subgrade (8' W x 2795' L)	2484	sy	\$2.29	\$5,694.35
Flex Base (2" @ 44' + 4' fill under curbs)	14907	sy	\$2.28	\$33,968.32
Flex Base (14.5" @ 8' W x 2795' L)	2484	sy	\$18.26	\$45,357.18
HMAC (1.5" @ 8' W x 2795' L)	2484	sy	\$13.85	\$34,418.17
HMAC 1.5" to 2" depth (33' W X 2795'L)	10248	sy	\$4.61	\$47,277.65
Storm Pipe (18" Dia. RCP)	115	lf	\$62.70	\$7,210.50
Storm Pipe (24" Dia. RCP)	77	lf	\$75.90	\$5,844.30
Storm Pipe (24" Dia. HDPE)	77	lf	\$42.90	\$3,303.30
Storm Pipe (42" Dia. HDPE)	-164	lf	\$96.80	-\$15,875.20
Storm Pipe (48" Dia. HDPE)	164	lf	\$117.70	\$19,302.80
Storm Inlet or Junction Box (10')	6	ea	\$4,818.00	\$28,908.00
Valley Gutter	-192	sf	\$7.15	-\$1,372.80
Engineering (15%)				\$33,826.96
Maintenance Security for oversizing (2% of 15% = 0.3%)				\$676.54
Performance Security entire Arterial (2% of 100%= 2.0%)				\$4,510.26
<b>Streets &amp; Drainage Sub-Total</b>				<b>\$264,526.79</b>

**CITY OF KILLEEN** § **CITY/OWNER AGREEMENT-IN-PRINCIPAL**  
**COUNTY OF BELL** § **TO OVERSIZE SELECTED WATER, STREET**  
**STATE OF TEXAS** § **AND DRAINAGE INFRASTRUCTURE IN**  
§ **ASSOCIATION WITH THE LANDING AT**  
§ **CLEAR CREEK PHASE III SUBDIVISION**

**KNOW ALL MEN BY THESE PRESENTS:**

**WHEREAS**, the **CITY OF KILLEEN** is authorized by law to approve development plats within its corporate limits and its extraterritorial jurisdiction; and

**WHEREAS**, **WBW DEVELOPMENT, LTD.**, has submitted and obtained final plat approval of **THE LANDING AT CLEAR CREEK PHASE III**, a subdivision development, by the City Council of Killeen; and

**WHEREAS**, the Killeen Code of Ordinances requires the completion of certain public improvements in connection with development to safeguard the health, safety and general welfare of the community; and

**WHEREAS**, said improvements promote the orderly and planned development of public infrastructure within the City, and are intended to overcome the detrimental effects of inadequate and over-taxed public infrastructure; and

**WHEREAS**, the City has identified the need to increase the size of a potable water main supplying the subdivision to serve the utility system as a large-diameter water transmission main; and

**WHEREAS**, the City has identified the need for a north-south and an east-west (Minor) Collector Street within The Landing at Clear Creek development; and

**WHEREAS**, said improvements are defined by the City's adopted Thoroughfare Plan; and

**WHEREAS**, the benefits of the public improvements are to the Owner, the City, and the Public; and

**WHEREAS**, the City's purposes in entering into this Agreement are to encourage development in an equitable manner, and to minimize the City's costs associated with the design and construction of transportation and drainage system public infrastructure; and

**WHEREAS**, the parties to this Agreement wish to provide for the protection of the rights and interests of the respective parties and to document for posterity a record of their agreement so that the public interest of the citizens of the City of Killeen is well served;

**NOW, THEREFORE, AND IN CONSIDERATION OF**, the mutual covenants and obligations herein expressed, the parties hereto agree as follows:

## RECITALS

1. Parties. The parties to this City/Owner Agreement (hereinafter “Agreement”), are the **City of Killeen**, a municipal corporation, (hereinafter “City”), acting by and through its City Manager, whose address is 101 North College Ave., Killeen, Texas, 76541, and **WBW Development, Ltd.** (hereinafter “Owner”), whose address is 3000 Illinois Avenue, Suite 100, Killeen, Texas, 76543.
2. Project. Owner is the owner of land included in the development project (hereinafter “Project”), more fully described by metes and bounds in **Exhibit A**, attached hereto and incorporated herein for all intents and purposes.

## OBLIGATIONS OF OWNER

3. Improvements. Owner agrees to construct as described in **Exhibit B**, attached hereto and incorporated herein for all intents and purposes (collectively the “Public Improvements”), through the Project area **THE LANDING AT CLEAR CREEK PHASE III** (Exhibit A) according to the standards and specifications in effect at time of construction. Owner agrees to construct and dedicate the Public Improvements as an independent obligation on its part, regardless of City’s performance under this Agreement.
4. Performance Bond. Owner shall provide a Performance Bond as specified in **Exhibit D**, “Development Process”.
5. Maintenance Bond. Upon completion of the Project and prior to the acceptance of the Project by City for maintenance, Owner shall submit to City a maintenance bond, in the amount equal to fifteen percent (15%) of the total cost to construct all streets and drainage in the Project and ten percent (10%) of the total cost to install all the water and sewer lines in the Project, executed by a corporate surety duly authorized to do business in this State, payable to the City and approved by the City as to form, to guarantee the maintenance of the Public Improvements for a period of one (1) year after completion and acceptance by City. In lieu of the maintenance bond, Owner may submit either an irrevocable letter of credit or cash bond payable to City in a face amount equal to that stated above for a surety bond, and approved by City as to form. “Maintenance” is defined for purposes of this paragraph as any repair, removal, replacement, or other work necessitated by defects in the original construction of the Public Improvements.
6. Compliance with Law. Owner agrees that nothing herein shall negate the applicability of future health and safety regulations which are not currently a part of the laws concerning subdivisions.
7. Easements. Owner agrees to dedicate any and all easements necessary to the Project which are located on Owner’s property. Owner agrees to grant a right-of-way for all sewer and water lines that City may desire to construct or cause to be constructed in the

aforementioned streets, alleys, roads, courts, avenues, drives, public ways, and parks in said Project. Such easements shall be dedicated before beginning construction.

8. Conveyance/Dedication. Owner agrees to dedicate to City all the streets, alleys, roads, courts, avenues, drives, public ways, bridges, water and sewer lines, sidewalks, drainage courses, parks, and all other improvements in said Project, exclusive, however, of those portions of the streets, alleys, roads, courts avenues, drives, public ways, bridges, water and sewer lines, sidewalks, drainage courses, and parks, lying outside of the City's limits as fixed by the legislature of Texas, which shall be dedicated to the public. Any and all dedications will not be effective until City takes formal action to accept the dedication(s) by letter of acceptance. Upon formally accepting the dedication, and after expiration of the 1-year maintenance bond required by City Ordinance and described in Exhibit D, City shall maintain same at its expense as provided for in the Killeen Code of Ordinances as part of the public ways of the City within the City's limits. The following are specifically excluded from conveyance or dedication and are expressly excluded from warranty: all encumbrances and other matters of record and all matters visible or apparent on the ground that a true and correct survey would reveal.
9. Warranty. Owner hereby gives express warranty that the Public Improvements will be constructed in accordance with the City's standards and specifications and shall be free from defects. Owner further indemnifies City for all claims, expenses, and liability arising in connection with any and all defects. This express warranty and indemnification shall be limited to a period of one (1) year after acceptance by City of the last completed Public Improvement. If there is a defect in construction or materials, City reserves the right to require an extension of the one-year warranty as a condition for final acceptance of the public improvements.
10. Inspections. Owner agrees that any and all work performed regarding the Public Improvement was or shall be inspected by the City's designated Engineer or inspector to ensure the quality of work and materials. The City shall have no duty to inspect the work of any contractor or subcontractor of the Owner except with regard to the Public Improvements and shall have no duty with regard to workplace safety at Project.
11. Insurance. No later than ten (10) days after the effective date of this Agreement and before the commencement of construction of the Public Improvements, Owner agrees to provide to City a certificate of insurance listing City of Killeen as an additional insured on its commercial general liability insurance policy.

#### CITY'S OBLIGATIONS

12. Acceptance/Certification. The acceptance of the Public Improvements, upon completion, is subject to approval of the City's designated Engineer.
13. Payment. Upon acceptance of **THE LANDING AT CLEAR CREEK PHASE III**, a "Participation Cost" as set forth in **Exhibit C** shall be paid by the City. Notwithstanding anything contained in this Agreement, City shall not reimburse that portion(s) of costs which together exceed thirty percent (30%) of the costs of the Public Improvements. If

upon a final accounting it is determined that the City paid more than 30%, Owner agrees to refund to the City that portion above 30% within 30 days of City's written request for reimbursement. It is mutually agreed and understood that City will pay no interest to Owner on the said total cost of the constructions and installations mentioned in Exhibit C. Notwithstanding any of these provisions, State law allows participation by the City at a level not to exceed one-hundred percent (100%) of any costs associated with over sizing any project improvement.

14. Defects During Warranty Period. City shall notify Owner in writing upon discovery of defects in the Public Improvements. Owner shall remedy defects within thirty (30) days after receiving notice of such from City. City may in its sole discretion grant additional time for remedy of defects where required by nature of the defect, provided that Owner commence work within thirty (30) days after receiving notice as described above and continue diligently to complete the repair work.

#### GENERAL TERMS AND CONDITIONS

15. Specifications. It is understood among the Parties that the technical requirements and specifications for the Project shall be in accordance with those established by the City's designated Engineer. It is further understood that designs for the Project shall be provided by Owner and must be approved by City's designated Engineer. Such approval shall not be unreasonably withheld.
16. Objectives. In the negotiation and acceptance of any term or condition, the parties hereby agree that the objectives to be fulfilled are the development of the Project and the orderly development in all the areas in its vicinity capable of development by reason of its location, topography, and pressure planes, subject to reasonable engineering efforts, so that the public interest of the City of Killeen will be well served.
17. Independent Obligation. Owner's obligation to construct and complete the Public Improvements as to which the City is making cost participation is not conditioned upon commencement of work in the subdivision or upon the sale of lots.
18. Binding Agreement. The terms and conditions set out in this Agreement shall be binding upon the parties hereto, and upon the heirs, successors, executors, administrators, personal representatives, and assigns of Owner and City.
19. Governing Law. In any dispute between the parties, it is hereby agreed that the laws of the State of Texas shall control and the venue shall be in Bell County, Texas.
20. Effective Date. This Agreement is effective upon signature by the last party to sign it.
21. Failure to Cure Defects. If Owner fails to remedy defects within thirty (30) days or within additional time granted by City, City may take any and all action to perform the work to remedy defects, including contracting with another party for the repair work or using City maintenance crews to perform the repair work, as City deems appropriate.

Owner shall reimburse City for costs of remedying defects or alternatively, City may draw upon the Owner's security described below and in Exhibit D.

22. Default. The following occurrences shall constitute defaults on the part of Owner:
  - (1) Owner's failure to begin or complete work on the Public Improvements within the prescribed time;
  - (2) Owner's failure to construct Public Improvements in accordance with the requirements of Exhibit B;
  - (3) Owner's failure to cure defects within the time period prescribed;
  - (4) Owner's abandonment of the Project as evidenced by his failure to perform work for a period of one hundred eighty (180) days;
  - (5) Owner's insolvency, appointment of receiver, or filing of a voluntary or involuntary bankruptcy petition; or
  - (6) The commencement of a foreclosure proceeding against the Project property, or a conveyance in lieu of foreclosure.
  
23. Rights Upon Default. Upon default by Owner, City reserves all remedies available at law or in equity, including but not limited to: (1) an action to recover damages for breach of this Agreement; (2) an action to seek specific performance; (3) an action to seek injunctive relief; (4) an action to rescind this Agreement and final plat approval; and (5) drawing upon the Owner's security described below and in Exhibit D. City shall be entitled to recover all expenses and reasonable attorney's fees in the event of litigation. All remedies provided by this Agreement are cumulative of rights provided at law or in equity.
  
24. Forms of Security. In order to guarantee completion of the Public Improvements and the faithful performance of this Agreement, the Owner, no later than ten (10) days after the effective date of this Agreement and before the commencement of the construction of the Public Improvements, shall deliver to the City the following: a performance bond in the penal sum of one hundred (100) percent of the cost to complete the Public Improvements, insuring full completion of the public improvements described in Exhibit D to this Agreement.
  
25. Waiver. City waives none of its rights with respect to this Agreement unless that right is expressly waived in writing herein. Nothing herein shall constitute an implied waiver of City's sovereign immunity.
  
26. Severability. If any provision of this Agreement is held by the courts to be illegal or unenforceable, that provision shall be severed from the Agreement and shall not render invalid the remaining provisions of this Agreement.
  
27. Entire Agreement. The provisions herein constitute the full extent of the Agreement among the parties concerning the construction of Public Improvements in this Project, and no parole evidence shall be allowed to contradict the terms hereof. Any amendment to or modification of this Agreement shall be by the written, mutual consent of the parties hereto.

28. Assignment. No obligation contained herein shall be transferred or assigned without the written, mutual consent of the parties hereto.
29. Attorney's Fees. Should any party hereto bring suit in court to enforce the terms hereof, it is agreed that the losing party or parties shall pay to the successful party or parties costs and reasonable attorney's fees. If relief is granted to all parties, each will bear its own costs in their entirety.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2013, in duplicate originals.

CITY OF KILLEEN

WBW DEVELOPMENT, LTD., By  
WBW DEVELOPMENT MANAGEMENT,  
LLC

BY: \_\_\_\_\_  
Glenn Morrison  
CITY MANAGER

BY: \_\_\_\_\_  
Bruce Whitis  
PRESIDENT

ATTEST:

BY: \_\_\_\_\_  
Dianna Barker  
CITY SECRETARY

STATE OF TEXAS           §  
COUNTY OF BELL       §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2013,  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

- Exhibits:  
A – Property Description – Field Notes  
B – Public Improvements To Be Constructed By Owner  
C – City Participation Cost  
D – Development Process

**EXHIBIT A**

**PROPERTY DESCRIPTION –  
FIELD NOTES**

**THE LANDING AT CLEAR CREEK PHASE III**

All construction and remedial actions to take place in existing City of Killeen right-of-way and in accordance with the attached field notes (two pages) for The Landing at Clear Creek Phase III subdivision, entitled “FIELD NOTES” Page “1 of 2” and Page “2 of 2”.

**FIELD NOTES  
BELL COUNTY, TEXAS**

Field notes for a 46.71 acre tract or parcel of land situated in and being out of the John E. Maddera Survey, A-600, Bell County, Texas and being part of the called 85.23 acre tract of land described in deed to the WBW Land Investments, LP, in Volume 7852, Page 420, Official Public Records, Bell County, Texas, also being part of the called 56.915 acre tract of land described in deed to the WBW Land Investments, LP, in Volume 8090, Page 828, Official Public Records, Bell County, Texas, said 46.71 a acre tract being more particularly described by metes and bounds as follows:

**BEGINNING** at an iron rod found with Killeen ENG. cap, same being in the east margin for Clear Creek Road, west line of said 56.915 acre tract, and being called the southwest corner of the remainder of the Prewitt Family Trust tract described in Volume 5096, Page 895, Official Records of Bell County, Texas,

**THENCE** along the common lines between the said Prewitt Family Trust remainder and said 56.915 acre tract with the following courses:

1. S 81°53'08"E, 454.00 feet to an iron rod with Killeen ENG. Cap found for corner;
2. N 10°40'01"E, 433.11 feet to an iron rod with Killeen ENG. Cap found for corner
3. S 79°19'59"E, 148.94 feet, to a wood fence corner post found for the southwest corner margin of the called 5.014 acre in deed to Nyla Prewitt Deane tract described in Volume 5096, Page 895, Official Records of Bell County, Texas
4. S 73°22'57"E, 12.98 feet to an iron rod set in the south line of said called 5.014 acre tract and north line of said 56.915 acre tract for corner of the herein described tract;

**THENCE** across and upon said 56.915 acre tract with the following courses:

1. S 14°35'57"W, 117.92 feet to an iron rod set for the beginning of a non-tangential curve;
2. Along a curve to the right, same having a Radius of 60.00 feet, a Length of 31.42 feet, a Chord Bearing N 89°35'57"E, and a Chord Length of 31.06 feet to an iron rod set for corner;
3. N 14°35'57"E, 108.83 feet, to a 1/2" iron rod set in the south line of said 5.014 acre tract and north line of said 56.915 acre tract for corner of the herein described tract;

**THENCE** S 73°22'57"E, 47.67 feet to an iron rod set in the south line of said 5.014 acre tract for a corner of the herein described tract

**THENCE** N 17°17'36"E, 437.98 feet to an iron rod set and N 59°37'52"W, 68.25 feet across and upon said 5.014 acre tract to an iron rod set in the south line of said 85.23 acre tract for corner of the herein described tract

**THENCE** N 80°50'24"E, 331.34 feet along the south line of said 85.23 acre tract to an iron rod found for corner of the herein described tract

**THENCE** across and upon said 85.23 acre tract with the following courses:

1. N 17°16'17"E, 77.67 feet, to an iron rod set for corner;
2. S 73°54'17"E, 130.83 feet, to an iron rod set for corner;
3. Along a curve to the left, same having a Radius of 70.00 feet, a Length of 33.32 feet, a Chord Bearing N 02°20'42"E, and a Chord Length of 33.01 feet to an iron rod set for corner;
4. N 11°17'30"W, 22.96 feet, to an iron rod set for corner;
5. N 78°42'30"E, 180.00 feet, an iron rod set for corner;
6. S 11°17'30"E, 7.89 feet, an iron rod set for corner;
7. S 83°27'31"E, 330.77 feet, to an iron rod set for corner, same being called the northeast corner of the herein described tract;

**THENCE** continuing across and upon said 85.23 acre tract and said 56.915 acre tract with the following courses:

1. S 06°32'29"E, 332.31 feet to an iron rod set;
2. S 17°16'50"W, 256.35 feet, to an iron rod set;
3. S 77°11'48"W, 158.36 feet, to an iron rod set;
4. N 73°28'08"W, 192.99 feet, to an iron rod set;
5. S 09°10'30"E, 67.02 feet, to an iron rod set
6. S 17°14'47"W, 302.43 feet, to an iron rod set;
7. S 73°54'17"E, 469.48 feet, to an iron rod set
8. S 06°33'09"E, 53.18 feet, to an iron rod set
9. S 08°56'54"W, 127.25 feet, to an iron rod set;

10. S 72°36'07"E, 416.97 feet, to an iron rod set in the east line of said 56.915 acre tract and west line of said 60 acre Reavis tract and corner of the herein described tract;
11. S 17°17'55"W, 210.90 feet, to an iron rod set in the east line of said 56.915 acre tract to 1/2" iron found at the base of a 2" pipe fence corner post same being called the south west corner of said 60 acre Reavis tract and being an ell corner of the herein described tract;

THENCE S 73°02'23"E, 502.51 feet, along a fence being called the south line of said 56.0 acre tract and a north line of said 56.0 acre tract to an iron rod found at a cedar fence corner post, same being called the northwest corner of a called 40.0 acre tract described in deed to Reeces Creek Developers, Ltd, in Volume 5483, Page 240. Official Records of Bell County, Texas and being a corner of the herein described tract;

THENCE S 17°13'04"W, along a line about 2 feet east of an existing fence at 216.52 feet passing an iron rod found in the west line of said 40.0 acre tract, same being the northeast corner of the called 5.97 acre tract described in deed to WBW Land Investments, L.P., in Volume 8158, Page 622. Official Records of Bell County, Texas, continuing for a total distance of 392.35 feet to an iron rod found at a cedar fence corner post marking the northeast corner of a tract described in deed to CP Summit Group, L.P., in Volume 7764, Page 289, Official Records of Bell County, Texas, the Southeast corner of said 5.97 acre tract, and southeast corner of the herein described tract;

THENCE N 72°36'33"W, 1482.58 feet, along the south line of said 5.97 acre tract to an iron rod found for the southwest corner of said 5.97 acre tract, and southeast corner of the remainder of the called 5.00 acre tract described in deed to Nelson Trent and Manuela Trent in Volume 3216, Page 111, Deed Records of Bell County, Texas, (herein called *Trent Tract 1*) being a corner of the herein described tract;

THENCE N 17°24'20"E, 175.11 feet to an iron rod found for the northwest corner of said 5.97 acre tract, and northwest corner of the remainder of the called 5.00 acre tract described in deed to Nelson Trent and Manuela Trent in Volume 5366, Page 422, Deed Records of Bell County, Texas, (herein called *Trent Tract 2*) being a corner of the herein described tract;

THENCE N 72°38'39"W, 682.81 feet to an iron rod found with Harman cap a corner of said *Trent Tract 2* and being a corner of the herein described tract;

THENCE S 17°51'24"W, 88.02 feet to an iron rod found with Harman cap for a an ell corner of said *Trent Tract 2* and being a corner of the herein described tract;

THENCE N 72°37'52"W, 264.24 feet along the north line of said *Trent Tract 2* to an iron rod set for a corner of the herein described tract;

THENCE across and upon said *Trent Tract 2* and *Trent Tract 1* with the following courses:

1. N 80°35'31"W, 210.51 feet to an iron rod set for the beginning of a curve;
2. Along a curve to the right, same having a Radius of 150.00 feet, a Length of 20.91 feet, a Chord Bearing N 76°35'53"W, and a Chord Length of 20.90 feet to an iron rod set for corner;
3. N 72°36'14"W, 53.36 feet, to an iron rod set in the east margin of Clear Creek Road, same being called the southwest corner of the herein described tract;

THENCE along the east margin of Clear Creek Road, N 24°46'21"E, 55.81 feet to an iron rod and N 16°55'43"E, 125.04 feet to an iron rod found for a corner same being the southwest corner of the remainder of the Prewitt Family Trust tract described in Volume 5096, Page 895, Official Records of Bell County, Texas, to the PLACE OF BEGINNING and containing 46.71 acres of land, more or less.

**SURVEYORS' NOTES:**

The basis for bearings is the south line of said 85.23 acre tract per deed of record same being called N 80°50'26"E..

All iron rods set for corner are 1/2 inch iron rods with cap marked "1852-CORNER", unless otherwise noted herein.

*A. W. Kessler* 10-5-12  
A. W. Kessler, RPLS



## **EXHIBIT B**

### **PUBLIC IMPROVEMENTS TO BE CONSTRUCTED BY OWNER**

#### **THE LANDING AT CLEAR CREEK PHASE III**

The Public Improvements to be oversized by the Owner as a part of this Agreement include the following infrastructure:

- Constructing 2,810 linear feet of 12-inch diameter potable water transmission main with appurtenances; and
- Widening approximately 1,209 linear feet of Mustang Creek Road by an additional 8 feet with curb inlets boxes and storm conduit required for a (Minor) Collector Street; and
- Widening approximately 2,795 linear feet of Prewitt Ranch Road by an additional 8 feet with curb inlets boxes and storm conduit required for a (Minor) Collector Street.

These Public Improvements shall be in accordance with the approved construction drawings entitled The Landing at Clear Creek Phase III, which are attached and made a part of this Agreement.

**EXHIBIT C**

**CITY PARTICIPATION COST**

**THE LANDING AT CLEAR CREEK PHASE III**

Upon inspection of the Public Improvements listed in Exhibit B of this Agreement, and upon City's determining that they are acceptable to the City, the City shall pay Owner one hundred percent (100%) of the installed cost of said Public Improvements identified in Exhibit B of this Agreement.

The specific items for City Cost Participation in this Agreement are described herein:

<b>ITEM DESCRIPTION</b>	<b>COST</b>
<b><u>Water Infrastructure</u></b>	
Construct a 12-inch diameter potable water transmission main to serve the State Highway 201 corridor west of Bunny Trail, with project Engineering and Surveying costs	<u>\$ 75,563.02</u>
Cost to Oversize Water Main	\$ 75,563.02
<b><u>Streets Infrastructure</u></b>	
Widen Mustang Creek Road by 8 additional feet to a 44-foot back-of-curb to back-of-curb width (Minor) Collector Street, to include storm drainage with project Engineering and Surveying costs	\$264,526.79
Widen Prewitt Ranch Road by 8 additional feet to a 44-foot back-of-curb to back-of-curb width (Minor) Collector Street, to include storm drainage with project Engineering and Surveying costs	<u>\$211,942.66</u>
Cost to Oversize Public Street and Storm Drainage	<u>\$476,469.45</u>
<b>TOTAL CITY COST IN PROJECT</b>	<b>\$552,032.47</b>

## EXHIBIT D

### DEVELOPMENT PROCESS

#### THE LANDING AT CLEAR CREEK PHASE III

1. Owner shall post with the City a Performance Bond executed by a corporate surety or corporate sureties duly authorized to do business in this State, payable to City and approved by City as to form, for construction included in the approved construction plans, in the sum of **To Be Determined**. A power of attorney shall be attached to the bond evidencing that the agent signing the bond has authority to sign the bonds on behalf of the surety. The bond shall be released upon completion and final acceptance by the City of the public improvements.
2. The approved plat with required notations shall be recorded following receipt of the Performance Bond.
3. The Public Improvements shall be completed to the satisfaction of the City prior to the City's making any cost participation in the construction thereof, and prior to the issuance to Owner of a Certificate of Occupancy for any building or structure built on the premises of the Project.
4. Upon completion of the Public Improvements, prior to their being accepted for maintenance by the City, Owner shall post, or cause to be posted, a Maintenance Bond executed by a corporate surety or sureties duly authorized to do business in Texas. Said Maintenance Bond shall be payable to City and approved by City as to form, to guarantee the maintenance of the Public Improvements for a period of one (1) year after completion and City's acceptance of them. If there is a defect in construction or materials, City reserves the right to require an extension of the one-year warranty as a condition of final acceptance of the Public Improvements.
5. In lieu of a maintenance or performance bond, Owner may submit either an Irrevocable Letter of Credit payable to City and approved by City as to form, or a Cash Bond payable to City and approved by City as to form.

Regular 10-8-13  
Item # CA-6C  
CCM/R \_\_\_\_\_

## CITY COUNCIL MEMORANDUM FOR RESOLUTION

### AGENDA ITEM

**Resolution expressing official intent by the City to reimburse for certain costs related to City/Owner Agreement-in-Principal to construct Mustang Creek Road and Prewitt Ranch Road**

### ORIGINATING DEPARTMENT

**Finance**

### BACKGROUND INFORMATION

Section 26-85 of the Killeen Code of Ordinances defines the process wherein the City may enter into an agreement with a developer to construct certain public improvements, not to include a building, related to new development. Under such an agreement, a developer constructs such improvements and the City participates in project costs within prescribed limits. City participation in such public improvements must be in association with a legal subdivision of land. Through review of appropriate documentation, City staff and the developer come to a mutual understanding of project scope and over-sizing (i.e., not infrastructure required to support the proposed development itself, but additional material and labor required to meet a defined public need or provide a regional benefit). Such City-Owner agreements are often considered concurrent with a plat application for the subdivision in which the proposed project would be constructed; however, Killeen Code of Ordinances Section 26-85(b) (5) allows consideration of a city-owner agreement at any time during the development process.

The City of Killeen considers street over sizing as a part of its analysis of future needs current during the review of each new development. The City's Thoroughfare Plan defines the necessary transportation network for the City of Killeen and establishes a framework for the orderly development of this network through desired roadway alignments, connections, and transportation system linkages. If street over sizing is warranted and is required by the City's Development Code and Thoroughfare Plan, the City may choose to participate in the cost of street over sizing with the developer.

In the past, the City has issued debt instruments to include general obligation bonds and certificate of obligations to fund City-Owner agreements. On October 31, 2006, the City Council adopted the following policy statement to affirm this understanding:

"City Owner Agreements may be funded through the issuance of certificates of obligation with an amortization period not to exceed ten (10) years as deemed necessary and approved by a majority of the City Council." (CCM/R 06-214R)

It is anticipated that the City would issue certificates of obligation for City-Owner agreement participation in the FY 13-14; however, the City desires to negotiate and may seek to enter into viable City participation public improvement projects project prior to that time. In addition, expenditures on these projects may occur prior to issuance of such obligations.

**DISCUSSION/CONCLUSION**

A reimbursement resolution needs to be passed by the Council, which will allow the City to make expenditures on the procurements and projects identified and be subsequently reimbursed for those expenditures when the proceeds from the certificate of obligations are received.

**FISCAL IMPACT**

The City's General Fund will advance funds for those items as needed. When proceeds from the sale of the certificates are received, any amounts that had been previously advanced from General Fund will be repaid to the General Fund from the proceeds received from the sale of the Certificates of Obligation Bonds.

**RECOMMENDATION**

Staff recommends that the City Council adopt the attached resolution.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this the 8<sup>th</sup> day of October, 2013, 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**

\_\_\_\_\_  
Daniel A. Corbin  
MAYOR

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

\_\_\_\_\_  
Dianna Barker  
CITY SECRETARY

**CERTIFICATE FOR RESOLUTION**

**THE STATE OF TEXAS §**  
**COUNTY OF BELL §**  
**CITY OF KILLEEN §**

I, the undersigned City Secretary of the City of Killeen, Texas, hereby certify as follows:

1. The City Council of said City convened in Regular Session on October 8, 2013, at the regular meeting place thereof, and the roll was called of the duly constituted officers and members of said City Council, to-wit:

Daniel A. Corbin, Mayor  
Elizabeth Blackstone, Mayor Pro Tem  
Jonathan Okray, Councilmember  
Jared Foster, Councilmember  
Wayne Gilmore, Councilmember  
Jose Segarra, Councilmember  
Terry Clark, Councilmember  
Steve Harris, Council member

and all of said persons were present, except for the following: \_\_\_\_\_;  
thus constituting a quorum. Whereupon, among other business, the following was transacted at said meeting: a written Resolution entitled

**RESOLUTION EXPRESSING OFFICIAL INTENT TO  
REIMBURSE FOR CERTAIN COSTS**

was duly introduced for consideration and passage on first reading. It was then duly moved and seconded that said Resolution be passed on first reading; and, after due discussion, said motion, carrying with it the passage of said Resolution, prevailed and carried by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

2. A true, full and correct copy of the aforesaid Resolution passed at the meeting described in the above and foregoing paragraph is attached to and follows this Certificate; said Resolution has been duly recorded in the official minutes of said City Council; the above and foregoing paragraph is a true, full and correct excerpt from said minutes of said meeting pertaining to the passage of said Resolution; the persons named in the above and foregoing paragraph, at the time of said meeting and the passage of said Resolution, were the duly chosen, qualified and acting officers and members of said City Council as indicated therein; each of said officers and members was duly and sufficiently notified officially and personally in advance, of the time, place and purpose of the aforesaid meeting and that said Resolution would be introduced and considered for passage at said meeting, and each of said officers and members consented in advance to the holding of said meeting for such purpose; and said meeting was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Tex. Gov't Code Ann., ch. 551.

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**SIGNED AND SEALED** this October 8, 2013.

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City Secretary, City of Killeen, Texas

[CITY SEAL]

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION EXPRESSING OFFICIAL INTENT TO  
REIMBURSE FOR CERTAIN COSTS**

**WHEREAS**, the City Council of the City of Killeen, Texas (the "City") expects to pay expenditures in connection with the projects described on Exhibit A attached hereto (collectively, the "Project") prior to the issuance of obligations to finance the Project; and

**WHEREAS**, the City finds, considers and declares that the reimbursement of the City for the payment of such expenditures will be appropriate and consistent with the lawful objectives of the City and, as such, chooses to declare its intention, in accordance with the provisions of Section 1.150-2 of the Treasury Regulations, to reimburse itself for such payments at such time as it issues obligations to finance the Project.

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

Section 1. The City reasonably expects to incur debt, as one or more separate series of various types of obligations, with an aggregate maximum principal amount not to exceed \$500,000 for the purpose of paying the costs of the Project prior to issuance of such obligations.

Section 2. All costs to be reimbursed pursuant hereto will be capital expenditures. No tax-exempt obligations will be issued by the City in furtherance of this Resolution after a date which is later than 18 months after the later of (1) the date the expenditures are paid or (2) the date on which the property, with respect to which such expenditures were made, is placed in service.

Section 3. The foregoing notwithstanding, no tax-exempt obligation will be issued pursuant to this Resolution more than three years after the date any expenditure which is to be reimbursed is paid.

**PASSED, APPROVED AND EFFECTIVE THIS OCTOBER 8, 2013.**

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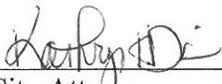
Mayor  
City of Killeen, Texas

**ATTEST:**

---

City Secretary  
City of Killeen, Texas

**APPROVED AS TO FORM:**



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City Attorney  
City of Killeen, Texas

## **EXHIBIT A**

Costs associated with (i) constructing, reconstructing, improving, repairing, expanding and extending Mustang Creek Road and Prewitt Ranch Road, including any related acquisition of land, rights-of-way and easements; and (ii) other related costs including payment of professional services in connection therewith including legal, fiscal, and engineering fees.

Regular 10-8-13  
Item # CA-7  
CCM/R \_\_\_\_\_

**CITY COUNCIL MEMORANDUM FOR RESOLUTION**

**AGENDA ITEM** **Reschedule City Council Meeting**  
**ORIGINATING DEPARTMENT** **City Manager**

**BACKGROUND INFORMATION**

Section 34 of the City Charter provides that the City Council shall meet regularly, but not less frequently than twice a month. Historically, the City Council has scheduled these two meetings for the second and fourth Tuesdays of the month.

**DISCUSSION/CONCLUSION**

Due to the Mayor and several Council Members attending the annual AUSA meeting in Washington, D.C. and the lack of a quorum, it is requested that the City Council meeting scheduled for October 22, 2013 be rescheduled for another date.

**FISCAL IMPACT**

No fiscal impact.

**RECOMMENDATION**

That the second regular City Council meeting of October that would ordinarily be held on October 22, 2013 instead be held on October 29, 2013.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this the 8<sup>th</sup> day of October, 2013, 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**

\_\_\_\_\_  
Daniel A. Corbin  
MAYOR

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

\_\_\_\_\_  
Dianna Barker  
CITY SECRETARY

Regular 10-8-13  
Item # CA-8  
CCM/R \_\_\_\_\_

## CITY COUNCIL MEMORANDUM FOR RESOLUTION

### AGENDA ITEM

**RESOLUTION APPROVING THE PURCHASE OF PROPERTY LOCATED AT 805 WEST JASPER DRIVE AND AUTHORIZING THE CITY MANAGER OR ASSISTANT CITY MANAGER TO CARRY OUT THE SALE**

### ORIGINATING DEPARTMENT

**Public Works**

### BACKGROUND INFORMATION

Over the years, the Water and Sewer Department has outgrown facilities at the 1901 Botanical Drive site. At this current facility, every office is occupied and all warehouse space is filled. Due to inadequate parking space, 25 to 30 employee vehicles are parked on Botanical Drive daily. The current facility also does not have a training room or lab necessary for effective operations.

### DISCUSSION/CONCLUSION

In January 2012, Elliot Electric moved out of their buildings located at 805 West Jasper Drive. This 1.25 acre property includes an 8,750 sq. ft. warehouse, two adjacent buildings with a combined size of 2,460 sq. ft., and more than ample parking area. The main warehouse space includes two offices and one bathroom. Water and Sewer staff has plans to develop the buildings and parking area over a three year period into a complex that will include ten offices, a training room, a lab, a meter shop, and a parking area for all employee parking. This property abuts the current Water and Sewer facilities located at 1901 Botanical Drive.

An appraisal of the property was commissioned with the finding that the property and buildings are valued at \$466,000. Following negotiations between the City and Elliot Electric, Elliot Electric has agreed to a sale price of \$435,000. A copy of the contingent purchase contract is attached.

### FISCAL IMPACT

The total fiscal impact associated with this action is \$435,000. Following the purchase, additional funding has been included in the FY 2013/14 budget to further develop and operate the property. Funds cumulatively totaling \$767,000 are available in the Water and Sewer Fund in accounts 550-3410-436.60-95; 550-3415-437.60-95; and 550-3420-438.60-95 for the purchase, development and operation of this property.

**RECOMMENDATION**

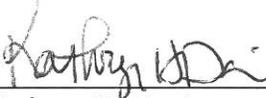
Staff recommends that the City Council approve the purchase of the above-described property and building, and that City Manager Glenn Morrison or Assistant City Manager John Sutton be authorized and empowered to act in the name and on behalf of the City of Killeen in all lawful ways to execute and deliver all contracts, notes, deeds of trust, deeds, bills of sale, assignments, consents, notices, filings, certificates, acknowledgements, closing statements, affidavits, and other documents, and to do and perform every other act as he may deem necessary and appropriate to carry out the purchase of the above-described tract in accordance with this resolution.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this the 8<sup>th</sup> day of October, 2013, 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**

\_\_\_\_\_  
Daniel A. Corbin  
MAYOR

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

\_\_\_\_\_  
Dianna Barker  
CITY SECRETARY



TEXAS ASSOCIATION OF REALTORS®  
**COMMERCIAL CONTRACT - IMPROVED PROPERTY**

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1. **PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: Elliott Partners, LTD  
 Address: P. O. Box 630610, Nacogdoches, TX 76963-0610  
 Phone: (936) 569-1184 Fax: \_\_\_\_\_  
 E-mail: joshthomas@elliotttelectric.com

Buyer: City of Killeen  
 Address: 101 N. College Street, Killeen, TX 76541  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 E-mail: \_\_\_\_\_

2. **PROPERTY:**

A. "Property" means that real property situated in Bell County, Texas at 805 W. Jasper Drive, Killeen, TX 76542 (address) and that is legally described on the attached Exhibit \_\_\_\_\_ or as follows: Lot 1, Block 1, Cherokee Commercial Subdivision Phase II, City of Killeen

- B. Seller will sell and convey the Property together with:
- (1) all buildings, improvements, and fixtures;
  - (2) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
  - (3) Seller's interest in all leases, rents, and security deposits for all or part of the Property;
  - (4) Seller's interest in all licenses and permits related to the Property;
  - (5) Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or any fixtures;
  - (6) Seller's interest in any trade names, if transferable, used in connection with the Property; and
  - (7) all Seller's tangible personal property located on the Property that is used in connection with the Property's operations except: \_\_\_\_\_
- Any personal property not included in the sale must be removed by Seller prior to closing.

(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)  
 (If mineral rights are to be reserved an appropriate addendum should be attached.)  
 (If the Property is a condominium, attach condominium addendum.)

3. **SALES PRICE:** At or before closing, Buyer will pay the following sales price for the Property: 435,000.00 BE/JWS

A. Cash portion payable by Buyer at closing	\$ <u><del>400,000.00</del></u>
B. Sum of all financing described in Paragraph 4	\$ <u>435,000.00 BE/JWS</u>
C. Sales price (sum of 3A and 3B)	\$ <u><del>400,000.00</del></u>

(TAR-1801) 1-26-10 Initialed for Identification by Seller BE and Buyer Jm

4. **FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3B as follows:

- A. Third Party Financing: One or more third party loans in the total amount of \$ \_\_\_\_\_ . This contract:
  - (1) is not contingent upon Buyer obtaining third party financing.
  - (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum.
- B. Assumption: In accordance with the attached Commercial Contract Financing Addendum, Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ \_\_\_\_\_ .
- C. Seller Financing: The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum in the amount of \$ \_\_\_\_\_ .

5. **EARNEST MONEY:**

- A. Not later than 3 days after the effective date, Buyer must deposit \$ 5,000.00 as earnest money with American Abstract & Title Co., Inc. (escrow agent) at 2501-B E. Elms Road, Killeen, TX 76542 (address) \_\_\_\_\_ (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.
- B. Buyer will deposit an additional amount of \$ \_\_\_\_\_ with the escrow agent to be made part of the earnest money on or before:
  - (i) \_\_\_\_\_ days after Buyer's right to terminate under Paragraph 7B expires; or
  - (ii) \_\_\_\_\_Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.
- C. Buyer may instruct the escrow agent to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

6. **TITLE POLICY, SURVEY, AND UCC SEARCH:**

A. Title Policy.

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by American Abstract & Title Co., Inc. (title company), in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
  - (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
  - (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
  - (a) will not be amended or deleted from the title policy.
  - (b) will be amended to read "shortages in areas" at the expense of  Buyer  Seller.
- (3) Within 30 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey: Within 30 days after the effective date:

- (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to Buyer and the title company within 20 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 20 days if necessary for Seller to deliver an acceptable survey within the time required. Buyer will reimburse Seller \_\_\_\_\_ (insert amount) of the cost of the new or updated survey at closing, if closing occurs.

C. UCC Search:

- (1) Within \_\_\_\_\_ days after the effective date, Seller, at Seller's expense, will furnish Buyer a Uniform Commercial Code (UCC) search prepared by a reporting service and dated after the effective date. The search must identify documents that are on file with the Texas Secretary of State and the county where the Property is located that relate to all personal property on the Property and show, as debtor, Seller and all other owners of the personal property in the last 5 years.
- (2) Buyer does not require Seller to furnish a UCC search.

D. Buyer's Objections to the Commitment, Survey, and UCC Search:

- (1) Within 21 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, any required survey, and any required UCC search, Buyer may object to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title to the real or personal property described in Paragraph 2 other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date Buyer actually receives the survey; or (ii) the deadline specified in Paragraph 6B.
- (2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.
- (3) Buyer's failure to timely object or terminate under this Paragraph 6D is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

7. PROPERTY CONDITION:

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: N/A

B. Feasibility Period: Buyer may terminate this contract for any reason within 10 days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

(1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 100.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the escrow agent. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to timely deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Not later than 3 days after the effective date, Buyer must pay Seller \$ \_\_\_\_\_ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to timely pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Seller, at Seller's expense, will turn on all utilities necessary for Buyer to make inspections, studies, or assessments.

(3) Buyer must:

- (a) employ only trained and qualified inspectors and assessors;
- (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
- (c) abide by any reasonable entry rules or requirements of Seller;
- (d) not interfere with existing operations or occupants of the Property; and
- (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(4) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

(1) Delivery of Property Information: Within 7 days after the effective date, Seller will deliver to Buyer:

- (a) a current rent roll of all leases affecting the Property certified by Seller as true and correct;
- (b) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- (c) a current inventory of all personal property to be conveyed under this contract and copies of any leases for such personal property;

- (d) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- (e) copies of all current service, maintenance, and management agreements relating to the ownership and operation of the Property;
- (f) copies of current utility capacity letters from the Property's water and sewer service provider;
- (g) copies of all current warranties and guaranties relating to all or part of the Property;
- (h) copies of fire, hazard, liability, and other insurance policies that currently relate to the Property;
- (i) copies of all leasing or commission agreements that currently relate to all or part of the Property;
- (j) a copy of the "as-built" plans and specifications and plat of the Property;
- (k) copies of all invoices for utilities and repairs incurred by Seller for the Property in the 24 months immediately preceding the effective date;
- (l) a copy of Seller's income and expense statement for the Property from \_\_\_\_\_ to \_\_\_\_\_;
- (m) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- (n) real & personal property tax statements for the Property for the previous 2 calendar years; and
- (o) \_\_\_\_\_

(2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer and all copies that Buyer made of those items; and (b) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed. This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. LEASES:

A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:

- (1) any failure by Seller to comply with Seller's obligations under the leases;
- (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
- (3) any non-occupancy of the leased premises by a tenant;
- (4) any advance sums paid by a tenant under any lease;
- (5) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
- (6) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. Estoppel Certificates: Within \_\_\_\_\_ days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than \_\_\_\_\_ by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TAR Form 1938 - Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.

9. BROKERS:

A. The brokers to this sale are:

<u>Cloud Real Estate</u>			
Principal Broker	<u>150326</u> License No.	Cooperating Broker	License No.
<u>Allen C. Cloud</u>			
Agent		Agent	
<u>1703 South W. S. Young Drive</u>			
Address		Address	
<u>Killeen, TX 76543</u>			
<u>(254) 690-3311</u>	<u>(254) 690-3430</u>	Phone	Fax
Phone	Fax	Phone	Fax
<u>accloud@cloudrealestate.com</u>			
E-Mail		E-Mail	

- Principal Broker: (Check only one box.)
- represents Seller only.
  - represents Buyer only.
  - is an intermediary between Seller and Buyer.

Cooperating Broker represents Buyer.

B. Fees: (Check only (1) or (2) below.)

- (1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.
- (2) At the closing of this sale, Seller will pay:
 

Principal Broker a total cash fee of:	Cooperating Broker a total cash fee of:
<input type="checkbox"/> _____ % of the sales price.	<input type="checkbox"/> _____ % of the sales price.
<input type="checkbox"/> _____	<input type="checkbox"/> _____

The cash fees will be paid in \_\_\_\_\_ County, Texas. Seller authorizes escrow agent to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

10. CLOSING:

- A. The date of the closing of the sale (closing date) will be on or before the later of:
- (1)  \_\_\_\_\_ days after the expiration of the feasibility period.
  - December 31, 2013 (specific date).
  - \_\_\_\_\_
  - (2) 7 days after objections made under Paragraph 6D have been cured or waived.

- B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.
- C. At closing, Seller will execute and deliver to Buyer, at Seller's expense, a  general  special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
- (1) with no liens, assessments, or Uniform Commercial Code or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes,
  - (2) without any assumed loans in default; and
  - (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.
- D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
- (1) tax statements showing no delinquent taxes on the Property;
  - (2) a bill of sale with warranties to title conveying title, free and clear of all liens, to any personal property defined as part of the Property in Paragraph 2 or sold under this contract;
  - (3) an assignment of all leases to or on the Property;
  - (4) to the extent that the following items are assignable, an assignment to Buyer of the following items as they relate to the Property or its operations:
    - (a) licenses and permits;
    - (b) maintenance, management, and other contracts; and
    - (c) warranties and guaranties;
  - (5) a rent roll current on the day of the closing certified by Seller as true and correct;
  - (6) evidence that the person executing this contract is legally capable and authorized to bind Seller;
  - (7) an affidavit acceptable to the escrow agent stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the escrow agent to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service together with appropriate tax forms; and
  - (8) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and the issuance of the title policy, all of which must be completed and executed by Seller as necessary.
- E. At closing, Buyer will:
- (1) pay the sales price in good funds acceptable to the escrow agent;
  - (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
  - (3) sign and send to each tenant in the Property a written statement that:
    - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
    - (b) specifies the exact dollar amount of the security deposit;
  - (4) sign an assumption of all leases then in effect; and
  - (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.
- F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

11. **POSSESSION:** Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

12. SPECIAL PROVISIONS: (If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)

- A. Seller shall give possession of the Property at time of closing and funding.
- B. This contract is contingent upon ratification by the Killeen City Council within two weeks from the date this agreement has been executed by Buyer and Seller. In the event the City Council does not ratify this contract within the two-week period, this contract and agreement shall be null and void and the earnest money returned to Buyer.
- C. The sale of the property as provided for herein is made on an "AS IS, WHERE IS, WITH ALL FAULTS" basis, and Buyer expressly agrees that, in consideration of the agreements of Seller herein, except as otherwise specified herein, Seller makes no warranty or representation, express or implied, or arising by operation of law, including, but not limited to, any warranty of condition, habitability, merchantability or fitness for particular purpose, in respect of the Property.
- D. Cloud Real Estate is representing Buyer only in this transaction and that representation is on a consultant basis with no real estate commission payable. Cloud Real Estate is being compensated on a time only basis, payable outside closing as agreed between Buyer and Cloud Real Estate. Seller is unrepresented.

13. SALES EXPENSES:

- A. Seller's Expenses: Seller will pay for the following at or before closing:
- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
  - (2) release of Seller's loan liability, if applicable;
  - (3) tax statements or certificates;
  - (4) preparation of the deed and any bill of sale;
  - (5) one-half of any escrow fee;
  - (6) costs to record any documents to cure title objections that Seller must cure; and
  - (7) other expenses that Seller will pay under other provisions of this contract.
- B. Buyer's Expenses: Buyer will pay for the following at or before closing:
- (1) all loan expenses and fees;
  - (2) preparation fees of any deed of trust;
  - (3) recording fees for the deed and any deed of trust;
  - (4) premiums for flood and hazard insurance as may be required by Buyer's lender;
  - (5) one-half of any escrow fee; and
  - (6) other expenses that Buyer will pay under other provisions of this contract.

14. PRORATIONS:

- A. Prorations:
- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
  - (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
  - (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other

charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

- B. **Rollback Taxes:** If Seller changes the use of the Property before closing or if a denial of a special valuation on the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.
- C. **Rent and Security Deposits:** At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

**15. DEFAULT:**

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller may:
- (1) terminate this contract and receive the earnest money, as liquidated damages and as Seller's sole remedy; or
  - (2) seek any other relief provided by law. Seller  may  may not enforce specific performance.
- B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
  - (2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
  - (2) enforce specific performance, or seek such other relief as may be provided by law, or both.

**16. CASUALTY LOSS AND CONDEMNATION:**

- A. If any part of the Property is damaged or destroyed by fire or other casualty after the effective date, Seller must restore the Property to its previous condition as soon as reasonably possible and not later than the closing date. If, without fault, Seller is unable to do so, Buyer may:
- (1) terminate this contract and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer;
  - (2) extend the time for performance up to 15 days and closing will be extended as necessary; or
  - (3) accept at closing: (i) the Property in its damaged condition; (ii) an assignment of any insurance proceeds Seller is entitled to receive along with the insurer's consent to the assignment; and (iii) a credit to the sales price in the amount of any unpaid deductible under the policy for the loss.
- B. If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:
- (1) terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer; or
  - (2) appear and defend the condemnation proceedings and any award will, at Buyer's election, belong to: (a) Seller and the sales price will be reduced by the same amount; or (b) Buyer and the sales price will not be reduced.

**17. ATTORNEY'S FEES:** If Buyer, Seller, any broker, or any escrow agent is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

**18. ESCROW:**

- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, escrow agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of escrow agent from all parties
- B. If one party makes written demand for the earnest money, escrow agent will give notice of the demand by providing to the other party a copy of the demand. If escrow agent does not receive written objection to the demand from the other party within 15 days after the date escrow agent sent the demand to the other party, escrow agent may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors.
- C. Escrow agent will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- D. If escrow agent complies with this Paragraph 18, each party hereby releases escrow agent from all claims related to the disbursal of the earnest money.
- E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to escrow agent are effective upon receipt by escrow agent.
- F. Any party who wrongfully fails or refuses to sign a release acceptable to escrow agent within 7 days after receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- G.  Seller  Buyer intend(s) to complete this transaction as a part of an exchange of like-kind properties in accordance with Section 1031 of the Internal Revenue Code, as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expense or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.

**19. MATERIAL FACTS:** To the best of Seller's knowledge and belief: *(Check only one box.)*

- A. Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement.
- B. Except as otherwise provided in this contract, Seller is not aware of:
  - (1) any subsurface structures, pits, waste, springs, or improvements;
  - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
  - (3) any environmental hazards or conditions that materially affect the Property;
  - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
  - (5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
  - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
  - (7) any threatened or endangered species or their habitat on the Property;
  - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
  - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
  - (10) any material physical defects in the improvements on the Property; or
  - (11) any condition on the Property that violates any law or ordinance.

*(Describe any exceptions to (1)-(11) in Paragraph 12 or an addendum.)*

20. **NOTICES:** All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

- A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.
- B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

21. **DISPUTE RESOLUTION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**22. AGREEMENT OF THE PARTIES:**

A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas. If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.

B. This contract contains the entire agreement of the parties and may not be changed except in writing.

C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

D. Addenda which are part of this contract are: *(Check all that apply.)*

- (1) Property Description Exhibit identified in Paragraph 2;
- (2) Commercial Contract Condominium Addendum (TAR-1930);
- (3) Commercial Contract Financing Addendum (TAR-1931);
- (4) Commercial Property Condition Statement (TAR-1408);
- (5) Commercial Contract Addendum for Special Provisions (TAR-1940);
- (6) Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (TAR-1906);
- (7) Notice to Purchaser of Real Property in a Water District (MUD);
- (8) Addendum for Coastal Area Property (TAR-1915);
- (9) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
- (10) Information About Brokerage Services; and
- (11) \_\_\_\_\_

*(Note: Counsel for the Texas Association of REALTORS® (TAR) has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by TAR are appropriate for use with this form.)*

E. Buyer  may  may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all of Buyer's obligations under this contract.

23. **TIME:** Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

24. **EFFECTIVE DATE:** The effective date of this contract for the purpose of performance of all obligations is the date the escrow agent receipts this contract after all parties execute this contract.

**25. ADDITIONAL NOTICES:**

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.
- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included as part of this contract.
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. If apartments or other residential units are on the Property and the units were built before 1978, federal law requires a lead-based paint and hazard disclosure statement to be made part of this contract.
- H. Section 1958.154, Occupations Code requires Seller to provide Buyer a copy of any mold remediation certificate issued for the Property during the 5 years preceding the date the Seller sells the Property.
- I. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers.

**26. CONTRACT AS OFFER:** The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on \_\_\_\_\_ the offer will lapse and become null and void.

BE



Commercial Contract - Improved Property concerning 805 W. Jasper Drive, Killeen, TX 76542

READ THIS CONTRACT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. CONSULT your attorney BEFORE signing.

Seller: Elliott Partners, LTD Buyer: City of Killeen  
By: \_\_\_\_\_ By: \_\_\_\_\_  
By (signature): [Signature] By (signature): [Signature]  
Printed Name: William M. Elliott, Sr. Printed Name: Glenn Morrison  
Title: General Partner/President Title: City Manager  
By: \_\_\_\_\_ By: \_\_\_\_\_  
By (signature): \_\_\_\_\_ By (signature): \_\_\_\_\_  
Printed Name: \_\_\_\_\_ Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Title: \_\_\_\_\_

**AGREEMENT BETWEEN BROKERS**

*(use only if Paragraph 9B(1) is effective)*

Principal Broker agrees to pay \_\_\_\_\_ (Cooperating Broker) a fee when the Principal Broker's fee is received. The fee to be paid to Cooperating Broker will be:

- \$ \_\_\_\_\_, or
- \_\_\_\_\_ % of the sales price, or
- \_\_\_\_\_ % of the Principal Broker's fee.

Escrow agent is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Principal Broker \_\_\_\_\_ Cooperating Broker \_\_\_\_\_  
By \_\_\_\_\_ By \_\_\_\_\_

**ATTORNEYS**

Seller's attorney \_\_\_\_\_ Buyer's attorney: Scott Osburn  
Address: \_\_\_\_\_ Address: 101 N. College Street  
Killeen TX 76541  
Phone & Fax: \_\_\_\_\_ Phone & Fax: (254) 501-8497  
E-mail: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Seller's attorney requests copies of documents, notices, and other information:  
 the title company sends to Buyer.  
 Seller sends to Buyer.  
Buyer's attorney requests copies of documents, notices, and other information:  
 the title company sends to Seller.  
 Buyer sends to Seller.

**ESCROW RECEIPT**

Escrow agent acknowledges receipt of:  
 A. the contract on this day \_\_\_\_\_ (effective date);  
 B. earnest money in the amount of \$ \_\_\_\_\_ in the form of \_\_\_\_\_ on \_\_\_\_\_  
Escrow Agent: American Abstract & Title Co Address: 2501-B East Elms Road  
Killeen, TX 76542  
By: \_\_\_\_\_ Phone & Fax: (254) 526-9525 (254) 526-9516  
Assigned file number (GF#): \_\_\_\_\_ E-mail: staff@americanabstract.org



Approved by the Texas Real Estate Commission for Voluntary Use  
 Texas law requires all real estate licensees to give the following information about  
 brokerage services to prospective buyers, tenants, sellers and landlords.

10-10-11

## Information About Brokerage Services

**B**efore working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner) or a prospective buyer or tenant (buyer), you should know that the broker who lists the property for sale or lease is the owner's agent. A broker who acts as a subagent represents the owner in cooperation with the listing broker. A broker who acts as a buyer's agent represents the buyer. A broker may act as an intermediary between the parties if the parties consent in writing. A broker can assist you in locating a property, preparing a contract or lease, or obtaining financing without representing you. A broker is obligated by law to treat you honestly.

### IF THE BROKER REPRESENTS THE OWNER:

The broker becomes the owner's agent by entering into an agreement with the owner, usually through a written - listing agreement, or by agreeing to act as a subagent by accepting an offer of subagency from the listing broker. A subagent may work in a different real estate office. A listing broker or subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first. The buyer should not tell the owner's agent anything the buyer would not want the owner to know because an owner's agent must disclose to the owner any material information known to the agent.

### IF THE BROKER REPRESENTS THE BUYER:

The broker becomes the buyer's agent by entering into an agreement to represent the buyer, usually through a written buyer representation agreement. A buyer's agent can assist the owner but does not represent the owner and must place the interests of the buyer first. The owner should not tell a buyer's agent anything the owner would not want the buyer to know because a buyer's agent must disclose to the buyer any material information known to the agent.

### IF THE BROKER ACTS AS AN INTERMEDIARY:

A broker may act as an intermediary between the parties if the broker complies with The Texas Real Estate License Act. The broker must obtain the written consent of each party to the transaction to act as an

intermediary. The written consent must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. The broker is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act. A broker who acts as an intermediary in a transaction:

(1) shall treat all parties honestly;

(2) may not disclose that the owner will accept a price less than the asking price unless authorized in writing to do so by the owner;

(3) may not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer; and

(4) may not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property.

With the parties' consent, a broker acting as an intermediary between the parties may appoint a person who is licensed under The Texas Real Estate License Act and associated with the broker to communicate with and carry out instructions of one party and another person who is licensed under that Act and associated with the broker to communicate with and carry out instructions of the other party.

If you choose to have a broker represent you, you should enter into a written agreement with the broker that clearly establishes the broker's obligations and your obligations. The agreement should state how and by whom the broker will be paid. You have the right to choose the type of representation, if any, you wish to receive. Your payment of a fee to a broker does not necessarily establish that the broker represents you. If you have any questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding.

Real estate licensee asks that you acknowledge receipt of this information about brokerage services for the licensee's records.

*B. S. [Signature]*  
 Buyer, Seller, Landlord or Tenant  
 Elliott Partners, LTD

*9/20/2013*  
 Date

Texas Real Estate Brokers and Salespersons are licensed and regulated by the Texas Real Estate Commission (TREC). If you have a question or complaint regarding a real estate licensee, you should contact TREC at P.O. Box 12186, Austin, Texas 78711-2186, 512-936-3000 (<http://www.trec.texas.gov>)

(TAR-2501) 10-10-11

TREC No. OP-K

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Elliott Partner

**CITY COUNCIL MEMORANDUM FOR ORDINANCE**

**AGENDA ITEM**

**ZONING CASE #Z13-34 R-2 (Two-Family Residential District) to R-2 (Two-Family Residential District) with CUP (Conditional Use Permit)**

**ORIGINATING DEPARTMENT**

**PLANNING & DEVELOPMENT SERVICES**

**Nature of the Request**

This request is to rezone 405 Houston Street from R-2 (Two-Family Residential District) to R-2 (Two-Family Residential District) with a CUP (Conditional Use Permit) to allow for the placement and habitation of a manufactured home.

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

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

Killeen Code of Ordinances, Section 31-456(c)(1-5) lists the following criteria for approval of a conditional use permit:

(1) **Generally.** The City Council shall consider the application at the next available meeting scheduled after it has received the final report and recommendation of the Planning and Zoning Commission and a corrected site plan, if applicable. The City Council may approve the application with or without conditions, deny the application, postpone the matter for future consideration, or refer the application back to the Planning and Zoning Commission for further study and recommendation.

(2) **Protest.** Protests shall be received and processed in accordance with Section 31-39(d) of this chapter.

(3) **Conditions of approval.** Regardless of whether such conditions have been recommended by the Planning and Zoning Commission, the City Council may establish such conditions of approval as are reasonably necessary to insure compatibility with surrounding uses and to preserve the public health, safety and welfare. Such conditions may include, without limitation, a limited term or duration of the permit; requirements for special yards, lot sizes, open spaces, buffers, fences, walls or screening; requirements for the installation and maintenance of landscaping or erosion control measures; requirements for street improvements, regulation of vehicular ingress or egress and traffic circulation, regulation of signs; regulation of hours or other characteristics of operation; establishment of development schedules for performance or completion; and such other reasonable conditions as the City Council may deem necessary to preserve the health, safety, and welfare of the applicant and the public.

(4) **Ordinance required.** If the application is approved by the City Council, an ordinance authorizing its issuance and setting forth the conditions of approval shall be executed by the mayor.

(5) **Submission of application following disapproval.** No application for a conditional use permit which has failed to be approved by the City Council shall be again considered either by the City Council or the Planning and Zoning Commission before the expiration of one (1) year from the date of the original rejection. City Council's failure to approve an application shall be considered the same as disapproval for purposes of this paragraph.

### **Property Specifics**

**Applicant/Property Owner:** Sergio Dominguez

**Property Location:** The property is addressed as 405 Houston Street, Killeen, Texas.

**Legal Description:** The property is a tract of land out of the A. Thompson Survey, Abstract No. 813.

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

- There is no recent rezone activity for this property.
- The property is unplatted.

### **Character of the Area**

**Existing Land Uses(s) on the Property:** This is a vacant parcel of land. The greater area consists of existing manufactured housing units and older housing stock.

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

See Attachment

### **Figure 2. FEMA Flood Map**

See Attachment

**Historic Properties:** None

### **Infrastructure and Community Facilities**

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

Provider: City of Killeen

Within Service Area: Yes

Feasibility Study or Service Commitment: water, sanitary sewer, and drainage utility services are available to the tract. It shall be noted that Public Works personnel have performed only a basic assessment of publicly-dedicated water and sanitary sewer infrastructure that would serve this property. Public storm drainage infrastructure is limited to public rights-of-way and detention of post development storm water run-off would be required.

The property owner and his agents are cautioned that unknown or unforeseen site conditions may require remedial action to provide safe and adequate water, sewer, or drainage service to

the property. Further, City of Killeen development regulations require that capacity analysis related to development of the property is the sole responsibility of the owner. The owner or his agents, acting as the permit applicant for development of the subject property, shall coordinate tie-in to all publicly dedicated infrastructure with the Public Works Department.

**Transportation:**

Existing conditions: Direct vehicular access is onto Houston Street (a local street per the City's adopted Thoroughfare Plan).

Proposed Improvements: None are being proposed at this time.

Projected Traffic Generation: Minimal.

**Environmental Assessment**

**Topography:** The site has elevations ranging from 814' to 828'.

**Regulated Floodplain/Floodway/Creek:** A large portion of this property is located in a FEMA regulatory special flood hazard area characterized as zone 'AE'. FEMA defines the AE zone as the base floodplain where base flood elevations (BFE) are provided. Future residential development would be required to be elevated 2-feet above the BFE. Future commercial development would be required to be elevated 2-feet above the BFE or flood proofed. All development within the FEMA regulatory special flood hazard area would require certification that the development does not cause a rise in BFE anywhere within the community.

**Land Use Analysis**

**Land Use Plan:** This area is designated as 'General Residential' on the future land use map (FLUM). Under Local Government Code, Section 213, the comprehensive plan is recognized under state law as the City's document for long range growth and development.

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

- Predominantly R-1 zoning district with less openness and separation between dwellings compared to Suburban Residential areas.
- Auto-oriented character that can be offset with architectural standards, landscaping and limited uniform subdivision designs.
- Neighborhood-scale commercial uses emerging over time for well-suited areas.

**Consistency:** The request is consistent with the FLUM. Currently, the applicant resides in a 15.5' x 75' manufactured home that is located across the street within an existing mobile home park. In its current location, the manufactured home is sited within the floodplain. The net effect of relocating the manufactured home out of the floodplain and across Houston Street (to the new site) is one of hazard mitigation; it removes a structure from the floodplain. The prevalence of the existing manufactured housing units in the immediate vicinity and the relocation of the existing home does not represent a change in community character and

substantially meets those criteria detailed in Killeen Code of Ordinances, Section 31-456 (c)(1-5). The actual placement of the structure must comply with the City's guidelines as contained in Killeen Code of Ordinances, Chapters 12 *Flood Damage Prevention* and 17 *Mobile Homes and Mobile Home Parks*.

**Public Notification**

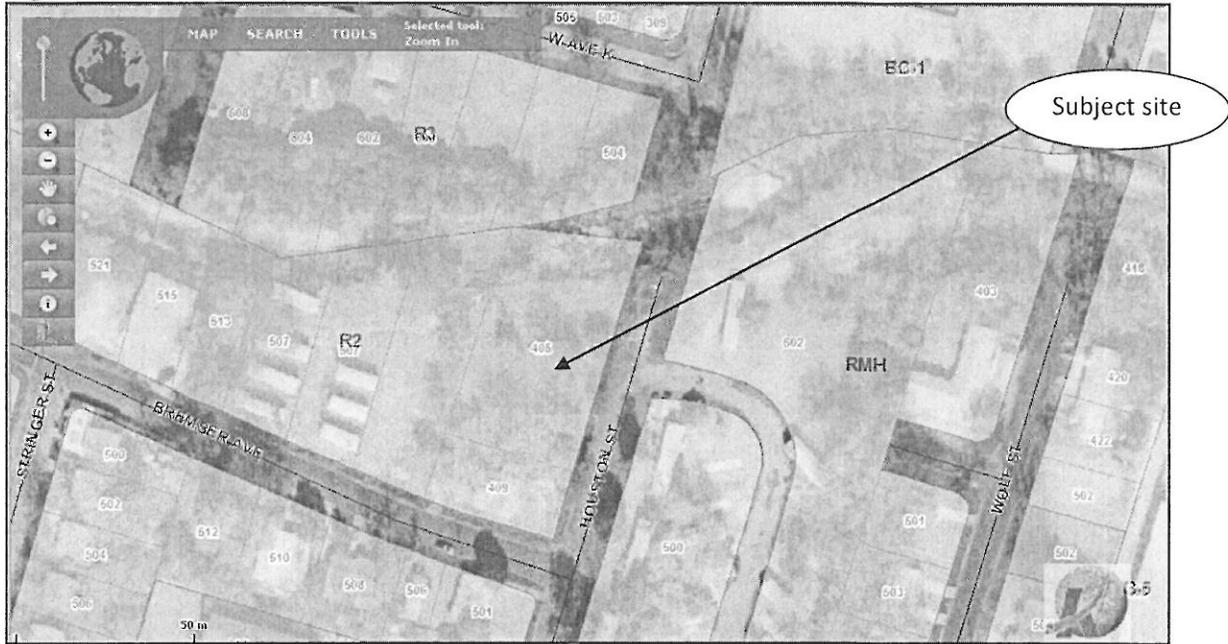
Staff notified sixteen (16) surrounding property owners within a 200' notification boundary. Staff has not received any responses.

**Recommendation**

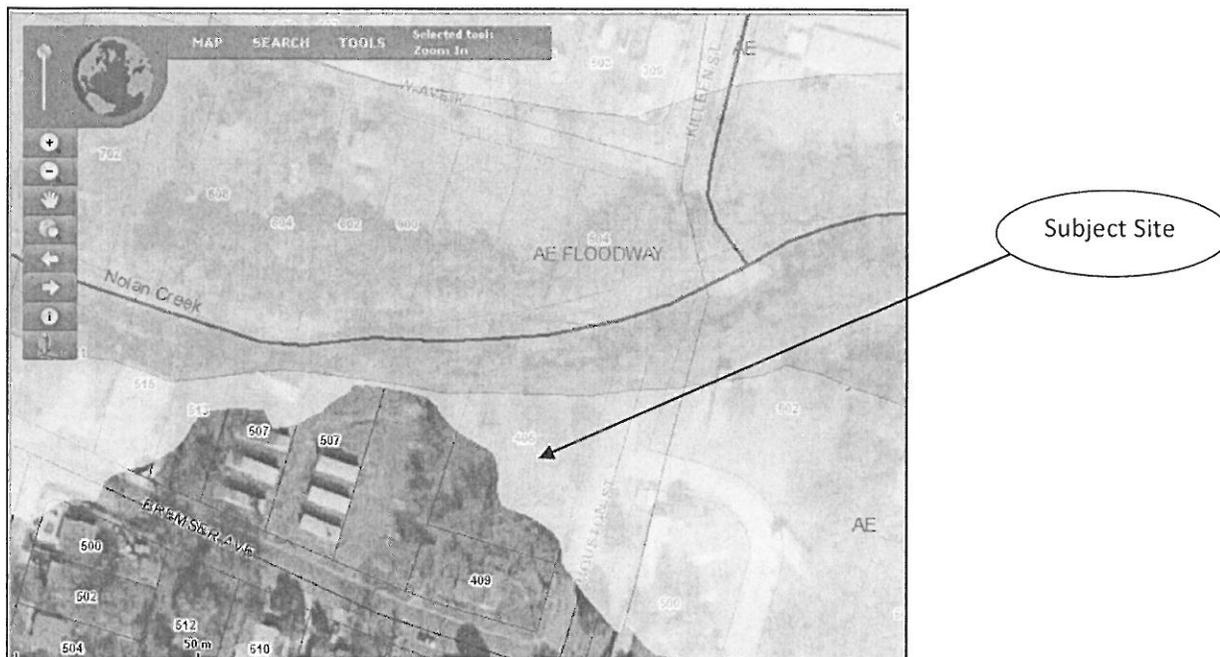
The Planning and Zoning Commission recommended approval of the conditional use permit by a vote of 7 to 0.



Figure 1. Zoning Map



**Figure 2. FEMA Flood Map**



**ORDINANCE \_\_\_\_\_**

**AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF CERTAIN PROPERTY OUT OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM R-2 (TWO-FAMILY RESIDENTIAL DISTRICT) TO R-2 (TWO-FAMILY RESIDENTIAL DISTRICT) WITH A CUP (CONDITIONAL USE PERMIT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Sergio Dominguez has presented to the City of Killeen a request for amendment of the zoning ordinance of the City of Killeen by changing the classification of 405 Houston Street from R-2 (Two-Family Residential District) to R-2 (Two-Family Residential District) with a CUP (Conditional Use Permit) to allow for the relocation and habitation of an existing manufactured home, said CUP request having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 23rd day of September 2013, and due notice of the filing of said request and the date of hearing thereon was given as required by law, and hearing on said request was set for 5:00 P.M., on the 8th day of October 2013, at the City Hall, City of Killeen;

**WHEREAS**, the City Council at said hearing duly considered said request, the action of the Planning and Zoning Commission and the evidence in support thereof, and the City Council being of the majority opinion that the request should be approved;

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

**Section I.** That the zoning classification of 405 Houston Street be changed from R-2 (Two-Family Residential District) to R-2 (Two-Family Residential District) with a CUP (Conditional Use Permit) to allow for the relocation and habitation of a manufactured home.

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

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

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

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this 8th day of October 2013, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 *et seq.*

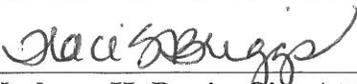
**APPROVED:**

\_\_\_\_\_  
**Daniel A. Corbin, MAYOR**

**ATTEST:**

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

**APPROVED AS TO FORM**

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

Case #13-34  
Ord. # 13

**PLANNING AND ZONING COMMISSION MEETING  
SEPTEMBER 23, 2013**

**CASE #Z13-34  
R-2 to R-2 w/CUP**

**HOLD a public hearing and consider a request by Sergio Dominguez (Case #Z13-34) to rezone approximately 0.675 acres, being part of the A. Thompson Survey, Abstract No. 813, from R-2 (Two-Family Residential District) to R-2 (Two-Family Residential District) with CUP (Conditional Use Permit) for a manufactured home. The property is locally known as 405 Houston Street, Killeen, Texas.**

Chairman Frederick requested staff comments.

The City Planner stated the this request submitted by Sergio Dominguez is to rezone 405 Houston Street from R-2 (Two Family Residential District) to R-2 (Two Family Residential District) with C.U.P. (Conditional Use Permit). The property owners would like to remove an existing manufactured home measuring fifteen and half feet (15.5 ft.) in width by seventy-five feet (75 ft.) in length from its existing location, totally within a flood plain, across the street to a vacant lot which is addressed as 405 Houston Street. The majority of the area consists of existing manufactured housing and older houses. The property is currently undeveloped and is mostly located in a FEMA regulatory special flood hazard area. The actual placement of the structure must comply with the city's guidelines as contained in Killeen Code of Ordinances Chapters 12, Flood Damage Prevention, and 17, Mobile Homes and Mobile Home Parks. Any development within the FEMA regulatory special flood area would require certification that the development does not cause a rise in BFE anywhere within the community.

Staff notified 16 surrounding property owners within a 200 foot notification boundary. No responses were received.

Staff recommended approval of the CUP. The applicant currently resides in a manufactured home that is located across the street, totally within a flood plain, within an existing mobile home park.

Ms. Fatima Villagomez, Killeen, was present to represent this request.

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

Commissioner Dehart motioned to recommend approval of the request. Commissioner Hicks seconded the motion. The motion passed 7-0.

Chairman Frederick stated that this will be forwarded to City Council on October 8, 2013 with a recommendation to approve.





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

CASE # 213-34

## City of Killeen Zoning Change Application

[ ] General Zoning Change [ ] Conditional Use Permit

15.5' x 75'

Name(s) of Property Owner: Sergio Dominguez  
 Current Address: #401 bear branch rd  
 City: Killeen State: TX Zip: 76542  
 Home Phone: 254-768-1076 Business Phone: ( ) Cell Phone: 254-248-5847  
 Email: \_\_\_\_\_

Name of Applicant: \_\_\_\_\_  
 (If different than Property Owner)

Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Home Phone: ( ) Business Phone: ( ) Cell Phone ( )  
 Email: \_\_\_\_\_

Address/Location of property to be rezoned: #405 Houston Street Killeen TX 76541  
 Legal Description: "A"

Metes & Bounds or Lot(s) Block Subdivision

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

Type of Ownership:  Sole Ownership  Partnership  Corporation  Other

Present Zoning: \_\_\_\_\_ Present Use: \_\_\_\_\_

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

Conditional Use Permit for: Place a mobile home

This property was conveyed to owner by deed dated 08-31-2010 and recorded in Volume 537  
 Page 370, Instrument Number \_\_\_\_\_ of the Bell County Deed Records.  
 (Attached)

Is this the first rezoning application on a unilaterally annexed tract?  
 Yes \_\_\_\_\_ (Fee not required) No \_\_\_\_\_ (Submit required fee)

## APPOINTMENT OF AGENT

As owner of the subject property, I hereby appoint the person designated below to act for me, as my agent in this request.

Name of Agent: Fatima Villagomez  
Mailing Address: #511 Joyner Cr  
City: Killeen State: TX Zip: 76841  
Home Phone: 254 768-1076 Business Phone: ( ) Email: \_\_\_\_\_

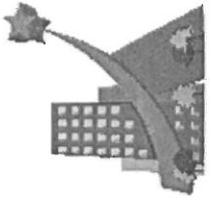
I acknowledge and affirm that I will be legally bound by the words and acts of my agent, and by my signature below, I fully authorize my agent to:

**be the point of contact between myself and the City: make legally binding representations of fact and commitments of every kind on my behalf; grant legally binding waivers of rights and releases of liabilities of every kind on my behalf; to consent to legally binding modifications, conditions, and exceptions on my behalf; and, to execute documents on my behalf which are legally binding on me. This authorization only applies to this specific zoning request.**

**I understand that the City will deal only with a fully authorized agent.** At any time it should appear that my agent has less than full authority to act, then the application may be suspended and I will have to personally participate in the disposition of the application. I understand that all communications related to this application are part of an official proceeding of City government and, that the City will rely upon statements made by my agent. Therefore, **I agree to hold harmless and indemnify the City of Killeen, its officers, agents, employees, and third parties who act in reliance upon my agent's words and actions from all damages, attorney fees, interest and costs arising from this matter.** If my property is owned by a corporation, partnership, venture, or other legal entity, then I certify that I have legal authority to make this binding appointment on behalf of the entity, and every reference herein to 'I', 'my', or 'me' is a reference to the entity.

Signature of Agent _____	Title _____
Printed/Typed Name of Agent _____	Date _____
Signature of Applicant <u>Sergio Domínguez</u>	Title _____
Printed/Typed Name of Applicant <u>Sergio Domínguez</u>	Date <u>08-23-13</u>
Signature of Property Owner <u>Sergio Domínguez</u>	Title _____
Printed/Typed Name of Property Owner <u>Sergio Domínguez</u>	Date <u>08-23-13</u>
Signature of Property Owner <u>Sergio Domínguez</u>	Title _____
Printed/Typed Name of Property Owner <u>Sergio Domínguez</u>	Date <u>08-23-13</u>
Signature of Property Owner <u>Sergio Domínguez</u>	Title _____
Printed/Typed Name of Property Owner <u>Sergio Domínguez</u>	Date <u>08-23-13</u>

\*Application must be signed by the individual applicant, by each partner of a partnership, or by an officer of a corporation or association.



**PLANNING AND DEVELOPMENT SERVICES**

**ZONING CASE:**

#Z13-34

**ZONING FROM:**

R2 TO R2 WTH CUP

**PROPERTY OWNER:**

SERGIO DOMINGUEZ

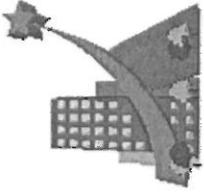
**Legend**

-  Zoning Case
-  City Limits
-  Parcel



Date: 8/26/2013





**PLANNING AND DEVELOPMENT SERVICES**

**ZONING CASE:**

#Z13-34

**ZONING FROM:**

R2 TO R2 WITH CUP

**PROPERTY OWNER:**

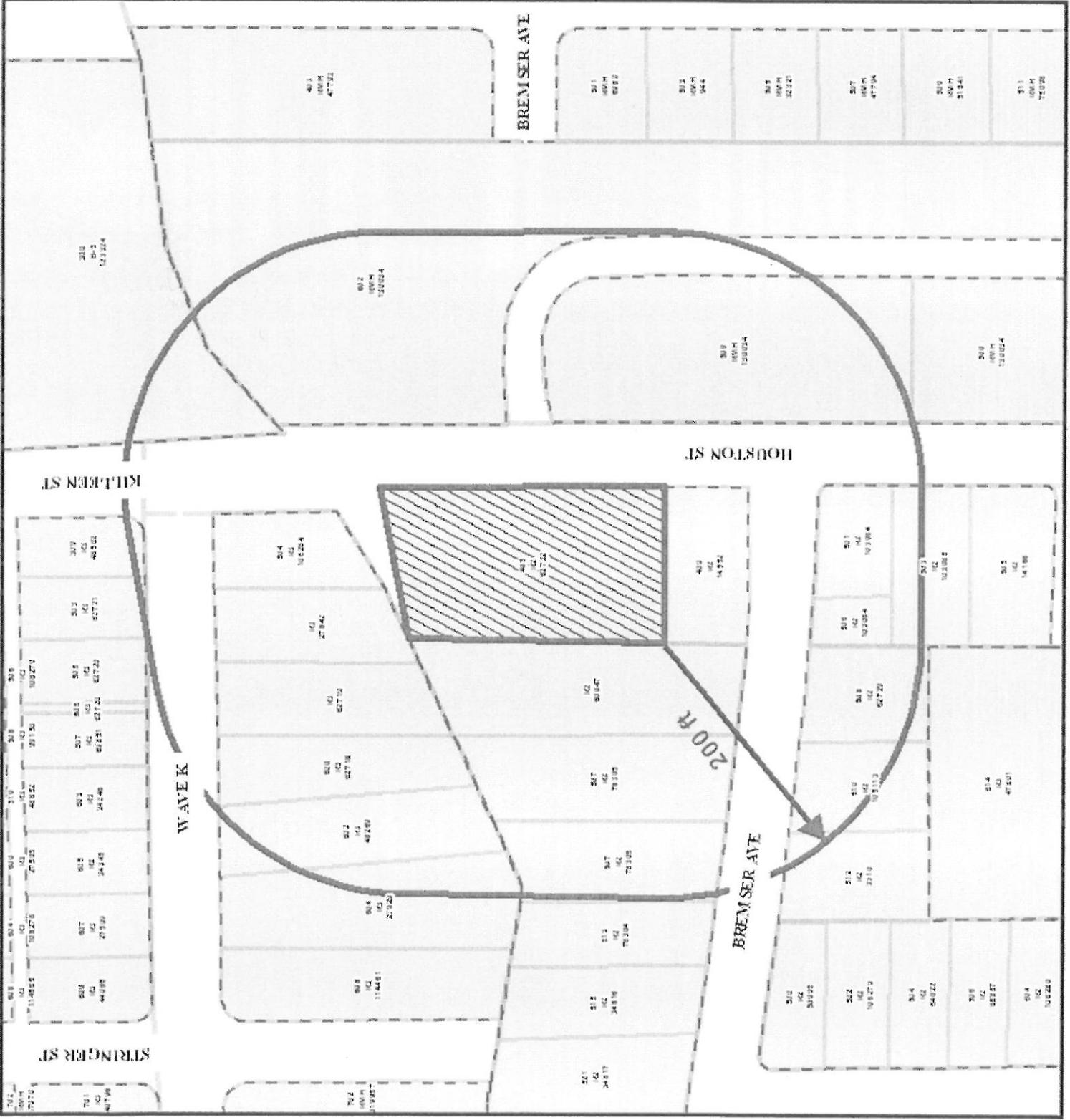
SERGIO DOMINGUEZ

**LEGEND**

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



Date: 8/26/2013



## CONSIDERATIONS

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

### A. General Factors to Consider:

Is the request in accordance with the comprehensive plan?

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

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

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

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

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

Whether there have been substantially changed conditions in the neighborhood.

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

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

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

### B. Conditional Use Permit (if applicable)

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

### C. Conditions to Consider

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

**CITY COUNCIL MEMORANDUM FOR RESOLUTION**

**AGENDA ITEM**

**APPOINTMENT OF MEMBERS-KVI/YOUTH ADVISORY COMMISSION**

**ORIGINATING DEPARTMENT**

**Community Services/Volunteer Services**

**BACKGROUND INFORMATION**

The City Council is responsible for making appointments to the boards and commissions. These appointments are not only once a year, but as vacancies occur.

**DISCUSSION/CONCLUSION**

The members of the Killeen Volunteers, Inc.-Youth Advisory Commission need to be appointed for the 2013-2014 year. The following recommendations are for City Council consideration:

<b>KILLEEN VOLUNTEERS, INC.-YOUTH ADVISORY COMMISSION</b>		
<i>Sub-Committee: All Council</i>		
Current Members	New YAC Members	Special Qualifications
Jennice Berdicia	Sheeondra Adams	Student Representative
Syeasha Burford	Najah Arthur	Student Representative
Kelsey Castro	Jennice Berdicia	Student Representative
Jenora Chester	Camryn Cotton	Student Representative
Dameisha Clemons	Emily Cumming	Student Representative
Camryn Cotton	Leya Deickman	Student Representative
Emily Cumming	Sara Drussell	Student Representative
Leya Deickman	X'zavier Green	Student Representative
Sara Drussell	Raquel Hubert	Student Representative
X'zavier Green	Delano Hudson	Student Representative
Raquel Hubert	Keith Huey	Student Representative
Delano Hudson	Ashley Jamison	Student Representative
Ashley Jamison	Ja'Tyrah Joseph	Student Representative
Jabreel Johnson	JoAnn Lomas-Mathis	Student Representative
Ja'Tyrah Joseph	Kaitlyn McVeigh	Student Representative
Kennedy Ketcham	Aimee Nazario-Ovalle	Student Representative
JoAnn Lomas-Mathis	Jacob Nichols	Student Representative
Sarah Luke	Andrea Pettaway	Student Representative
Alex Matheny	Nathan Rarangol	Student Representative
Kaitlyn McVeigh	LaTiara Robertson	Student Representative
Angel Meza	Thomas Robinson	Student Representative

Jacob Nichols	Maya Ross	Student Representative
Chelsea Phillips	Kristiane Smith	Student Representative
Talyjah Plummer	DeAngelo Thompson, Jr.	Student Representative
Thomas Robinson	Alexandria Ussery	Student Representative
Maya Ross	Skylar Vanderberg	Student Representative
DeAngelo Thompson, Jr.	Alex Weathersby	Student Representative
Alyssia Tirado	Keyah Williams	Student Representative
Alexandria Ussery	Koshon Williams	Student Representative
Skylar Vanderberg	Valarie Wimes	Student Representative
Alex Weathersby	Shakira Wingate	Student Representative
Keyah Williams	Travian Wright	Student Representative
Jasmine Wingate	Vacancy	Student Representative
Shakira Wingate	Vacancy	Student Representative
Travian Wright	Vacancy	Student Representative
Vacancy	Vacancy	Student Representative
Vacancy	Vacancy	Student Representative

**FISCAL IMPACT**

These proposed changes will have no fiscal impact.

**RECOMMENDATION**

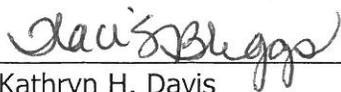
It is recommended that the City Council appoint the nominated individuals.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this the 8<sup>th</sup> day of October, 2013, 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**

\_\_\_\_\_  
Daniel A. Corbin  
MAYOR

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

\_\_\_\_\_  
Dianna Barker  
CITY SECRETARY

**CITY COUNCIL MEMORANDUM FOR ORDINANCE**

**AGENDA ITEM**

**Ordinance approving a negotiated resolution with Atmos Energy Corp., Mid-Tex Division regarding the 2013 Annual Rate Review Mechanism and adopting tariffs with rate adjustments**

**ORIGINATING DEPARTMENT**

**City Attorney**

**BACKGROUND INFORMATION**

By law, cities have jurisdiction of natural gas rates. The City, along with approximately 164 other cities served by Atmos Energy Mid-Tex Division ("Atmos"), is a member of the Atmos Cities Steering Committee ("ACSC"). A Rate Review Mechanism ("RRM") process was originally adopted by the cities in 2007 as an alternate to the more restrictive Gas Reliability Infrastructure Program ("GRIP") provided in the law and was renewed by the cities earlier this year. On July 15, 2013, Atmos filed an application to increase natural gas rates pursuant to the RRM.

**DISCUSSION/CONCLUSION**

The RRM filing sought a \$22.7 million increase system wide based on what was alleged to be a cost of service revenue deficiency. ACSC hired consultants to investigate the request and supporting documentation. They determined that a rate increase was justified, but that the requested rate increase was excessive. ACSC attorneys began settlement negotiations and reached a compromised increase of \$16.6 million system wide. The alternative to negotiating would be to require Atmos to file a standard GRIP. The consultants determined that Atmos would have been entitled to an increase of about \$28 million under the traditional GRIP system, making the compromised settlement a much better result. The new rates will be effective November 1, 2013.

**FISCAL IMPACT**

There is no fiscal impact to the City. The estimated monthly increase for each category of customers is as follows:

Residential	\$ 0.74
Commercial	\$ 2.16
Industrial	\$53.65
Transportation	\$53.65

**RECOMMENDATION**

The ACSC Executive Committee, of which the City is a member, recommends approving the attached ordinance authorizing the settlement and new rate tariffs.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KILLEEN, TEXAS, APPROVING A NEGOTIATED RESOLUTION BETWEEN THE ATMOS CITIES STEERING COMMITTEE AND ATMOS ENERGY CORP., MID-TEX DIVISION REGARDING THE COMPANY'S 2013 ANNUAL RATE REVIEW MECHANISM FILING IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT AND FINDING THE RATES TO BE SET BY THE ATTACHED TARIFFS TO BE JUST AND REASONABLE; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES; REPEALING CONFLICTING RESOLUTIONS OR ORDINANCES; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; PROVIDING A MOST FAVORED NATIONS CLAUSE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE STEERING COMMITTEE'S LEGAL COUNSEL.**

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

WHEREAS, the City is a member of the Atmos Cities Steering Committee ("ACSC"), a coalition of approximately 164 similarly situated cities served by Atmos Mid-Tex that have joined together to facilitate the review of and response to natural gas issues affecting rates charged in the Atmos Mid-Tex service area; and

WHEREAS, pursuant to the terms of the agreement settling the Company's 2007 Statement of Intent to increase rates, ACSC Cities and the Company worked collaboratively to develop a Rate Review Mechanism ("RRM") tariff that allows for an expedited rate review

process controlled in a three-year experiment by ACSC Cities as a substitute to the current Gas Reliability Infrastructure Program (“GRIP”) process instituted by the Legislature; and

WHEREAS, the City took action in 2008 to approve a Settlement Agreement with Atmos Mid-Tex resolving the Company’s 2007 rate case and authorizing the RRM tariff; and

WHEREAS, in 2013, ACSC and the Company negotiated a renewal of the RRM tariff process for an additional five years; and

WHEREAS, the City passed an ordinance renewing the RRM tariff process for the City for an additional five years; and

WHEREAS, the RRM renewal tariff contemplates reimbursement of ACSC Cities’ reasonable expenses associated with RRM applications; and

WHEREAS, on or about July 15, 2013, the Company filed with the City its first annual RRM filing under the renewed RRM tariff, requesting to increase natural gas base rates by \$22.7 million; and

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

WHEREAS, the ACSC Executive Committee, as well as ACSC’s counsel and consultants, recommend that ACSC Cities approve the attached rate tariffs (“Attachment A” to this Ordinance), which will increase the Company’s revenues by \$16.6 million; and

WHEREAS, the attached tariffs implementing new rates are consistent with the negotiated resolution reached by ACSC Cities and are just, reasonable, and in the public interest;

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

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

Section 2. That the City Council finds the existing rates for natural gas service provided by Atmos Mid-Tex are unreasonable and new tariffs which are attached hereto and incorporated herein as Attachment A, are just and reasonable and are hereby adopted.

Section 3. That Atmos Mid-Tex shall reimburse the reasonable ratemaking expenses of the ACSC Cities in processing the Company's RRM application.

Section 4. That to the extent any resolution or ordinance previously adopted by the Council is inconsistent with this Ordinance, it is hereby repealed.

Section 5. That the meeting at which this Ordinance was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 6. That if any one or more sections or clauses of this Ordinance is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance and the remaining provisions of the Ordinance shall be interpreted as if the offending section or clause never existed.

Section 7. That if ACSC determines any rates, revenues, terms and conditions, or benefits resulting from a Final Order or subsequent negotiated settlement approved in any proceeding addressing the issues raised in Atmos' 2013 RRM filing would be more beneficial to the ACSC Cities than the terms of the attached tariffs, then the more favorable rates, revenues, terms and conditions, or benefits shall additionally and automatically accrue to the ACSC Cities, including the City, without the need for City to take any further action. If this automatic adjustment occurs, Atmos Mid-Tex shall promptly thereafter file with the City an amended tariff documenting the adjustment to rates.

Section 8. That this Ordinance shall become effective from and after its passage with rates authorized by attached tariffs to be effective for bills rendered on or after November 1, 2013.

Section 9. That a copy of this Ordinance shall be sent to Atmos Mid-Tex, care of Chris Felan, Manager of Rates and Regulatory Affairs, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

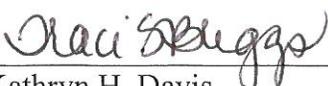
PASSED AND APPROVED this \_\_\_\_\_ day of October, 2013.

\_\_\_\_\_  
Daniel A. Corbin  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

# **Attachment A**

Atmos Mid-Tex Tariffs  
Effective November 1, 2013

**MID-TEX DIVISION  
ATMOS ENERGY CORPORATION**

<b>RATE SCHEDULE:</b>	<b>R – RESIDENTIAL SALES</b>	
<b>APPLICABLE TO:</b>	<b>ALL CUSTOMERS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS AND UNINCORPORATED AREAS</b>	
<b>EFFECTIVE DATE:</b>	<b>Bills Rendered on or after 11/01/2013</b>	

**Application**

Applicable to Residential Customers for all natural gas provided at one Point of Delivery and measured through one meter.

**Type of Service**

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

**Monthly Rate**

Customer's monthly bill will be calculated by adding the following Customer and Ccf charges to the amounts due under the riders listed below:

<b>Charge</b>	<b>Amount</b>
Customer Charge per Bill	\$ 17.70 per month
Rider CEE Surcharge	\$ 0.02 per month <sup>1</sup>
<b>Total Customer Charge</b>	<b>\$ 17.72 per month</b>
Commodity Charge – All <u>Ccf</u>	\$0.05831 per Ccf

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

**Agreement**

An Agreement for Gas Service may be required.

**Notice**

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

<sup>1</sup> Reference Rider CEE - Conservation And Energy Efficiency as approved in GUD 10170. Surcharge billing effective July 1, 2013.

**MID-TEX DIVISION  
ATMOS ENERGY CORPORATION**

<b>RATE SCHEDULE:</b>	<b>C – COMMERCIAL SALES</b>	
<b>APPLICABLE TO:</b>	<b>ALL CUSTOMERS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS AND UNINCORPORATED AREAS</b>	
<b>EFFECTIVE DATE:</b>	<b>Bills Rendered on or after 11/01/2013</b>	

**Application**

Applicable to Commercial Customers for all natural gas provided at one Point of Delivery and measured through one meter and to Industrial Customers with an average annual usage of less than 30,000 Ccf.

**Type of Service**

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

**Monthly Rate**

Customer's monthly bill will be calculated by adding the following Customer and Ccf charges to the amounts due under the riders listed below:

<b>Charge</b>	<b>Amount</b>
Customer Charge per Bill	\$ 35.75 per month
Rider CEE Surcharge	\$ 0.10 per month <sup>1</sup>
<b>Total Customer Charge</b>	<b>\$ 35.85 per month</b>
Commodity Charge – All Ccf	\$ 0.06893 per Ccf

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

**Agreement**

An Agreement for Gas Service may be required.

**Notice**

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

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<sup>1</sup> Reference Rider CEE - Conservation And Energy Efficiency as approved in GUD 10170. Surcharge billing effective July 1, 2013.

**MID-TEX DIVISION  
ATMOS ENERGY CORPORATION**

<b>RATE SCHEDULE:</b>	<b>I – INDUSTRIAL SALES</b>	
<b>APPLICABLE TO:</b>	<b>ALL CUSTOMERS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS AND UNINCORPORATED AREAS</b>	
<b>EFFECTIVE DATE:</b>	<b>Bills Rendered on or after 11/01/2013</b>	

**Application**

Applicable to Industrial Customers with a maximum daily usage (MDU) of less than 3,500 MMBtu per day for all natural gas provided at one Point of Delivery and measured through one meter. Service for Industrial Customers with an MDU equal to or greater than 3,500 MMBtu per day will be provided at Company's sole option and will require special contract arrangements between Company and Customer.

**Type of Service**

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

**Monthly Rate**

Customer's monthly bill will be calculated by adding the following Customer and MMBtu charges to the amounts due under the riders listed below:

<b>Charge</b>	<b>Amount</b>
Customer Charge per Meter	\$ 620.00 per month
First 0 MMBtu to 1,500 MMBtu	\$ 0.2565 per MMBtu
Next 3,500 MMBtu	\$ 0.1879 per MMBtu
All MMBtu over 5,000 MMBtu	\$ 0.0403 per MMBtu

**Gas Cost Recovery:** Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

**Franchise Fee Adjustment:** Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

**Tax Adjustment:** Plus an amount for tax calculated in accordance with Rider TAX.

**Surcharges:** Plus an amount for surcharges calculated in accordance with the applicable rider(s).

**Curtailment Overpull Fee**

Upon notification by Company of an event of curtailment or interruption of Customer's deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailment or interruption, pay Company 200% of the midpoint price for the Katy point listed in *Platts Gas Daily* published for the applicable Gas Day in the table entitled "Daily Price Survey."

**Replacement Index**

In the event the "midpoint" or "common" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" is no longer published, Company will calculate the applicable imbalance fees utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

**MID-TEX DIVISION  
ATMOS ENERGY CORPORATION**

<b>RATE SCHEDULE:</b>	<b>I – INDUSTRIAL SALES</b>	
<b>APPLICABLE TO:</b>	<b>ALL CUSTOMERS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS AND UNINCORPORATED AREAS</b>	
<b>EFFECTIVE DATE:</b>	<b>Bills Rendered on or after 11/01/2013</b>	

**Agreement**

An Agreement for Gas Service may be required.

**Notice**

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

**Special Conditions**

In order to receive service under Rate I, Customer must have the type of meter required by Company. Customer must pay Company all costs associated with the acquisition and installation of the meter.

**MID-TEX DIVISION  
ATMOS ENERGY CORPORATION**

<b>RATE SCHEDULE:</b>	<b>T – TRANSPORTATION</b>	
<b>APPLICABLE TO:</b>	<b>ALL CUSTOMERS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS AND UNINCORPORATED AREAS</b>	
<b>EFFECTIVE DATE:</b>	<b>Bills Rendered on or after 11/01/2013</b>	

**Application**

Applicable, in the event that Company has entered into a Transportation Agreement, to a customer directly connected to the Atmos Energy Corp., Mid-Tex Division Distribution System (Customer) for the transportation of all natural gas supplied by Customer or Customer's agent at one Point of Delivery for use in Customer's facility.

**Type of Service**

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

**Monthly Rate**

Customer's bill will be calculated by adding the following Customer and MMBtu charges to the amounts and quantities due under the riders listed below:

<b>Charge</b>	<b>Amount</b>
Customer Charge per Meter	\$ 620.00 per month
First 0 MMBtu to 1,500 MMBtu	\$ 0.2565 per MMBtu
Next 3,500 MMBtu	\$ 0.1879 per MMBtu
All MMBtu over 5,000 MMBtu	\$ 0.0403 per MMBtu

Upstream Transportation Cost Recovery: Plus an amount for upstream transportation costs in accordance with Part (b) of Rider GCR.

Retention Adjustment: Plus a quantity of gas as calculated in accordance with Rider RA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

**Imbalance Fees**

All fees charged to Customer under this Rate Schedule will be charged based on the quantities determined under the applicable Transportation Agreement and quantities will not be aggregated for any Customer with multiple Transportation Agreements for the purposes of such fees.

**Monthly Imbalance Fees**

Customer shall pay Company the greater of (i) \$0.10 per MMBtu, or (ii) 150% of the difference per MMBtu between the highest and lowest "midpoint" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" during such month, for the MMBtu of Customer's monthly Cumulative Imbalance, as defined in the applicable Transportation Agreement, at the end of each month that exceeds 10% of Customer's receipt quantities for the month.

**MID-TEX DIVISION  
ATMOS ENERGY CORPORATION**

<b>RATE SCHEDULE:</b>	<b>T – TRANSPORTATION</b>	
<b>APPLICABLE TO:</b>	<b>ALL CUSTOMERS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS AND UNINCORPORATED AREAS</b>	
<b>EFFECTIVE DATE:</b>	<b>Bills Rendered on or after 11/01/2013</b>	

**Curtailment Overpull Fee**

Upon notification by Company of an event of curtailment or interruption of Customer's deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailment or interruption, pay Company 200% of the midpoint price for the Katy point listed in *Platts Gas Daily* published for the applicable Gas Day in the table entitled "Daily Price Survey."

**Replacement Index**

In the event the "midpoint" or "common" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" is no longer published, Company will calculate the applicable imbalance fees utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

**Agreement**

A transportation agreement is required.

**Notice**

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

**Special Conditions**

In order to receive service under Rate T, customer must have the type of meter required by Company. Customer must pay Company all costs associated with the acquisition and installation of the meter.

**MID-TEX DIVISION  
ATMOS ENERGY CORPORATION**

<b>RIDER:</b>	<b>WNA – WEATHER NORMALIZATION ADJUSTMENT</b>	
<b>APPLICABLE TO:</b>	<b>ALL CUSTOMERS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS AND UNINCORPORATED AREAS</b>	
<b>EFFECTIVE DATE:</b>	<b>Bills Rendered on or after 11/01/2013</b>	

Provisions for Adjustment

The Commodity Charge per Ccf (100 cubic feet) for gas service set forth in any Rate Schedules utilized by the cities of the Mid-Tex Division service area for determining normalized winter period revenues shall be adjusted by an amount hereinafter described, which amount is referred to as the "Weather Normalization Adjustment." The Weather Normalization Adjustment shall apply to all temperature sensitive residential and commercial bills based on meters read during the revenue months of November through April. The five regional weather stations are Abilene, Austin, Dallas, Waco, and Wichita Falls.

Computation of Weather Normalization Adjustment

The Weather Normalization Adjustment Factor shall be computed to the nearest one-hundredth cent per Ccf by the following formula:

$$WNAF_i = R_i \frac{(HSF_i \times (NDD-ADD))}{(BL_i + (HSF_i \times ADD))}$$

Where

- $i$  = any particular Rate Schedule or billing classification within any such particular Rate Schedule that contains more than one billing classification
- $WNAF_i$  = Weather Normalization Adjustment Factor for the  $i^{th}$  rate schedule or classification expressed in cents per Ccf
- $R_i$  = Commodity Charge rate of temperature sensitive sales for the  $i^{th}$  schedule or classification.
- $HSF_i$  = heat sensitive factor for the  $i^{th}$  schedule or classification divided by the average bill count in that class
- $NDD$  = billing cycle normal heating degree days calculated as the simple ten-year average of actual heating degree days.
- $ADD$  = billing cycle actual heating degree days.
- $BL_i$  = base load sales for the  $i^{th}$  schedule or classification divided by the average bill count in that class

The Weather Normalization Adjustment for the  $j$ th customer in  $i$ th rate schedule is computed as:

$$WNA_j = WNAF_i \times q_{ij}$$

Where  $q_{ij}$  is the relevant sales quantity for the  $j$ th customer in  $i$ th rate schedule.

**MID-TEX DIVISION  
ATMOS ENERGY CORPORATION**

<b>RIDER:</b>	<b>WNA – WEATHER NORMALIZATION ADJUSTMENT</b>	
<b>APPLICABLE TO:</b>	<b>ALL CUSTOMERS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS AND UNINCORPORATED AREAS</b>	
<b>EFFECTIVE DATE:</b>	<b>Bills Rendered on or after 11/01/2013</b>	

Base Use/Heat Use Factors

Weather Station	<u>Residential</u>		<u>Commercial</u>	
	<u>Base use</u> <u>Ccf</u>	<u>Heat use</u> <u>Ccf/HDD</u>	<u>Base use</u> <u>Ccf</u>	<u>Heat use</u> <u>Ccf/HDD</u>
Abilene	9.97	0.1318	96.50	0.5659
Austin	11.05	0.1262	189.59	0.7195
Dallas	13.13	0.1832	171.84	0.8797
Waco	9.78	0.1262	117.60	0.5774
Wichita Falls	10.99	0.1297	107.70	0.5041

Weather Normalization Adjustment (WNA) Report

On or before June 1 of each year, the company posts on its website at [atmosenergy.com/mtx-wna](http://atmosenergy.com/mtx-wna), in Excel format, a *Weather Normalization Adjustment (WNA) Report* to show how the company calculated its WNAs factor during the preceding winter season. Additionally, on or before June 1 of each year, the company files one hard copy and a Excel version of the *WNA Report* with the Railroad Commission of Texas' Gas Services Division, addressed to the Director of that Division.

**CITY COUNCIL MEMORANDUM FOR ORDINANCE**

**AGENDA ITEM**

**Masonry and Design Standards Ordinance for certain residential and commercial zoning districts**

**ORIGINATING DEPARTMENT**

**Planning and Development Services**

**BACKGROUND INFORMATION**

Staff has been working with the Planning and Zoning Commission for a few months to create a masonry and design ordinance for the City Council's consideration and approval. The Planning and Zoning Commission created a sub-committee which met with staff and several members of the developer/homebuilding community. A great deal of research was done and examples of other masonry ordinances were examined.

**DISCUSSION/CONCLUSION**

The Planning and Zoning Commission held two public hearings and received input from the developer/homebuilder community. The Planning and Zoning Commission is recommending that the City Council approve the masonry and design standards contained in the ordinance.

**FISCAL IMPACT**

None

**RECOMMENDATION**

The Planning and Zoning Commission voted to recommend approval of the draft Masonry and Design Standards Ordinance by a vote of 5 to 2 (with Commissioners Langford and Hoover in opposition).

**PLANNING AND ZONING COMMISSION MEETING  
MINUTES**

**SEPTEMBER 23, 2013  
MASONRY ORDINANCE**

**HOLD a public hearing and consider the creation of a masonry ordinance for certain residential zoning districts and all business zoning districts within the City of Killeen.**

Chairman Frederick requested staff comments.

City Planner McIlwain briefed the Commission on the draft masonry ordinance.

Chairman Frederick opened the public hearing.

Robert Stefek, 3800 W.S. Young Drive, Suite 102, Killeen, Texas was present to speak on the masonry ordinance. He suggested minor changes to the commercial part of the draft ordinance based on the information he presented at the previous meeting.

Mr. Tim Farek of 5311 Martin Luther King Jr. Boulevard, Killeen, Texas spoke next. Mr. Farek had issues with the masonry percentage requirements and wanted hardy board to be added as a masonry building material. Mr. Farek spoke on the benefits of using hardy board such as low costs and fire rating. He informed the Commission that the inclusion of hardy board as an allowable masonry material would help keep costs low for the homebuyers.

Chairman Frederick stated that hardy board is not a masonry material, but could be used in those areas of the home that weren't subject to the proposed masonry percentage requirements.

Chairman Frederick closed the public hearing.

Vice Chair Langford asked the staff to make minor corrections regarding integrally colored materials and the removal of masonry requirements for chimneys, as this was consistent with the direction given to staff at previous workshops.

Commissioner Dorroh spoke to the Commission regarding the merits of the proposed changes that were submitted by Mr. Stefek as it related to design and the allowance of EIFS as a masonry material when constructed over at least three of brick, stone or cinder block. Mr. Stefek clarified his position on the allowance of EIFS and spoke about how other cities have incorporated it as part of their masonry standards. After a lengthy discussion the Commission agreed on the following changes to the draft masonry ordinance:

For those residential zoning districts as mentioned in the draft ordinance, requiring 75% brick, stone or stucco on every side of the structure on the first floor, and 50% on the second

floor; and requiring 85% brick, stone or stucco on any exterior wall of a residential structure that abuts a collector or higher classified roadway; and

Reducing the masonry requirement from 90% to 80% for commercial structures, and including EIFS as an allowable masonry material when three feet above slab is constructed of stone, brick or split face cinder block.

Commissioner Hicks motioned to recommend approval of the draft masonry and design standards ordinance. Commissioner Dorroh seconded the motion. The motion passed 5 to 2 with Commissioners Langford and Hoover in opposition.

Chairman Frederick stated that this will be forwarded to City Council on October 8, 2013 with a recommendation to approve.

**AN ORDINANCE AMENDING CHAPTER 31 OF THE CODE OF ORDINANCES OF THE CITY OF KILLEEN; AMENDING ARTICLE V, CREATING DIVISION 11, MASONRY AND DESIGN STANDARDS, BY CREATING THE DIVISION NAME, REGULATIONS AND REQUIREMENTS THEREIN; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION AND 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; and,

**WHEREAS**, the City of Killeen has declared the application and enforcement of the City's zoning 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 masonry and design standards that will help ensure that future development is mutually compatible with surrounding areas and the community as a whole; and,

**WHEREAS**, the City Council desires to amend district regulations to preserve and enhance surrounding property values, improve the aesthetic quality of development and overall appearance of the city, and to promote safety through the use of more fire resistant building materials; and,

**WHEREAS**, the City Council finds that such amendments are necessary and will provide consistent and even application of zoning regulations to all applicants.

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

**SECTION I.** That Chapter 31, Article V, Division 11 is hereby created to read as follows:

**Sec. 31-860. Purpose.**

The purpose of this division is to require a minimum percentage of masonry requirements and design standards in order to protect public health, safety, and welfare within the City. In addition, the masonry and design standards will promote the aesthetic character of Killeen, while increasing the quality, adaptability, and durability of future development and ensuring that new construction maintains its value and sustainability in future years.

**Sec. 31-861. Definitions.**

For the purposes of this division, the following definitions apply:

*Brick* includes kiln fired clay or shale brick manufactured to ASTM C216 or C652, Grade SW, and may include concrete brick if the coloration is integral (i.e.: not painted) and it is manufactured to ASTM C1634. The minimum thickness of brick shall be two and one quarter inches (2 ¼”) when applied as a veneer, and shall not include underfired clay.

*Decorative Concrete Block* includes material that has a highly textured finish, such as split faced, indented, hammered, fluted, ribbed or similar architectural finish and shall include light weight and featherweight concrete block or cinder block units that must be sealed or painted. Coloration may be sealed or painted. Decorative concrete block shall possess a minimum thickness of three and five eighths inches (3 5/8”) when applied as a veneer.

*Exterior insulation and finish systems (EIFS)* are exterior wall systems that typically consist of the following components:

- Insulation board made of polystyrene or polyisocyanurate foam, which is secured to the exterior wall surface with an adhesive and/or mechanical attachment.
- A water-resistant base coat, which is applied on top of the insulation and reinforced with fiber glass mesh.
- A finish coat – typically using acrylic co-polymer technology.

*Masonry materials* shall mean and include clay brick, stone, decorative concrete block, rock or other materials of equal characteristics laid up unit by unit and set in mortar. The following materials shall not qualify nor be defined as “masonry materials” in meeting the minimum requirements for exterior construction of buildings, unless specifically approved by variance or as otherwise provided in this Division:

- Exterior plaster, adobe or mortar wash surface material;

- Exterior insulation and finish systems (EIFS), acrylic matrix, synthetic plaster, or other similar synthetic material; or
- Cementitious fiber board siding (such as “Hardy Plank” or “Hardy Board”)

*Nonresidential building* shall mean those primary and accessory buildings utilized for use other than single family, two-family and multiple family dwelling.

*Precast concrete panels* include products often associated with Tilt Up Wall Construction, but shall only be allowed as a masonry material for nonresidential buildings if the wall is finished, stamped and stained in such a manner to replicate brick or stone in texture and appearance or to provide architectural relief. Precast concrete panels may be painted or covered by other defined masonry materials.

*Residential buildings* shall mean those primary and accessory buildings utilized for single family, two-family or multifamily use.

*Stone* includes naturally occurring granite, marble, limestone, slate, river rock, and other similar hard and durable all weather stone that is customarily used in exterior building construction. Stone may also include cast or manufactured stone product, provided that such product yields a highly textured stone-like appearance, its coloration is integral to the masonry material and shall not be painted on, and it is demonstrated to be highly durable and maintenance free. Natural or manmade stone shall have a minimum thickness of two and five eighths (2 5/8”) inches when applied as a veneer.

*Stucco, conventional hard-coat (hard-coat stucco)* is a material made of Portland cement, sand, and water; a minimum of 1/2” thickness applied by hand or machine to a solid base such as masonry, concrete walls, or metal lath attached to frame construction, solid masonry, or concrete construction; a vapor-permeable, water-resistant building paper separates the plaster and lath from water-sensitive sheathing or framing; coloration shall initially be integral to the masonry material and may be painted in a color consistent with the integral coloration.

### **Sec. 31-862. General Regulations.**

The masonry restrictions and requirements established in this section shall not apply to any planned unit development for which other construction restrictions and requirements have been adopted or to any planned unit development or subdivision, or phase of a planned unit development or subdivision, for which a plat has been filed and recorded and a building permit has been issued for construction therein prior to the adoption of this Division.

(a) Residential.

- (1) This Division applies to all exterior wall surfaces of all new residential buildings constructed after [the date of this ordinance] or as otherwise provided in the Texas

Local Government Code.

- (2) Any repair, addition or alteration to the exterior wall surfaces of a residential building constructed after [the date of this ordinance] or as otherwise provided in the Texas Local Government Code, shall also comply with this Division.
- (3) Exception: A legal nonconforming house/structure may be reconstructed, altered, or repaired without having to comply with the requirements of this section if at least fifty percent (50%) of the houses/structures within a two hundred (200') feet radius are also classified as legally nonconforming.
  - (A) Any owner or authorized agent who intends to reconstruct, alter, or repair a burned/damaged house/structure under this exception shall first make application to the Building Official and obtain the required permits. In addition the application shall:
    - (i) Identify each house/structure located within two hundred (200) feet of the lot on which the proposed house/structure is located; and
    - (ii) Describe the exterior siding for each single-family dwelling located within two hundred 200 feet of the lot on which the proposed house/structure is located.
  - (b) Nonresidential.
    - (1) This Division applies to all exterior wall surfaces of all new nonresidential buildings constructed after [the date of this ordinance].
    - (2) Any repair, addition, or alteration to a building constructed after [the date of this ordinance] shall comply with this Division.
    - (3) Where a legally nonconforming building exists at the effective date of adoption of this ordinance, such nonconformance may continue so long as it remains lawful, subject to the following provisions:
      - (A) Such a building may not be enlarged by more than twenty five percent (25%) of its existing foundation footprint unless the entire building is brought into conformity with this Division.
      - (B) The exterior walls of such a building may not be modified, altered, or enlarged in a way that increases the building's nonconformity. Any modification, alteration, or enlargement shall be in conformity with the provisions of this Division.
      - (C) Should a building be destroyed by any means or require repair to an extent of more than fifty percent (50%) of its replacement cost at the time of destruction, the building shall not be reconstructed except in conformity with the provisions of

this Division.

**Sec. 31-863. Exterior wall construction for residential buildings; exceptions.**

Exterior wall construction for all residential dwelling units and buildings accessory to those dwelling units in districts, "R-1" Single Family Residential, "RT-1" Residential Townhouse Single Family District, "R-2" Two-Family Residential District, "R-3" and "R-3F" Multifamily Residential Districts and "R-3A" Multifamily Apartment Residential District shall conform to the following restrictions and requirements:

- (a) Exterior wall construction on every side of each story or floor of every residential dwelling unit and building accessory to those residential buildings shall consist of a minimum of seventy five percent (75%) percent masonry, brick, stone or hard-coat stucco construction on the first floor, and fifty percent (50%) percent masonry, brick, stone or hard-coat stucco construction on the second floor exclusive of the following:
  - (1) Windows and Doors.
  - (2) Fascia and Soffit.
  - (3) Offset portions of upper-story exterior walls offset a minimum of three feet (3'-0) from the plane of lower story exterior walls.
  - (4) Offset portions of dormer windows offset a minimum of one foot (1'-0).
  - (5) Rear walls of detached garages not visible from a public street, alleyway or court.
  - (6) Exterior surfaces of accessory buildings that are two-hundred (200) square feet or smaller.
- (b) Exterior wall construction on each story or floor of every residential dwelling unit and building accessory to those residential buildings shall consist of a minimum of eighty five percent (85%) percent masonry, brick, stone or hard-coat stucco construction if adjacent to a road classified on the City's adopted Thoroughfare Plan as a collector or arterial.
- (c) All remaining portions of the building shall consist of masonry, hard-coat stucco, EIFS, cementitious fiber board siding, or other materials in accordance with the City's building and fire codes.

**Sec. 31-864. Exterior wall construction for nonresidential buildings; exceptions.**

Exterior wall construction for nonresidential buildings in all nonresidential zoning districts except "CD" Cemetery District, "M-1" Manufacturing District, "M-2" Heavy Manufacturing District, "NBD" Neighborhood Business District, and "UD" University District, shall conform to the following restrictions and requirements:

- (a) Exterior wall construction on every side of each story or floor shall consist of a

minimum of eighty (80%) percent masonry, brick, stone, or hard-coat stucco construction, exclusive of doors, windows, glass, entryway treatments, and atriums, all in accordance with the City's building and fire codes.

- (b) Notwithstanding any language in this Division to the contrary, for purposes limited to this section, EIFS shall be considered and allowed as a masonry material for nonresidential buildings provided that a minimum of three (3) feet above slab grade on exterior walls is constructed of brick, stone, rock, or split face cinder block.
- (c) Precast concrete panels are acceptable provided that the wall is finished, stamped and stained in such a manner to replicate brick or stone in texture and appearance or to provide architectural relief.
- (d) Cementitious fiber board siding and metal construction may be used as a secondary or accent material in accordance with the City's building and fire codes.
- (e) The masonry restrictions and requirements established in this section shall not apply to a planned unit development for which other construction restrictions and requirements have been adopted or to any planned unit development or subdivision, or phase of a planned unit development or subdivision, for which a plat has been filed and recorded and a building permit has been issued for construction therein prior to the adoption of this Division.
- (f) Exterior walls shall be articulated to reduce the massive scale and the uniform, impersonal appearance of large buildings and provide visual interest. No uninterrupted length of any facade shall exceed sixty (60) feet.
- (g) Standards. Architectural features on exterior walls, exclusive of rear walls not visible from a public street, alleyway or court, shall address the visual impact of long uninterrupted walls by providing a minimum of three (3) of the following elements:
  - (1) Variation in color and materials;
  - (2) Wall plane projections;
    - (A) For walls between sixty (60) feet and up to one hundred (100) feet in length, wall plane projections or recesses having a depth of at least one (1) foot and extending at least one and a half (1-1/2) feet of the length of the facade between projections and recesses;
    - (B) For walls between one hundred (100) and up to two hundred (200) feet in length, wall plane projections or recesses having a depth of at least two (2) feet and extending at least three (3) feet of the length of the facade between projections and recesses;
    - (C) For walls greater than two hundred (200) feet in length, wall plane projections or recesses having a depth of at least three (3) feet and

extending at least five (5) feet of the length of the facade between projections and recesses.

- (3) Variation of a minimum of two (2) feet in height of parapets. Variation to parapet height may include pilasters and projecting raised entrance features;
  - (4) Pilasters projecting from the plane of the wall by a minimum of sixteen (16) inches;
  - (5) Canopies projecting a minimum of six (6) feet from the plane of the primary facade walls; and/or
  - (6) Repetitive ornamentation, including windows and decorated applied features such as wall-mounted light fixtures or applied materials. Repetitive ornamentation shall be located with a maximum spacing of sixty (60) feet. Banding shall be complementary to the scale of the building.
- (h) The Planning and Zoning Commission may grant approval of variances to use materials not listed when the purpose of this Division is met, or when unusual hardships arise regarding the rear of buildings.

**Section II.** That Chapter 31, Article IV, Division 8A, section 31-255.4, Division 8B, section 31-256.4, and Division 12A, section 31-316, are hereby respectively deleted in their entirety as follows:

**~~Sec. 31-255.4. Architectural design.~~**

~~(a) Exterior wall treatment. Exterior walls of buildings fronting, siding, or backing on a public street shall be constructed of fifty percent (50%) native stone or brick.~~

**~~Sec. 31-256.4 Architectural design.~~**

~~(a) Exterior wall treatment. Exterior walls of buildings fronting, siding, or backing on a public street shall be constructed of fifty percent (50%) native stone or brick.~~

**~~Sec. 31-316. Architectural design requirements.~~**

~~Exterior walls of buildings or structures fronting, siding, or backing up to a public street in the "B-3A" local business and retail alcohol sales district shall be constructed or retrofitted to include a minimum of fifty percent (50%) native stone, brick or stucco.~~

~~(Ord. No. 10-079, § II, 12-28-10)~~

**Reserved.**

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

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

**Section V.** That this ordinance shall take effect immediately upon passage of the ordinance.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this \_\_\_ day of October 2013, 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:**

\_\_\_\_\_

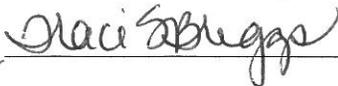
**Daniel A. Corbin, MAYOR**

**ATTEST:**

\_\_\_\_\_

**Dianna Barker, CITY SECRETARY**

**APPROVED AS TO FORM**

*for*  \_\_\_\_\_

**Kathryn H. Davis, City Attorney**  
Ord. # 13

Regular 10-8-13  
 Item # OR-4  
 CCM/R \_\_\_\_\_

**CITY COUNCIL MEMORANDUM FOR RESOLUTION**

**AGENDA ITEM**

**Boards, Commissions, and Committees  
 Appointments**

**ORIGINATING DEPARTMENT**

**Assistant City Manager, Internal  
 Services**

**BACKGROUND INFORMATION**

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

**DISCUSSION/CONCLUSION**

In order to make appointments and reappointments, City Council action is required. The following listing represents opportunities for both.

\*Indicates service on the same board, commission, or committee for six years or more.

Board of Adjustments and Appeals (Construction Board)

<b>Current Member</b>	<b>Interested</b>	<b>New Member</b>	<b>Special Qualifications</b>
Berilyn Varnado	No		Alternate General Contractor

Board of Adjustments and Appeals (Zoning)

<b>Current Member</b>	<b>Interested</b>	<b>New Member</b>	<b>Special Qualifications</b>
VACANCY (Dr. Alvin Dillard)			Alternate

Civil Service Commission

<b>Current Member</b>	<b>Interested</b>	<b>New Member</b>	<b>Special Qualifications</b>
T. J. Jones*	Term Limited		See your chart.

Heritage Preservation Board

<b>Current Member</b>	<b>Interested</b>	<b>New Member</b>	<b>Special Qualifications</b>
Dawn Harris*	Yes		
Michelle Lee*	Yes		
Robin DeHart (filled unexpired term)	Yes		

Killeen Economic Development Corporation

<b>Current Member</b>	<b>Interested</b>	<b>New Member</b>	<b>Special Qualifications</b>
Charles Hollinger (KIF Rep)	N/A	John Gilmore	Chamber Nominee
Scott Cosper (Chamber Rep)	N/A	Charlie Watts	Chamber Nominee

Killeen Housing Authority

<b>Current Member</b>	<b>Interested</b>	<b>New Member</b>	<b>Special Qualifications</b>
Brockley Moore*	Term Limited		
Genevieve Hyde*	Term Limited		

Killeen Volunteers, Inc.

<b>Current Member</b>	<b>Interested</b>	<b>New Member</b>	<b>Special Qualifications</b>
Juanita Borth*	Term Limited		Citizen Rep
Marcus Carr*	Term Limited		Citizen Rep
Ronda McClarren*	Term Limited		Citizen Rep
VACANCY (Lottie Osanyingbemi)			Citizen Rep

Senior Citizens Advisory Board

<b>Current Member</b>	<b>Interested</b>	<b>New Member</b>	<b>Special Qualifications</b>
Juanita Borth	Yes		
Katherine Gordon*	Term Limited		
Lucille Jump*	Term Limited		
Klaus Adam	Yes		

Tree Advisory Board

<b>Current Member</b>	<b>Interested</b>	<b>New Member</b>	<b>Special Qualifications</b>
Shanna Havens	No		
Eric Shephard	No		

**FISCAL IMPACT**

No fiscal impact.

**RECOMMENDATION**

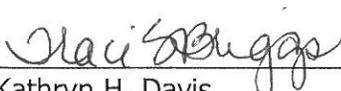
It is recommended that the City Council appoint individuals to fill vacancies and expired terms.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this the 8<sup>th</sup> day of October, 2013, 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**

\_\_\_\_\_  
Daniel A. Corbin  
MAYOR

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

\_\_\_\_\_  
Dianna Barker  
CITY SECRETARY