



City of Abilene City Council Agenda

Shane Price, Mayor Pro-tem
Weldon Hurt, Council Member
Jack Rentz, Council Member
Robert Hanna, City Manager

Anthony Williams, Mayor

Donna Albus, Council Member
Kyle McAlister, Council Member
Travis Craver, Council Member
Stanley Smith, City Attorney
Shawna Atkinson, City Secretary

Notice is hereby given of a meeting of the City Council of City of Abilene to be held on January 28, 2021, at 4:30 p.m., at City Hall, 555 Walnut Street, Council Chambers, Abilene, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action. The City Council reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

CALL TO ORDER

1. **Executive Session** - City Council will convene into Executive Session at 4:30 p.m.
Reconvene - City Council will reconvene into open session at 5:30 p.m.

INVOCATION

2. Deputy Mayor Pro-tem Jack Rentz

PLEDGE TO THE UNITED STATES FLAG AND THE TEXAS FLAG

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS AND ANNOUNCEMENTS

CONSENT AGENDA

All consent agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember or Citizen so requests, in which event the item will be removed from the Consent Agenda and considered separately.

3. **Minutes:** Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on January 14, 2021 (**Shawna Atkinson**)
4. **Oral Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Accepting an Agreement with Hendrick Medical Center for Payment in Lieu of Taxes (**Robert Hanna**)
5. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Confirming the Appointment of an Interim Police Chief (**Robert Hanna**)

6. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Authorizing the City Manager to Execute a Contract between the City of Abilene and Cadco Architects-Engineers, Inc. for the design services for City Hall Remodel Project **(Michael Rice)**
7. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Bid No. 2114 to Bontke Brothers, Inc. on Pine Street Area Rehabilitation Project **(Greg McCaffery)**
8. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding the Bid for Purchase of SDR35 Pipe and Manholes for Improvements to the Northwest Interceptor Sewer **(Rodney Taylor)**
9. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on authorizing the City Manager to Procure Luminaire Innoculate in an Amount not to Exceed \$100,000.00 **(Annette Lerma)**
10. **Ordinance (First Reading) Z-2021-01:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Lane Miller to rezone property from a Planned Development (PD) District primarily limited to residences, to a Neighborhood Office (NO) District and located at 3702 Antilley Road, approximately 0.2 mile east from Buffalo Gap Road **(Mike Warrix)**
11. **Ordinance (First Reading) Z-2021-02:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Pattie Hollingsworth and Matthew Gjerstad to rezone property from an Agricultural Open Space (AO) to a Residential Single-Family (RS-6) District and located on approximately 0.79 acre at 5526 and 5534 Highway 277, approximately 0.62 mile southwest from Texas Avenue's intersection with Highway 277 **(Mike Warrix)**
12. **Ordinance (First Reading) TC-2021-01:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Leonor Rivera, agents Anton and Francesca Barnett, to abandon the public right-of-way (40-feet) of Sunrise Avenue extending between Minda Street (on the south) and Hailey Street (on the north) and located approximately 650 feet east from T&P Lane in east central Abilene **(Mike Warrix)**

REGULAR AGENDA - ORDINANCES AND PUBLIC HEARINGS - RESOLUTIONS

13. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Confirming the Appointment of Marcus Dudley as the Police Chief of the Abilene Police Department **(Robert Hanna)**
14. Oath of Office for Chief Marcus Dudley

EXECUTIVE SESSION

15. **The City Council of the City of Abilene reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed below, as authorized by the noted Texas Government Code Sections:**

A. 551.071 (Consultation with Attorney)

1. Robert Steven Reitz v. City of Abilene, Texas, et al., Case No. 1:16-cv-00181-BL; In the U.S. District Court, Northern District of Texas, Abilene Division, filed October 10, 2016
2. Officer Patrick Sumrall and City of Abilene, Case No. 01-18-000-8653; Appeal of Indefinite Suspension to Arbitration, filed February 6, 2018
3. Alfredo Valencia v. Corey Davis and City of Abilene; Case No. 1:19-cv-00017-C; In the United States District Court, Northern District of Texas, Abilene Division, filed February 4, 2019.
4. City of Abilene v. Patrick Sumrall; Cause No. 27,733-B, In the 104th Judicial District Court, Taylor County, Texas, filed May 28, 2019
5. City of Abilene v. 3118 South 22nd Street, Abilene, Texas, et al.; Cause No. 11968-D, In the 350th Judicial District Court, Taylor County, Texas; filed October 11, 2019
6. City of Abilene, Texas and Garfield Public/Private LLC v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-20-000900, In the 261st Judicial District Court, Travis County, Texas, filed February 13, 2020
7. Chandler Brooks v. Taylor County, et al.; Civil Action No. 1:20-cv-00049, In the United States District Court, Northern District of Texas, Abilene Division; filed March 5, 2020
8. John Doe v. Robert Hanna, Individually and as City Manager; Cause No. 28078-B; In the 104th Judicial District Court, Taylor County, Texas; filed July 7, 2020
9. The City of Abilene, Texas v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-20-004598, In the 53rd Judicial District Court, Travis County, Texas; filed September 1, 2020
10. Cockrell Investment Partners, L.P. v. Middle Pecos Groundwater Conservation District, et al.; Cause No. P-8277-83-CV, In the 83rd Judicial District Court, Pecos County, Texas; filed September 11, 2020
11. Sharra Sampson v. City of Abilene; Cause No. 8144-B, In the 104th Judicial District Court, Taylor County, Texas; filed September 14, 2020
12. The City of Abilene, Texas v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-20-007028, In the 459th Judicial District Court, Travis County, Texas; filed November 18, 2020
13. Governor's Executive Orders - COVID-19

B. 551.072 (Deliberations about Real Property)

1. Clyde Water
2. 28.014 acres at 125 E South 7th Street and Six Vacant Contiguous Lots south of E South 7th Street in Abilene, Taylor County, Texas

C. 551.073 (Deliberations about Gifts and Donations)

D. 551.074 (Personnel Matters)

1. City Council may consider appointment, employment, compensation, reassignment, duties, discipline, or dismissal of public officers or employees, City Manager, City Attorney, Municipal Court Judge, City Secretary, and City Board and Commission Members
2. City of Abilene Boards & Commissions May be Discussed, as needed for (re)appointment

E. 551.076 (Deliberations about Security Devices)

F. 551.087 (Business Prospect/Economic Development)

1. Abilene Convention Center Hotel Project

RECONVENE

PUBLIC COMMENTS

There will be no votes or any formal actions taken on subjects presented during public comment.

The public comment period will only allow members of the public to present ideas and information to city officials and staff.

ADJOURNMENT

In compliance with the Americans with Disabilities Act, the City of Abilene will provide for reasonable accommodations for persons attending City Council meetings. To better serve you, requests should be received 48 hours prior to the meetings. Please call 325-676-6208.

CERTIFICATION

I hereby certify the above meeting notice was posted on the bulletin board at the City Hall of the City of Abilene, Texas, on the 22n day of January, 2021, at 4:00 p.m.

Shawna Atkinson, TRMC
City Secretary



**City Council
Agenda Memo**

City Council Meeting Date: 1/28/2021

TO: Honorable Mayor & Members of City Council

FROM: Shawna Atkinson, City Secretary

SUBJECT: 3. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on January 14, 2021 (*Shawna Atkinson*)

GENERAL INFORMATION

Approval of the Minutes from the Regular Meeting held on January 14, 2021

SPECIAL CONSIDERATIONS

None.

FUNDING/FISCAL IMPACT

None

STAFF RECOMMENDATION

Approval of the Minutes

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 01-14-2021 Minutes - Regular - Morning

CITY COUNCIL MEETING
January 14, 2021 at 8:30 a.m.

CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
COUNCIL CHAMBERS, CITY HALL

The City Council of the City of Abilene, Texas met in Regular Session on January 14, 2021, at 8:30 a.m. in the Council Chambers, 555 Walnut St. Mayor Anthony Williams was present and presiding with Mayor Pro-tem Shane Price, Deputy Mayor Pro-tem Jack Rentz, and Councilmembers Donna Albus, Weldon Hurt, Kyle McAlister, and Travis Craver. Also present were City Manager Robert Hanna, City Attorney Stanley Smith, and City Secretary Shawna Atkinson.

Councilmember Donna Albus delivered the invocation.

Bella Isalas, 5th Grader at Thomas Elementary, and Leah Rodriguez, 4th Grader at Thomas Elementary, led the Pledge of Allegiance to the Flag of the United States of America and State of Texas Flag.

CONSENT AGENDA

The Consent Agenda consisted of items 2-6. Items 4 and 5 were pulled for individual consideration.

Item pulled for individual consideration were as follows:

- Councilmember Hurt and David Swart, citizen – Item #4
- David Swart, citizen – Item #5

Councilmember Hurt moved to approve the consent agenda, now consisting of items 2-3 and 6. Mayor Pro-tem Price seconded the motion; motion carried.

AYES (7): Mayor Williams, Mayor Pro-tem Price, Deputy Mayor Pro-tem Rentz, and Councilmembers Albus, Hurt, McAlister and Craver

NAYS (0): None

2. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on December 17, 2020
3. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Supporting a Housing Tax Credit Application for Abilene Pioneer Crossing and Commitment of Development Incentives
[ASSIGNED RESOLUTION NO. 01-2021]
6. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the purchase of three Rear Loaders from Houston Freightliner for Solid Waste
[ASSIGNED RESOLUTION NO. 04-2021]

ITEMS PULLED FOR INDIVIDUAL CONSIDERATION

4. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Modifying and Extending the Declaration of Local Disaster Issued December 17, 2020
[ASSIGNED RESOLUTION NO. 02-2021]

The item was pulled by Councilmember Hurt and David Swart, citizen.

Having pulled the item, Councilmember Hurt stated that he is for taking care of the vulnerable, but is not for shutting down businesses.

Also having pulled the item, David Swart stated he knows this is about funding, but it's effected a lot of people everywhere. Just following the Governors orders here, but with the change in administration next week, we don't know what the new administration will do.

With no other speakers coming forward, the public comment period was closed.

Robert Hanna, City Manager, presented the item. Adoption of the item would modify and extend the disaster declaration issued on December 17, 2020.

Councilmember McAlister moved to approve the item as presented. Councilmember Craver seconded the motion; motion carried.

AYES (6): Mayor Williams, Mayor Pro-tem Price, Deputy Mayor Pro-tem Rentz and Councilmembers Albus, McAlister and Craver

NAYS (1): Councilmember Hurt

5. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the purchase of seven Chevrolet Police Pursuit Vehicle Tahoe's from Caldwell Country Chevrolet for Abilene Police Department

[ASSIGNED RESOLUTION NO. 03-2021]

The item was pulled by David Swart, citizen.

Having pulled the item, David Swart, citizen stated he is concerned about the upfitting costs. Previously, staff said they didn't have time to do the upfitting in-house. Mr. Swart stated that he hopes the K9 Unit has doggy A/C to keep the dog cool when the officer leaves the vehicle. He thinks the AM/FM radio is a waste of money, but the warranty is good.

With no other speakers coming forward, the public comment period was closed.

Mayor Pro-tem Price moved to approve the item as presented. Councilmember McAlister seconded the motion; motion carried.

AYES (7): Mayor Williams, Mayor Pro-tem Price, Deputy Mayor Pro-tem Rentz and Councilmembers Albus, Hurt, McAlister and Craver

NAYS (0): None

REGULAR AGENDA

7. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Adopting and Ratifying the City's Governing Principles, Rules of Procedure, and Council Policies
[ASSIGNED RESOLUTION NO. 05-2021]

Robert Hanna, City Manager, presented the item. Adoption of the item would adopt and ratify the City's Governing Principles, Rules of Procedure, and Council Policies, by combining them into one document.

Mayor Williams opened the public hearing. The following addressed the Council:

- David Swart – stated that this is a good move. Seems like one dealership always get the police vehicle bids, and the Parks Department has a hodge-podge of different makes. He thinks it is a good thing to have this, so local bidders can get in on it.

With no other speakers coming forward, the public hearing was closed.

Mayor Pro-tem Price moved to approve the item as presented. Councilmember McAlister seconded the motion; motion carried

AYES (7): Mayor Williams, Mayor Pro-tem Price, Deputy Mayor Pro-tem Rentz, and Councilmembers Albus, Hurt, McAlister and Craver

NAYS (0): None

8. Discussion: Receive a Report and Hold a Discussion and Public Hearing on Recycling in Abilene, TX

Michael Rice, Assistant City Manager, presented the item. The City's contractor for receiving & processing cardboard and paper products has placed the City on notice that they will no longer be able to provide this service after January 31, 2021. This discussion is to determine the Council's desire for Abilene's recycling program in the future.

Mayor Williams opened the public hearing. The following addressed the Council:

- David Swart – stated that he didn't like when plastics went away, because it is convenient to buy bottled water, but then you have to do something with the bottles afterwards. The newspaper recycling at United was convenient. Mr. Swart is glad to see we are not pulling the recycling centers completely. He thinks this is something the DCOA should be able to assist with and urged staff to reach out to them for help.

With no other speakers coming forward, the public hearing was closed.

Council and Staff discussed various options to move forward with recycling. Robert Hanna, City Manager stated he would like 90 days to do an analysis and bring back different options to Council. Mr. Hanna wants to look at all the materials, not just cardboard.

This item was for discussion only. No votes or action were taken at this time.

9. Ordinance (Final Reading) Z-2020-22: Receive a Report and Hold a Discussion and Public Hearing on a request from Mobile Home Concepts, LLC to rezone property from a combination of Manufactured/Mobile Home (MH) and General Commercial (GC) to Planned Development (PD) District allowing occupancy by recreational vehicles and vacation travel trailers as well as mobile and manufactured homes on property at 6101 South 7th Street in western Abilene
[ASSIGNED ORDINANCE NO. 01-2021]

Mike Warrix, Director of Planning & Development Services, presented the item. Adoption of the item would rezone the above referenced property from a combination of Manufactured/Mobile Home (MH) and General Commercial (GC) to Planned Development (PD) District, allowing occupancy by recreational vehicles and vacation travel trailers as well as mobile and manufactured homes.

Mayor Williams opened the public hearing. With no speakers coming forward, the public hearing was closed.

Councilmember McAlister moved to approve the item as presented. Deputy Mayor Pro-tem Rentz seconded the motion; motion carried.

AYES (7): Mayor Williams, Mayor Pro-tem Price, Deputy Mayor Pro-tem Rentz, and Councilmembers Albus, Hurt, McAlister and Craver

NAYS (0): None

10. Ordinance (Final Reading) Z-2020-23: Receive a Report and Hold a Discussion and Public Hearing on a request from Eugene Rickert to rezone property from Agricultural Open Space (AO) to Rural Residential (RR-1) District on one acre of land located at 1949 Beltway South (F.M. Highway 707)
[ASSIGNED ORDINANCE NO. 02-2021]

Mike Warrix, Director of Planning & Development Services, presented the item. Adoption of the item would rezone the above referenced property from Agricultural Open Space (AO) to Rural Residential (RR-1) District.

Mayor Williams opened the public hearing. With no speakers coming forward, the public hearing was closed.

Mayor Pro-tem Price moved to approve the item as presented. Councilmember Hurt seconded the motion; motion carried.

AYES (7): Mayor Williams, Mayor Pro-tem Price, Deputy Mayor Pro-tem Rentz, and Councilmembers Albus, Hurt, McAlister and Craver

NAYS (0): None

11. Ordinance (Final Reading) Z-2020-24: Receive a Report and Hold a Discussion and Public Hearing on a request from Donald Callaway (agents Jacob & Martin LLC) and the City of Abilene to rezone approximately 0.6 acre of land (120 feet wide) located behind the restaurant building at 4801 Buffalo Gap Road, from Agricultural Open Space (AO) to Neighborhood Retail (NR) District
[ASSIGNED ORDINANCE NO. 03-2021]

Mike Warrix, Director of Planning & Development Services, presented the item. Adoption of the item would rezone the above referenced property from Agricultural Open Space (AO) to Neighborhood Retail (NR) District, to allow for a parking lot.

Mayor Williams opened the public hearing. The following addressed the Council:

- Tal Fillingim, agent with Jacob & Martin – stated that the request was to rezone only a portion, but understands doing the whole area. There is buffering requirements in the LDC and they will adhere to them. They do not expect any more development other than the parking lot, and cars will park facing north and south.

With no other speakers coming forward, the public hearing was closed.

Councilmember McAlister moved to approve the item as presented. Councilmember Albus seconded the motion; motion carried.

AYES (7): Mayor Williams, Mayor Pro-tem Price, Deputy Mayor Pro-tem Rentz, and Councilmembers Albus, Hurt, McAlister and Craver

NAYS (0): None

12. Ordinance (Final Reading) Z-2020-25: Receive a Report and Hold a Discussion and Public Hearing on a request from KPLB LLC, agents Jacob & Martin LLC, to rezone property from Residential Single-Family Patio Home (PH) to a Residential Medium-Density (MD) District on 5.85 acres of now-vacant land at 1826 Colony Hill Road in southeastern Abilene
[ASSIGNED ORDINANCE NO. 04-2021]

Mike Warrix, Director of Planning & Development Services, presented the item. Adoption of the item would rezone the above referenced property from Residential Single-Family Patio Home (PH) to a Residential Medium-Density (MD) District.

Mayor Williams opened the public hearing. The following address the Council:

- Tal Fillingim, agent with Jacob & Martin – stated the request is to go back to MD. The owners decided to go back to this original plan and apologized for going back and forth.

With no other speakers coming forward, the public hearing was closed.

Councilmember McAlister moved to approve the item as presented. Councilmember Albus seconded the motion; motion carried.

AYES (7): Mayor Williams, Mayor Pro-tem Price, Deputy Mayor Pro-tem Rentz, and Councilmembers Albus, Hurt, McAlister and Craver

NAYS (0): None

13. Ordinance (Final Reading) Z-2020-26: Receive a Report and Hold a Discussion and Public Hearing on a request from Abilene Christian University, agent Kendra Hanfeld of Parkhill, Smith and Cooper Inc., to rezone 13.05 acres (occupied since 1955 by Taylor Elementary School) at 916 East North 13th Street, from Residential Medium-Density (MD) to a College University (CU) District
[ASSIGNED ORDINANCE NO. 05-2021]

Mayor Williams, Councilmember Price and Councilmember McAlister had a conflict of interest on this item and abstained from voting. Conflict of Interest Affidavits were filled out before the meeting and filed with the City Secretary's office. Mayor Williams, Mayor Pro-tem Price and Councilmember McAlister left the room during this discussion and Deputy Mayor Pro-tem Rentz presided.

Mike Warrix, Director of Planning & Development Services, presented the item. Adoption of the item would rezone the above referenced property from Residential Medium-Density (MD) to a College University (CU) District.

Deputy Mayor-tem Rentz opened the public hearing. The following addressed the Council:

- Kendra Hanfeld with Parkhill, Smith and Cooper, Inc – stated that ACU has already gained ownership of the property and intends to use it for their education programs.

With no other speakers coming forward, the public hearing was closed.

Councilmember Hurt moved to approve the item as presented. Councilmember Albus seconded the motion; motion carried.

AYES (4): Deputy Mayor Pro-tem Rentz, and Councilmembers Albus, Hurt, and Craver

NAYS (0): None

ABSTAIN (3): Mayor Williams, Mayor Pro-tem Price, and Councilmember McAlister

14. Ordinance (Final Reading) TC-2020-07: Receive a Report and Hold a Discussion and Public Hearing on a request from Abilene Christian University, agents Enprotec/Hibbs & Todd Inc., to abandon the public right-of-way within a 0.4039-acre tract of presently unpaved land initially dedicated for what is now known as North Judge Ely Boulevard and located northeast from the original campus of Taylor Elementary School at 916 E.N. 13th Street in northeast Abilene
[ASSIGNED ORDINANCE NO. 06-2021]

Mayor Williams, Mayor Pro-tem Price and Councilmember McAlister had a conflict of interest on this item and abstained from voting. Conflict of Interest Affidavits were filled out before the meeting and filed with the City Secretary's office. Mayor Williams, Deputy Mayor Pro-tem Price and Councilmember McAlister left the room during this discussion and Deputy Mayor Pro-tem Rentz presided.

Mike Warrix, Director of Planning & Development Services, presented the item. Adoption of the item would abandon the public right-of-way at the above referenced property.

Deputy Mayor Pro-tem Rentz opened the public hearing. The following addressed the Council:

- Kendra Hanfeld with Parkhill, Smith and Cooper, Inc – stated that this is really a cleanup, as the land was never swapped. They will be combining it with the rest of the property.

With no other speakers coming forward, the public hearing was closed.

Councilmember Craver moved to approve the item as presented. Councilmember Hurt seconded the motion; motion carried.

AYES (4): Deputy Mayor Pro-tem Rentz, and Councilmembers Albus, Hurt, and Craver

NAYS (0): None

ABSTAIN (3): Mayor Williams, Mayor Pro-tem Price, and Councilmember McAlister

15. Ordinance (Final Reading) TC-2020-06: Receive a Report and Hold a Discussion and Public Hearing on a request from the City of Abilene to abandon the public right-of-way within the complete 418-foot length of Crow Street as it extends north from right-of-way for East South 5th Street, approximately 765 feet west from and parallel to T&P Lane in southeast central Abilene
[ASSIGNED ORDINANCE NO. 07-2021]

Mike Warrix, Director of Planning & Development Services, presented the item. Adoption of the item would abandon the public right-of-way at the above referenced property.

Mayor Williams opened the public hearing. With no speakers coming forward, the public hearing was closed.

Councilmember McAlister moved to approve the item as presented. Deputy Mayor Pro-tem Rentz seconded the motion; motion carried.

AYES (7): Mayor Williams, Mayor Pro-tem Price, Deputy Mayor Pro-tem Rentz, and Councilmembers Albus, Hurt, McAlister and Craver

NAYS (0): None

PUBLIC COMMENTS

Mayor Williams opened the public comment period. The following addressed the city council:

- David Swart – stated this is a rough election year and has lost faith in the ballot box. When they check your ID and names don't match with the voter ID card, he questions if his vote actually counted. Mr. Swart requested to publish the senior menu online and it is still not there. The \$2.00 charge is starting in February.
- Samuel Garcia – stated he is shocked that Councilmember McAlister said it is great for the DCOA to have a country club membership. Mr. Garcia spoke about receipts from dinners and thinks the DCOA needs more oversight. City employees don't spend money at the country club so he doesn't understand why this is allowed. He stated that Jack Rich is being appointed to board for the 3rd time, and that there are no Hispanics on that board. Mr. Garcia thinks he is overly qualified to be appointed instead of Mr. Rich.

With no other speakers coming forward, the public comment period was closed.

EXECUTIVE SESSION

Mayor Williams recessed into Executive Session at 10:18 a.m., pursuant to the following of the Open Meetings Act, with the following issues discussed during this session, as listed on the agenda and authorized by the noted Texas Government Code Section:

- 16. A. 551.071 (Consultation with Attorney)
 - 1. Cockrell Investment Partners, LP v Middle Pecos Groundwater Conservation
 - 2. Annual Ethics Training
- 16. B. 551.072 (Deliberations about Real Property)
 - 1. Discussion on Recycling (Also Agenda Item 8)
- 16. F. 551.087 (Business Prospect/Economic Development)
 - 1. Abilene Convention Center Hotel Project

The Executive Session ended at 10:31 a.m. and reconvened to Open Session. Mayor Williams reported no votes or action were taken in Executive Session.

REGULAR AGENDA

- 17. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Appointing Members to Various Boards and Commissions per the City Charter.
[ASSIGNED RESOLUTION NO. 06-2021]

Mayor Williams opened the public hearing. The following addressed the Council:

- John Beckham – stated he is in favor of reappointing Jack Rich to the DCOA board. Mr. Rich has great value to the board and his leadership is critical to their future economic development efforts.
- Samuel Garcia – stated the DCOA's board has no diversity. There are two African Americans and no Hispanics. Mr. Garcia questioned why he wasn't being appointed to the board. He thinks the DCOA needs to have an audit.
- Sam Vinson – stated that Misty Mayo and Jack Rich couldn't be here, but he speaks on behalf of the board, and they fully support Jack's reappointment. They are thriving with him as the Chair. Jack Rich is imperative in closing major projects.

With no other speakers coming forward, the public hearing was closed.

Mayor Pro-tem Price moved to (re)appoint the following:

Board	Term End Date
<i>Abilene Taylor County Child Advocacy Center Board</i>	
Kari Leong [New]	December 2023
<i>Development Corporation of Abilene</i>	
Jack Rich [Reappointment]	December 2023
<i>Keep Abilene Beautiful</i>	
John Willey [New]	December 2022 [unexpired term]
<i>Planning & Zoning Commission</i>	
Shawnte Fleming [New]	November 2023 [unexpired term]
<i>Street Maintenance Advisory & Appeals Board</i>	
James McCoy [New]	March 2021 [unexpired term]
<i>Senior Citizens Advisory Board</i>	
Dorothy Drone [New]	May 2022 [unexpired term]

Deputy Mayor Pro-tem Rentz seconded the motion; motion carried

AYES (7): Mayor Williams, Mayor Pro-tem Price, Deputy Mayor Pro-tem Rentz, and Councilmembers Albus, Hurt, McAlister and Craver
NAYS (0): None

ADJOURNMENT

There being no further business, the meeting adjourned at 10:55 a.m.

Shawna Atkinson
City Secretary

Anthony Williams
Mayor

Minutes approved on: _____



**City Council
Agenda Memo**

City Council Meeting Date: 1/28/2021

TO: Honorable Mayor & Members of City Council

FROM: Robert Hanna, City Manager

SUBJECT: 4. Oral Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Accepting an Agreement with Hendrick Medical Center for Payment in Lieu of Taxes (Robert Hanna)

GENERAL INFORMATION

As of October 27, 2020, Hendrick Health purchased substantially all of the assets of Abilene Regional Medical Center. As a result of the acquisition, most of the real property will no longer be subject to certain ad valorem taxes by the City of Abilene.

Hendrick Health intends to provide substantial investment in and to the real property as a result of the acquisition.

Additionally, Hendrick Health desires to make voluntary community benefit payments to the City of Abilene as described in the Agreement.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

\$450,000 paid to the City of Abilene over three-year period.

STAFF RECOMMENDATION

Staff recommends acceptance of the Agreement with Hendrick Health for voluntary community benefit payments.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. Agreement with Hendrick ppt
2. Agreement with Hendrick ppt

**MEMORANDUM OF UNDERSTANDING – VOLUNTARY COMMUNITY BENEFIT PAYMENTS
HENDRICK HEALTH AND THE CITY OF ABILENE, TEXAS**

This **MEMORANDUM OF UNDERSTANDING** (“Agreement”) is entered into and executed effective as of **January 1, 2021** (the “Effective Date”) by and between **Hendrick Medical Center**, a 501(c)(3) Texas nonprofit corporation (“*Hendrick Health*”), with its principal place of business at 1900 Pine Street, Abilene, Taylor County, Texas, 79601 and the **City of Abilene, Texas** (the “*City*”), a political subdivision and municipal corporation the State of Texas (the “*State*”), validly created and existing under the Constitution and laws of the State, located at 555 Walnut Street, Abilene, Taylor County, Texas, 79601. In consideration of the promises and of the mutual covenants and agreements herein contained, it is agreed by and between the City and Hendrick Health as follows:

RECITALS:

- A. The City and Hendrick Health have a long tradition of working cooperatively together to the mutual benefit of the community and the furtherance of each other’s missions.
- B. As of October 27, 2020, Hendrick Health purchased substantially all of the assets of Abilene Regional Medical Center located at 6250 Highway 83-84 and 1680 Antilley Road, Abilene, Texas (the “*Acquisition*”), including certain real estate more fully described on Exhibit A (the “*Real Estate*”) and tangible personal property located thereon (the “*Personal Property*”, and together with the Real Property, the “*Property*”). The Real Property was previously owned by AMRC, L.P., which was owned and operated by CHS/Community Health Systems, Inc. (“*CHS*”), and under CHS ownership, generated real property tax revenue for the City of Abilene on an annual basis.
- C. As a result of the Acquisition, most of the Real Property will no longer be subject to certain ad valorem taxes by the City, or any other taxing authority; however, Hendrick Health intends to provide substantial investment in and to the Real Property as a result of the Acquisition. Further, Hendrick Health believes that the Acquisition will result in adding additional jobs to the City from other locations and will continue to grow the workforce in and around the City, all of which will continue to increase the tax revenue of the City for years to come. Notwithstanding this community benefit, Hendrick Health desires to make additional voluntary community benefit payments to the City as described herein.

AGREEMENT:

- 1.) The City is authorized and empowered by the provisions of the Constitution and laws of the State to enter into this Agreement. The City has found, and hereby finds, that the agreements herein contained and the consummation of the transactions in connection herewith will promote the public interest and public purposes by, among other things, providing certainty and soundness in fiscal planning and promoting the present and prospective prosperity, health, happiness, safety and general welfare of the people of the City.

- 2.) The City shall notify the City Council of this Agreement at a duly called regular meeting of the City Council. The execution of this Agreement and the consummation of the transactions in connection herewith require no other formal approval by the City or City Council. Except as otherwise required by law, the City and Hendrick Health shall jointly determine and agree upon the form, timing and content of all public announcements, press releases or other public statements concerning the Payments described in this Agreement, and the City shall not independently make such statements without the prior consent of Hendrick Health.
- 3.) For a period of three (3) years (the “**Payment Term**”), Hendrick Health will pay, and the City shall accept, a voluntary community benefit payment as set forth in this Section during each of the City’s fiscal years (“**Payments**”) as follows:

	<u>Payment Amount</u>	<u>Payment Date</u>
a. FY 2022	\$250,000.00	Payable on October 1, 2021
b. FY 2023	\$125,000.00	Payable on October 1, 2022
c. FY 2024	\$75,000.00	Payable on October 1, 2023

Nothing herein contained shall be construed to change or enlarge the jurisdiction, power or authority of the City over or with respect to the Property as prescribed by applicable law, except as specifically provided in this Agreement. At no time during the term of this Agreement shall the City attempt to assess any real property or tangible personal property taxes against the Property, or any portion thereof. During the term of this Agreement, this Agreement will exclusively govern the payments of all amounts Hendrick Health shall pay to the City regarding the Property; provided, however, that this Agreement is not intended to affect, and will not preclude, other assessments of general applicability by the City for services provided by the City to the Property payable by Hendrick Health pursuant to applicable law, including, but not limited to, water, solid waste and wastewater services. The City agrees the City will not assess any real property taxes or personal property taxes to Hendrick Health regarding the Property during the term of this Agreement. If Hendrick Health at any time is required to pay any real property taxes or personal property taxes on the Property by any applicable taxing authority, then the Payments shall be reduced by the amount of those taxes received by the City.

- 4.) The Payments shall be made directly to the City c/o the City Manager. In the event any taxing authority attempts to collect any ad valorem real property tax or personal property tax applicable to the Property, Hendrick Health may immediately terminate this Agreement upon thirty (30) days prior written notice to the City and without any obligation to make any additional Payments hereunder.

In the event Hendrick Health sells any Property, the transferee shall not be assessed a real property tax or tangible personal property tax as a result of this Agreement with such taxes being governed by applicable law for the transferee. In the event Hendrick Health sells any Property, and the transferee is subject to real property tax or tangible personal property tax on the Property as a result of such transaction, then the Payments shall be reduced by the amount of those taxes received by the City from such transferee.

- 5.) The City will continue to provide the same or substantially similar level of services (police, fire, water, solid waste, streets) for Hendrick Health at the Real Property as it did for Abilene Regional Medical Center. Nothing herein shall prohibit the City and Hendrick Health from amending or modifying those levels of service provided by the City.
- 6.) Unless terminated sooner by the express provisions hereof, this Agreement shall remain in effect (a) until the date that the final Payment is paid, in accordance with this Agreement, or (b) upon any change in law or a ruling by any court or judicial body with jurisdiction resulting in the assessment of any ad valorem taxes upon Hendrick Health's interest to the Property, or (c) upon a successful challenge of any of the terms set forth in this Agreement by any party hereto or benefitting from this Agreement or from payments made pursuant to this Agreement, whichever shall occur first.
- 7.) Hendrick Health shall not have any responsibility or liability for the application or expenditure by the City of any amount paid to the City pursuant to this Agreement. The City alone shall be responsible for the proper disposition of any amount paid by Hendrick Health hereunder. Hendrick Health is hereby indemnified and held harmless, by the City, to the fullest extent allowed by law, from any lawsuit or legal action, and any liability, arising from or relating to the manner in which any party distributes (or the City applies, expends or otherwise distributes or disposes of) any amount paid by Hendrick Health under this Agreement.
- 8.) Each party hereby agrees that it shall, upon request of the other, execute and deliver such further documents (in form and substance reasonably acceptable to the party to be charged) and do such other acts and things as are reasonably necessary and appropriate to effectuate the terms and conditions of this Agreement, without cost to the other party, including (without limitation) the execution and delivery of such documents.
- 9.) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all or which, taken together, shall constitute one and the same instrument. This Agreement contains the entire agreement between the parties respecting the subject matter of this Agreement. The provisions of the Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attribution to such party as the source of the language in question. This Agreement shall be governed by the laws of the State of Texas. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. The waiver by one party of the performance of any covenant or condition under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other covenant or condition under this Agreement. This Agreement may be amended at any time by the written agreement of all of the parties hereto. All Amendments, changes, revisions and discharges of this Agreement, in whole or in part, from time to time, shall be binding upon the parties despite any lack of legal consideration, so long

as the same shall be in writing and executed by all of the parties hereto. This Agreement is intended to benefit only the parties hereto and their successors and assigns and no other person or entity has or shall acquire any intended third party beneficiary rights hereunder. Each individual executing this Agreement on behalf of a party represents and warrants to the other parties that he/she has the authority to execute this Agreement and to the bind such party to the terms hereof. This Agreement supersedes any prior existing agreements between Hendrick Health and the City relating to the subject matter hereof and governing the Property; to the extent any such prior existing agreement contemplated payment by Hendrick Health on or after January 1, 2021, such payment obligations are hereby canceled and are superseded by the provisions contained herein. In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not authorize the same. If any provision of this Agreement, or any covenant, obligation or agreement contained herein, including, without limitation, that term hereof, is determined by a court to be invalidated or unenforceable, such provision, covenant, obligation or agreement shall be reformed so as to comply with applicable law. If it is not possible to so reform such provision, covenant, obligation or agreement, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. Provided, further that such invalidity or unenforceability shall not affect any valid and enforceable provision thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law. The City agrees that it may be subject to civil and commercial suit for any breach of contract obligations under this Agreement. To the extent that City may be entitled to claim sovereign, governmental, or municipal immunity from any liability or damages in such a civil or commercial suit by Hendrick Health, the City does not waive such sovereign, governmental, or municipal immunity. All notices and other communications hereunder shall be in writing and shall be sufficiently given when delivered to the party by registered or certified mail, return receipt requested or by such other means as shall provide the sender with documentary evidence of such delivery.

AGREED:

Hendrick Medical Center

d/b/a Hendrick Health

City of Abilene, Texas

By:



Brad Holland, President & CEO

Date: 1-13-2021

By:

Robert Hanna, City Manager

Date: _____

Reviewed and Approved by
R. David Evans, Esq. RDE 1-13-21
Vice President & General Counsel
Hendrick Health

EXHIBIT A

No.	Account	Name	Owner	Address 1	Address 2	City	Property Type
1.	R55792	Spine Abilene	ARMC, L.P.	1888 Antilley Road		Abilene	MOB
2.	R10884	Abilene Emergency Clinic	Abilene Clinic Asset Holding Company, LLC	3101 South 27th Street		Abilene	MOB
3.	R25257	Abilene Regional Business Office	ARMC, L.P.	52 Windmill Circle		Abilene	Office
4.	R43795	Abilene Regional Medical Center	ARMC, L.P.	6250 Highway 83-84 and 1680 Antilley Road		Abilene	Hospital
5.	R43912	Abilene Regional MOB D & G	ARMC, L.P.	6250 Regional Plaza		Abilene	MOB
6.	R46971	Abilene Regional MOB A	ARMC, L.P.	6300 Regional Plaza	Unit 250	Abilene	Condo
7.	R47095	Abilene Regional MOB A	ARMC, L.P.	6300 Regional Plaza	Unit 260	Abilene	Condo
8.	R47360	Abilene Regional MOB A	ARMC, L.P.	6300 Regional Plaza	Unit 650	Abilene	Condo
9.	R47479	Abilene Regional MOB A	ARMC, L.P.	6300 Regional Plaza	Unit 820	Abilene	Condo
10.	R47603	Abilene Regional MOB A	ARMC, L.P.	6300 Regional Plaza	Unit 830	Abilene	Condo
11.	R47730	Abilene Regional MOB A	ARMC, L.P.	6300 Regional Plaza	Unit 875	Abilene	Condo
12.	R50139	Abilene Regional MOB C	ARMC, L.P.	6200 Regional Plaza	Unit 1225	Abilene	Condo
13.	R50268	Abilene Regional MOB C	ARMC, L.P.	6200 Regional Plaza	Unit 1250	Abilene	Condo
14.	R50395	Abilene Regional MOB C	ARMC, L.P.	6200 Regional Plaza	Unit 1200	Abilene	Condo
15.	R50548	Abilene Regional MOB C	ARMC, L.P.	6200 Regional Plaza	Unit 1400	Abilene	Condo
16.	R50946	Abilene Regional MOB C	ARMC, L.P.	6200 Regional Plaza	Unit 1600	Abilene	Condo
17.	R51080	Abilene Regional MOB C	ARMC, L.P.	6200 Regional Plaza	Unit 1675	Abilene	Condo
18.	R51209	Abilene Regional MOB C	ARMC, L.P.	6200 Regional Plaza	Unit 1625	Abilene	Condo
19.	R53278	Abilene Regional MOB E	ARMC, L.P.	6250 Regional Plaza	Unit 1000	Abilene	Condo
20.	R53412	Abilene Regional MOB E	ARMC, L.P.	6250 Regional Plaza	Unit 1030	Abilene	Condo
21.	R53548	Abilene Regional MOB E	ARMC, L.P.	6250 Regional Plaza	Unit 1050	Abilene	Condo

No.	Account	Name	Owner	Address 1	Address 2	City	Property Type
22.	R53682	Abilene Regional MOB E	ARMC, L.P.	6250 Regional Plaza	Unit 1056	Abilene	Condo
23.	R53815	Abilene Regional Medical Center	ARMC, L.P.	6250 Regional Plaza	Unit 1060	Abilene	Condo
24.	R53943	Abilene Regional MOB E	ARMC, L.P.	6250 Regional Plaza	Unit 1070	Abilene	Condo
25.	R54071	Abilene Regional MOB E	ARMC, L.P.	6250 Regional Plaza	Unit 1080	Abilene	Condo
26.	R54208	Abilene Regional MOB E	ARMC, L.P.	6250 Regional Plaza	Unit 1016 (and Expansion Unit 1016)	Abilene	Condo
27.	R54342	Abilene Regional MOB E	ARMC, L.P.	6250 Regional Plaza	Unit 1010	Abilene	Condo
28.	R55283	Humana West Vacant Land	ARMC, L.P.	20 Hospital Drive		Abilene	Vacant Land
29.	R55419	Humana West Vacant Land	ARMC, L.P.	21 Hospital Drive		Abilene	Vacant Land
30.	R55656	Greenfield Building	ARMC, L.P.	23 Hospital Drive		Abilene	MOB; Land subject to ground lease
31.	R69356	Abilene Diagnostic Nursing Center	ARMC, L.P.	560 North Judge Ely Boulevard		Abilene	MOB
32.	R973949	Vacant Lot	ARMC, L.P.	6601 Buffalo Gap Road		Abilene	Vacant Land

Resolution: Agreement with Hendrick Medical Center for Payment in Lieu of Taxes



QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 1/28/2021

TO: Honorable Mayor & Members of City Council

FROM: Robert Hanna, City Manager

SUBJECT: **5. Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Confirming the Appointment of an Interim Police Chief (*Robert Hanna*)

GENERAL INFORMATION

On November 15, 2020, upon the departure of Police Chief Stan Standridge, City Manager Robert Hanna appointed Assistant Police Chief Mike Perry as the Interim Police Chief.

Pursuant to Section 143.013(a), Local Government Code, the Police Department Head (Police Chief) shall be appointed by the municipality's chief executive and confirmed by the municipality's governing body.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends the City Council to confirm the appointment of Mike Perry as Interim Police Chief, effective November 15, 2020, and ending upon the appointment of the Police Chief.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 2021 RESOLUTION Appointing Interim Police Chief
2. Interim Police Chief PPT

RESOLUTION _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
CONFIRMING THE APPOINTMENT OF AN INTERIM POLICE CHIEF**

WHEREAS, Section 143.013, Local Government Code, provides that, unless elected, each department head is appointed by the municipality's chief executive and confirmed by the municipality's governing body; and

WHEREAS, on November 15, 2020, the City Manager of the City of Abilene appointed Mike Perry, Assistant Police Chief, as the Interim Police Chief, to serve as the department head of the Abilene Police Department until such time that a Police Chief is appointed.

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

That the City Council of the City of Abilene hereby confirms of the appointment of Mike Perry as Interim Police Chief of the Abilene Police department, effective November 15, 2020, and that he shall serve as Interim Police Chief until such time that a Police Chief is appointed.

ADOPTED this 28TH day of January, 2021.

ATTEST:

City Secretary

Mayor

APPROVED:

City Attorney

Resolution: Appointment of an Interim Police Chief



QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 1/28/2021

TO: Robert Hanna, City Manager

FROM: Michael Rice, Assistant City Manager

SUBJECT: 6. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Authorizing the City Manager to Execute a Contract between the City of Abilene and Cadco Architects-Engineers, Inc. for the design services for City Hall Remodel Project (Michael Rice)

GENERAL INFORMATION

The Abilene City Hall has a large portion of floor space that is currently unused due to the relocation of the Municipal Court operations to their new location on S. 1st Street. This space, combined with the current Planning and Development offices, are targeted for a complete remodel. The remodel will address existing additional space requirements for the Planning and Development group, and will provide new space for the Water Utilities Administration operations to relocate to City Hall.

The remodel will also include a small remodel in the Legal Department area to create a new hallway that will allow for a secure connection of the offices separate and apart from the current public reception area.

SPECIAL CONSIDERATIONS

The Scope for this design contract includes:

Field work, meetings with staff, schematic design including mechanical, plumbing and electrical, contract documents for bidding and construction, contractor procurement, contract administration, final punch-list, and electronic format Final As-Built drawings.

FUNDING/FISCAL IMPACT

The design services will cost 8.75% of the final construction cost. The estimated project construction cost is \$1,000,000.00, resulting in a total estimated design cost of \$87,500. The funds for the recommended design services contract are currently available within the Minor Improvement Fund.

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution.Cadco Contract.City Hall Remodel
2. Cadco-City Hall Remodel contract
3. Cadco City Hall Remodel Contract Presentation

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT BETWEEN THE CITY
OF ABILENE AND CADCO ARCHITECTS-ENGINEERS, INC. FOR DESIGN SERVICES FOR
CITY HALL REMODEL PROJECT**

WHEREAS, The City of Abilene desires to remodel portions of the Abilene City Hall;
and,

WHEREAS, The City of Abilene has selected Cadco Architects-Engineers, Inc. for the
design and plan preparation for said project; and,

WHEREAS, The City Council authorizes the City Manager to execute an agreement with
Cadco Architects-Engineers, Inc. in the amount of 8.75% of the Final Project Construction Cost
for the engineering of the Abilene City Hall Remodel project.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF ABILENE, TEXAS**

- PART 1: The City Council authorizes the City Manager to execute an agreement with
Cadco Architects-Engineers, Inc.
- PART 2: That the design agreement is in the amount of 8.75% of the Final Project
Construction Cost.
- PART 3: That this resolution will take effect immediately from and after passage.

ADOPTED this 28th day of January, 2021.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney



PROFESSIONAL SERVICES CONTRACT Engineers & Architects

This contract, dated the 28th day of January, 2021, is between the City of Abilene, a home rule municipal corporation of the State of Texas ("City"), and Cadco Architects-Engineers, Inc., a Corporation organized under the laws of the State of Texas ("Consultant").

The City is engaged in design services for City Hall Remodel Project and desires to engage the services of Consultant, as an independent contractor and not as an employee, to assist in the project and to render his or her or its services on the terms and conditions provided in this Contract.

The Consultant is a[n] qualified architect/engineer properly licensed to practice in the State of Texas. Consultant desires to render professional services to the City on the terms and conditions provided in this Contract.

The Consultant must perform services with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

THEREFORE, the City engages the services of the Consultant. In consideration of the mutual promises contained in this Contract, the parties agree as follows:

I. TERMS

In consideration of the compensation stated in paragraph II, the Consultant must provide all services as described in Attachment A, which is incorporated by reference for all purposes. The Consultant must complete all services by a mutually agreed upon date.

II. FEE

For the services to be rendered under this Contract, the Consultant will be entitled to a fee as described in Attachment B, which is incorporated by reference for all purposes.

III. FACILITIES

The Consultant will furnish all facilities and equipment that may be necessary to perform services required under this agreement.

IV. ASSIGNMENT

The Consultant may not assign in whole or in part any rights, duties, obligations or interest arising from this agreement without the City's prior written consent. In the event of an assignment by the Consultant to which the City has consented, the assignee or assignee's legal representative must agree in writing with the City to personally assume, perform, and be bound by all the provisions of this Contract. All of the terms and provisions of this Contract are binding on Consultant's successors and assigns and may be enforced by the City against such successors and assigns.

V. STATUS OF CONSULTANT

The Consultant is an Independent Contractor. Consultant and Consultant's employees are not the agents, servants or employees of the City.

VI. AMENDMENT OR MODIFICATION

This contract, including attachments, constitutes the entire agreement of the parties. Any statements, promises, or agreements made by either party or its agent which are not contained in this contract are of no effect. This contract may not be amended or modified except by both parties' written consent. This Contract supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Contract.

VII. OWNERSHIP OF DOCUMENTS AND MATERIALS

All documents and materials prepared by Consultant under the terms of this contract are the Consultant's property from the time of preparation. Consultant will deliver copies of the documents and materials to the City or make them available for inspection *whenever requested*. City has the right to make duplicate copies of such documents or materials for its own file or use for any other such purposes as the City deems necessary and there shall be no additional costs incurred because of such copying or use.

VIII. NONDISCLOSURE

The Consultant may not show to any person or entity any documents, reports, plans, programs, reports, drawings, or any other material which Consultant prepares or acquires in performing this contract, including any duplicate copies kept by Consultant. The Consultant may not disclose to any person or entity any information regarding the City's activities. The City may, however, specifically authorize a limited disclosure at its discretion.

IX. INDEMNITY

A. Definitions

For the purpose of this section the following definitions apply:

“City” shall mean all officers, agents and employees of the City of Abilene.

“Claims” shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.

“Consultant” includes the person, corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.

“Consultant’s employees” shall mean any employees, officers, agents, subcontractors, licensee and invitees of Consultant.

“Damages” shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:

- (i) injury or damage to any property or right
- (ii) injury, damage, or death to any person or entity
- (iii) attorneys fees, witness fees, expert witness fees and expenses, and
- (iv) all other costs and expenses of litigation

“Premise Defects” shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

B. Indemnity

The Consultant shall indemnify, hold harmless and defend the City against liability for damage that is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Consultant or the Consultant’s agent, or another entity over which the Consultant exercises control.

The Consultant is an independent contractor and is not, with respect to its acts or omissions, an agent or employee of the City.

Consultant must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Consultant’s employees while in the vicinity where the work is

being done. The City is not liable or responsible for the negligence or intentional acts or omissions of the Consultant or Consultant's employees.

The City assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects. Responsibility for all such defects is expressly assumed by the Consultant.

The City and Consultant must provide the other prompt and timely notice of any covered event which in any way affects or might affect the Consultant or City. The City has the right to compromise and defend the same to the extent of its own interests.

X. INSURANCE

A. GENERAL REQUIREMENTS

The Consultant agrees to maintain the type and amounts of insurance required in this contract throughout the term of the agreement. The Consultant is solely responsible for providing the required certificates of insurance. The City may terminate this agreement if the Consultant fails to timely comply with the insurance requirements.

The required insurance must be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies are subject to examination and approval by the City for their adequacy as to content, form of protection, and providing company.

The required insurance naming the City as additional insured must be primary insurance and not contributing with any other insurance available to City, under any third party liability policy.

Before the City executes the notice to proceed with any work under this agreement, the Consultant must provide the City Secretary with either an original certificate of insurance or a certified copy of the insurance policy evidencing the required insurance. Thereafter, the Consultant must furnish new certificates or copies of the policy before the expiration date.

Texas Labor Code Section 406.096 requires a city to ensure that contractors carry workers' compensation for each employee when the city is a party to any "building or construction contract." The code enumerates that "building and construction" includes:

- (A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
- (B) remodeling, extending, repairing, or demolishing a structure; or

(C) otherwise improving real property or an appurtenance to real property through similar activities.

B. ADDITIONAL REQUIREMENTS

The required liability insurances and their certificates must:

1. Name the City as an additional insured with respect to operations for which this agreement is made.
2. Provide for 30 days advance written notice of cancellation or material change.

C. TYPES AND AMOUNTS OF INSURANCE

The types of insurance required in this contract are those indicated by initials. If no initials appear on any of items 1 through 6, items 1 through 4 shall be required.

<u>Type</u>	<u>Amount</u>
☐ 1. Workers' Compensation Employer's Liability	Statutory \$100,000 per occurrence
☐ 2. Commercial (Public) Liability including, but not limited to: • Premises/Operations • Independent Contractors • Products/Completed Operations • Contractual Liability (insuring above indemnity) and where the exposures exist • Explosion Collapse and Underground	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
☐ 3. Business Automobile Liability to include coverage for: • Owned/Leased Autos • Non-Owned Autos • Hired Cars	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
☒ 4. Professional Liability	\$500,000 combined single limit (per occurrence)
☐ 5. See Addendum for Special Coverages and/or revisions	

___6. No Insurance Required

XI. VENUE, CHOICE OF LAW AND INTERPRETATION

Venue for any cause of action arising under this contract is Taylor County, Texas. This contract is governed by the laws of the State of Texas both as to interpretation and performance. This contract shall, in any dispute over its meaning or application, be interpreted fairly and reasonably, and not more strongly for or against either party.

XII. TERMINATION

This contract may be terminated at any time upon 30 days written notice by City to Consultant. In the event of termination, Consultant will be compensated for work satisfactorily performed before the termination date.

If, through any cause, the Consultant fails to fulfill his obligations under this contract, or if the Consultant violates any of the agreements of this contract, the City has the right to terminate the contract by giving five days written notice to the Consultant. The Consultant will be compensated for work satisfactorily performed before the termination date.

The Consultant, however, is not relieved of liability to the City for damages sustained by the City because of any breach of contract by Consultant. The City may withhold any payments to Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined and paid.

XIII. PROJECT REPRESENTATION

The City agrees to appoint a Project Representative to assist in obtaining information from various City departments as requested by Consultant and in coordinating, monitoring, and evaluating the project to its completion. The Project Representative has no control over the means, methods, techniques, or procedures employed by Consultant. The City is interested only in the results obtained under this contract; the manner and means of obtaining those results is solely under the Consultant's control.

XIV. NOTICE

All notices must be in writing, hand-delivered or mailed by certified mail, to the other party at the address below. The name and address for notification may be changed by notice to the other party.

City – ATTN:

**Michael Rice, ACM
P.O. Box 60
Abilene, Texas 79604**

Consultant – ATTN:

**Steve Ellinger, Cadco
2401 S. Willis St., Ste 200
Abilene, Texas 79605**

XV. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES

Consultant, its agents, employees and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Abilene, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Consultant must obtain all necessary permits and licenses required in completing the work contracted for in this agreement.

XVI. NO INDEBTEDNESS

Consultant agrees that no payments owed by him of any nature whatsoever to the City, including payment in advance for service charges or any sums of any character whatsoever, shall become delinquent or in arrears.

The City will not knowingly award contracts for goods or services to any bidder in arrears to the City for any debt, claim, demand, or account whatsoever, including taxes, penalty and interest. Consultant is responsible for ensuring that no indebtedness exists.

Section 130 of the City Charter authorizes the City to counterclaim and offset against any debt, claim, demand or account owed by the City to any person, firm or corporation in arrears to the City for any debt, claim, demand or account of any nature whatsoever, including taxes, penalty and interest.

XVII. EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the City to recruit, employ, and to provide compensation, promotion, and other conditions of employment without regard to race, color, religion, sex, age, national origin, or disability. The City affirms that employment decisions shall be made only on the basis of bonafide occupational qualifications. The City shall continually review its employment practices and personnel procedures and take positive steps to assure that equality of employment opportunity in the City of Abilene, Texas, is a fact as well as an ideal.

XVIII. VERIFICATION OF EMPLOYMENT ELIGIBILITY

Consultant must comply with the Immigration Reform and Control Act (IRCA) and may not knowingly obtain labor or services of an unauthorized alien. Consultant -- not City -- must verify eligibility for employment as required by IRCA.

XIX. MINORITY AND WOMEN BUSINESS ENTERPRISES

The City hereby gives notice that Minority and Women Business Enterprises will be afforded equal opportunities to submit bids in for this contract and will not be discriminated against on the grounds of race, ethnicity, color, sex, religion or national origin in awarding the contract. Technical assistance is available to Minority and Women Business Enterprises through the Texas

Tech University Small Business Development Center, 749 Gateway St., #301, Building C, Abilene, Texas, 79602, 325-670-0300.

XX. SALES TAX

The City qualifies as an exempt agency under the Texas Limited Sales, Excise and Use Tax Act (the "Tax Act"), and is not subject to any State or City sales taxes on materials incorporated into the project. Labor used in the performance of this contract is also not subject to State or City sales taxes. The City will provide an exemption certificate to the Consultant. The Consultant must have a sales tax permit issued by the Comptroller of Public Accounts and shall issue a resale certificate complying with the Tax Act, as amended, when purchasing said materials. The Consultant is responsible for any sales taxes applicable to equipment purchases, rentals, leases, consumable supplies which are not incorporated into the project, tangible personal property purchased for use in the performance of this contract and not completely consumed, or other taxable services used to perform this contract, or other taxes required by law in connection with this contract.

XXI. LEGAL CONSTRUCTION

In the event that any one or more of the provisions contained in this Contract is for any reason held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provisions, and the Contract will be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

XXII. BOYCOTT OF ISRAEL

In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

This section only applies to a contract that: (a) is between a governmental entity and a company with 10 or more full-time employees, and (b) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. Additionally, "company" does not include a sole proprietorship.

If this section is applicable, the signatory executing this contract on behalf of company verifies that the company does not boycott Israel and will not boycott Israel during the term of this contract.

XXIII. SECTIONS AND OTHER HEADINGS

Section, paragraph, and other headings contained in this Contract are for reference purposes only and do not affect in any way the meaning or interpretation of this Contract.

XIV. COUNTERPARTS

This Contract may be executed in two or more counterparts (including fax, email, or electronic PDF counterparts), each of which shall be deemed an original and all of which together shall constitute one instrument.

{Remainder of Page Intentionally Left Blank—Signature Page Follows}

IN WITNESS HEREOF, the parties hereto have executed this contract effective as of the date written above:

CITY OF ABILENE

By: _____

Name: _____

Title: _____

ATTEST:

City Secretary

APPROVED:

By: _____
City Attorney

PROFESSIONAL

By: Steve Ellinger

Name: STEVE ELLINGER, FMA

Title: VICE. PRESIDENT

Address: 2409 S. WILLIS, #200

Phone Number: 325.669.7555

Federal Tax ID#: N/A

ATTEST: (if corporation)

Corporation's Secretary

Corporate Seal (if available)

ATTACHMENT A

Scope of Services

CITY HALL REMODEL PROJECT:

Field work to determine actual existing conditions.

All necessary meetings with city staff etc. to determine programming (use) needs.

Schematic Design/Design Development which includes all function and circulation layouts

Construction Documents, which is the production and development of the "plans" for bidding and construction. Also included is the Project Manual that includes the specifications and Instructions to Bidders.

Assistance with bidding, negotiation, and contractor procurement.

Construction Administration including periodic on-site observations, processing of payment applications, any necessary change orders, and monthly owner/contractor/architect meetings.

Final "punch-list" to assure that all work is completed as per the plans and specifications.

All Mechanical, Plumbing and Electrical design is included.

Shall provide Final As-Built drawings, in an electronic format acceptable to the City of Abilene.

ATTACHMENT B

PAYMENT SCHEDULE PARTIES TO INITIAL OPTION SELECTED

OPTION 1 ____

Compensation is based on actual hours of work/time devoted to providing the described professional services and will be paid at a rate of \$_____ per hour not to exceed \$_____.

Professional must submit monthly invoices to City accompanied by an explanation of charges, professional fees, and services. City will pay invoices according to its normal payment procedures.

OPTION 2 ____

Payment is in a lump sum amount of \$_____ upon completion of the work and written acceptance by City's Project Representative.

No mechanic, contractor, subcontractor, materialman or other person can or will contract for or in any other manner have or acquire any lien upon any building or work covered by the contract or the land upon which the same is situated.

Before final acceptance of this project by the City, the Contractor must execute and provide City with an Affidavit that all bills for labor, materials and incidentals incurred by subcontractors, materialmen, mechanics and suppliers under this agreement have been paid in full, and that there are no claims pending of which Contractor has been notified.

OPTION 3 X

Payment is a fixed fee amount of \$ 8.75% of final construction cost payable per the schedule upon completion of the work and written acceptance by City's Project Representative.

No mechanic, contractor, subcontractor, materialman or other person can or will contract for or in any other manner have or acquire any lien upon any building or work covered by the contract or the land upon which the same is situated.

Before final acceptance of this project by the City, the Professional shall execute and provide City with an Affidavit that all bills for labor, materials and incidentals incurred by subcontractors, materialmen, mechanics and suppliers under this agreement have been paid in full, and that there are no claims pending of which Professional has been notified.

ATTACHMENT C

OWNERSHIP OF DOCUMENTS AND MATERIALS

Parties to initial option chosen

(Option 1) ____

All documents and materials prepared by Professional under the terms of this contract are the City's property from the time of preparation, and Professional must deliver the documents and materials to the City or make them available for inspection whenever requested. Professional has the right to make duplicate copies of such documents or materials for its own file or for other such purposes as the City authorizes in writing.

(Option 2) X

All documents and materials prepared by the Professional remain the property of the Professional; however, Professional must furnish City, at no additional cost, one set of reproducible mylars of the original drawings of the work and/or one copy of all documents prepared by the Professional pursuant to this Agreement.

ATTACHMENT D

STATE MANDATED WORKERS' COMPENSATION INSURANCE LANGUAGE

THIS ATTACHMENT IS ONLY APPLICABLE IF WORKERS' COMPENSATION COVERAGE IS PROVIDED

a. Definitions

Certificate of coverage ("certificate") - a copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Professional's/person's work on the project has been completed and accepted by the City.

Persons providing services on the project ("subcontractors" in 406.096) - includes all persons or entities performing all or part of the services the Professional has undertaken to perform on the project, regardless of whether that person contracted directly with the Professional and regardless of whether that person has employees. This includes, without limitation, independent contractors, subprofessionals, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitations, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- b. The Professional shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Professional providing services on the project, for the duration of the project.
- c. The Professional must provide a certificate of coverage to the City prior to being awarded the contract.
- d. If the coverage period shown on the Professional's current certificate of coverage ends during the duration of the project, the Professional must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.
- e. Professional shall obtain from each person providing services on a project and provide to City:
- (1) a certificate of coverage, prior to that person beginning work on the project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven (7) days after receipt by the Professional, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

- f. The Professional shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.
- g. The Professional shall notify the City in writing by certified mail or personal delivery, within ten (10) days after the Professional knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- h. The Professional shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- i. The Professional shall contractually require each person with whom it contracts to provide services on a project to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the Professional, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing service on the project, for the duration of the project;
 - (3) provide the Professional, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the Professional:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
 - (6) notify the City in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing service on the project;

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

- j. By signing this contract or providing or causing to be provided a certificate of coverage, the Professional is representing to the City that all employees of the Professional who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Professional to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- k. The Professional's failure to comply with any of these provisions is a breach of contract by the Professional which entitles the City to declare the contract void if the Professional does not remedy the breach within ten (10) days after receipt of notice of breach from the City.

ATTACHMENT E
NOTICE TO PROCEED

ATTACHMENT F
CHANGE IN SCOPE OF SERVICES

City Hall Design Services Contract with Cadco Architects-Engineers, Inc.



City Hall Design Services Contract with Cadco Architects-Engineers, Inc.

- Cadco Architects was the original Architect/Designer for City Hall.
- There is a desire to modify existing City Hall space to address growth pressures within Planning and Development Services, to create space needed to relocate the Water Utilities Administration to City Hall, and to modify the Legal Services area to address needed changes.
- The estimated construction cost for this project is \$1,000,000. The proposed design services expense is 8.75% of the Final Construction Cost. Based upon a \$1,000,000 final construction cost, the design services contract would cost \$87,500.



City Hall Design Services Contract with Cadco Architects- Engineers, Inc.

QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 1/28/2021

TO: Robert Hanna, City Manager

FROM: Greg McCaffery

SUBJECT: 7. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Bid No. 2114 to Bontke Brothers, Inc. on Pine Street Area Rehabilitation Project (Greg McCaffery)

GENERAL INFORMATION

This Project was advertised as a Public Notice on January 3, 2021, and on January 10, 2021 with a bid opening dated January 19, 2021. This contract includes the resurfacing of Pine St from Ambler Ave to N Treadaway, as well as N 18th St from Pine St to to Cottonwood St. This contract will also include two concrete intersections along Pine St, one at N 19th St and the second at N 21st St.

SPECIAL CONSIDERATIONS

This project has a contract completion time of 60 working days (approx. 3 month, weather permitting)

FUNDING/FISCAL IMPACT

Funding for this project is allocated through both Street Maintenance Fee as well as DCOA funds.

STAFF RECOMMENDATION

Staff recommends bid award to Bontke Brothers, Inc. for \$888,963.00.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Pine area resolution
2. CB2114 TABSHEET
3. Pine St. Contract
4. Pine Street Area scope
5. PROJECT LOCATION MAP Model (1)
6. Pine area ppt

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AWARDING
BID TO BONTKE BROTHERS, INC., ABILENE, TEXAS**

WHEREAS, the City of Abilene duly advertised and gave such notice, as required by law, for bids for the resurfacing of Pine St from Ambler Ave to N Treadaway, as well as N 18th St from Pine St to to Cottonwood St.; and

WHEREAS, the project includes the resurfacing of Pine St from Ambler Ave to N Treadaway, as well as N 18th St from Pine St to Cottonwood St. This contract will also include two concrete intersections along Pine St, one at N 19th St and the second at N 21st St.: and

WHEREAS, the City of Abilene has utilized the “Best Value” competitive bidding method in determining the award of the contract; and,

WHEREAS, the following bids were received and opened on the January 19, 2021:

Bontke Brothers Construction, Inc., Abilene, Texas	\$888,963.00
J.H. Strain & Sons Inc., Tye, Texas	\$910,446.34
Contract Paving Co. Inc., Tye, Texas	\$936,123.90

WHEREAS, Bontke Brothers, Inc., Abilene, Texas submitted the best value bid in the amount of \$888,963.00 with the bid meeting specifications. Staff recommends awarding the bid to the best value bidder, Bontke Brothers, Inc., Abilene, Texas.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF ABILENE, TEXAS**

PART 1: That the City Council approves this bid in the amount of \$888,963.00.

PART 2: That this Resolution shall take effect immediately from and after passage.

ADOPTED this 28th day of January, 2021.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

**CITY OF ABILENE
PURCHASING DIVISION
TABULATION OF BIDS**

PAGE
1 OF 1

DEPARTMENT: ENGR
BID NO.: CB-2114
TIME OF OPENING: 11:00 A.M.
DATE OF OPENING: JANUARY 19, 2021

BONTKE BROTHERS
ABILENE, TX

J.H STRAIN & SONS
TYE, TX

CONTRACT PAVING
TYE, TX

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION
1.	PINE STREET AREA REHABILITATION PROJECT				888,963.00		910,466.34		936,123.90						
BASE BID					888,963.00		910,466.34		936,123.90						
DISCOUNT															
TOTAL BID					888,963.00		910,466.34		936,123.90						

*NOTES: INDICATES RECOMMENDED AWARD

CONSTRUCTION CONTRACT

BACKGROUND

THIS CONTRACT, made on the 28th day of January, 2021 is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and Bontke Brothers Construction Company, Inc. of the City of Abilene, State of Texas. ("Contractor").

The City recognizes a need for high quality construction work; the Contractor agrees to complete the project in return for payment.

THE AGREEMENT

1. **Work and Consideration.** hereby agrees to commence and complete the construction of Work required in the Contract Documents -- incorporated herein by reference --

PINE STREET AREA REHABILITATION PROJECT

All work to be performed will be completed in conformance with (1) Part I and II of the City of Abilene's Standard Specifications for Construction adopted September, 2006 with the attached amendments in these Contract Documents, and (2) the Technical Specifications and Plans attached to these Contract Documents. Technical Specifications and Plans attached to these Contract Documents control in the event of a conflict.

In consideration of this Work, the City will pay the Contractor the sum of \$888,963.00 (Eight hundred eighty-eight thousand nine hundred sixty-three dollars and zero cents).

2. **Timely Work.** The Contractor must begin and fully complete Work in the days stated in the Notice to Proceed. The time allows for normal delays associated with weather conditions, crew coordination, etc. Time is of the essence, and liquidated damages as set forth in the General Conditions (Paragraph 16) apply for late Work.
3. **Payment.** If Performance and Payment Bonds are required, the City will pay Contractor according to the General Conditions (Paragraph 20). If Performance and Payment Bonds are not required, the City will pay Contractor according to the Instructions to Bidders.
4. **No liens.** No mechanic, contractor, subcontractor, supplier, or other person can or will contract for, or in any other manner have or acquire any lien upon the work of this Contract, or the land upon which it is situated. The laws of the State of Texas govern this Contract.
5. **Venue.** Venue for any legal proceeding is Taylor County, Texas.
6. **Indemnity.**

A. Definitions

For the purpose of this section the following definitions apply:

"City" shall mean all officers, agents and employees of the City of Abilene.

"Claims" shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.

"Contractor" includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.

"Contractor's employees" shall mean any employees, officers, agents, subcontractors, licensee and invitees of Contractor.

"Damages" shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:

- (i) injury or damage to any property or right
- (ii) injury, damage, or death to any person or entity
- (iii) attorneys fees, witness fees, expert witness fees and expenses, and
- (iv) all other costs and expenses of litigation

"Premise Defects" shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

"Proven" shall mean that a court of competent jurisdiction has entered a final unappealable judgment on a claim adjudging an entity or person liable for a monetary judgment.

"Sole negligence" shall mean negligence of a party that is unmixed with the fault of any other person or entity.

B. Indemnity

The Contractor must indemnify, hold harmless, and defend the City from and against liability for any claims arising out of the Contractor's work and activities conducted in connection with this Contract.

The Contractor is an independent contractor and is not, with respect to its acts or omissions, an agent or employee of the City.

Contractor must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Contractor's employees while in the vicinity where the work is being done. The City is not liable or responsible for the negligence or intentional acts or omissions of the Contractor or Contractor's employees.

The City assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects. Responsibility for all such defects is expressly assumed by the Contractor.

The City and Contractor must provide the other prompt and timely notice of any covered event which in any way affects or might affect the Contractor or City. The City has the right to compromise and defend the same to the extent of its own interests.

BOTH CITY AND CONTRACTOR EXPRESSLY INTEND THIS CONTRACT'S INDEMNITY PROVISION TO REQUIRE CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE WHILE CITY IS PARTICIPATING IN THIS CONTRACT, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE DAMAGES. THIS CONTRACT'S INDEMNITY PROVISION DOES NOT APPLY TO ANY CLAIM WHERE DAMAGE IS PROVEN TO RESULT FROM THE SOLE NEGLIGENCE OF THE CITY.

7. **Insurance.** The Special Conditions found in the City of Abilene's Standard Specifications for Construction adopted September, 2006, Part I, Division I, Item 3, contain the insurance requirements of this Contract.

8. **Overcharges.** The Contractor assigns to City any claims for overcharges related to this Contract which arise under antitrust laws of the United States, 15 U.S.C.A. Sec. 1 et seq., as amended.

9. **Contract Interpretation.** Any dispute about the Contract's meaning or application will be interpreted fairly and reasonably, and neither more strongly for or against either party.

10. **Indebtedness to City.** Contractor agrees that no payments owed by him of any nature whatsoever to the City, including payment in advance for service charges or any sums of any character whatsoever, shall become delinquent or in arrears.

The City will not knowingly award contracts for goods or services to any Bidder in arrears to the City for any debt, claim, demand, or account whatsoever, including taxes, penalty or interest. Contractor is responsible for ensuring that no indebtedness exists.

Section 130 of the City Charter authorizes the City to counterclaim and offset any debt, claim, demand or account owed by the City to any person, firm or corporation in arrears to the City for any debt, claim, demand or account of any nature whatsoever, including taxes, penalty or interest.

11. **Boycott of Israel.** In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

This section only applies to a contract that: (a) is between a governmental entity and a company with 10 or more full-time employees and (b) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. Additionally, "company" does not include a sole proprietorship.

If this section is applicable, the signatory executing this contract on behalf of company verifies that the company does not boycott Israel and will not boycott Israel during the term of this contract.

12. **Contract Execution.** The Contractor must sign the Contract first, with any necessary attestation and seal. The City Attorney or designee must review the Contract, and approve or disapprove it. If approved, the City's authorized agent will then sign. The City Secretary must keep a signed original in the City Secretary's Office.

13. **Contract Copies.** Each of the two executed copies is an original.

IN WITNESS HERE OF, the parties hereto have executed this contract:

CONTRACTOR

Name of Contractor:

Bontke Brothers Construction

Business Address:

102 College Drive
Abilene TX 79601

Signature

Kenneth Bontke

Name - Typed or Printed

President

Title - Typed or Printed

325 677 62 76

Business Phone No.

75 133 132 5

Federal Tax I.D.#

ATTEST: (If Corporation)

B. D.

Corporate Secretary's Signature

Corporate Seal

(if none, write "None") |

CITY OF ABILENE

Authorized Signature

APPROVED:

City Attorney

ATTEST:

City Secretary

Seal: |

SCOPE OF PROJECT

This construction contract involves several street projects. Pine Street from Ambler Ave to TxDOT ROW at N. Treadaway; N. 18th Street from Pine east to Cottonwood; and both intersections at N. 19th & Pine and N. 21st & Pine. Both of the intersections will be redone with concrete and the Pine to Treadaway and N. 18th Streets will have the existing pavement milled and replaced with new HMAC material as outlined in the Construction Plans. Pavement markings will be installed on the Pine Street and the N. 18th Street as laid out in the Construction Plans.

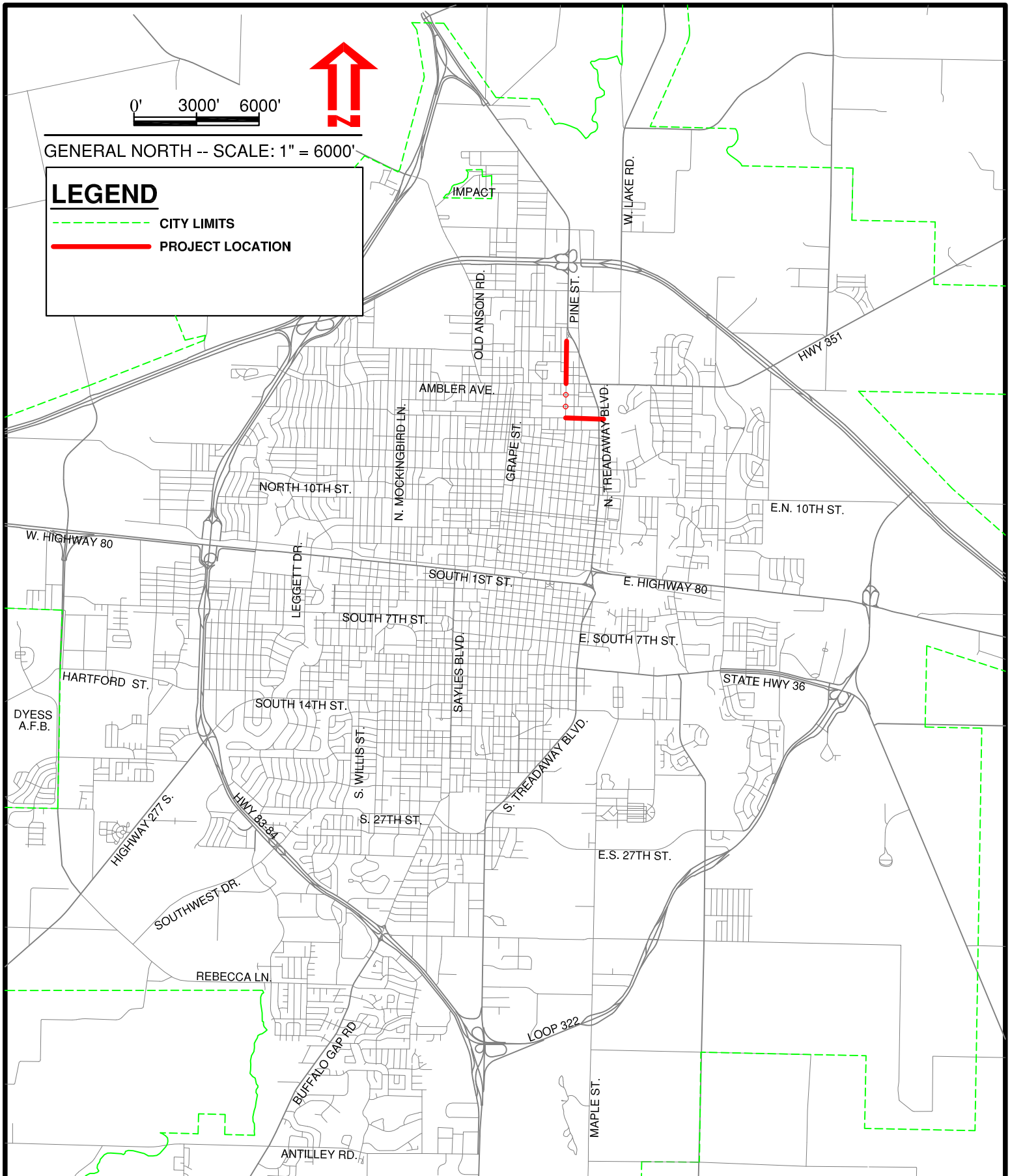
0' 3000' 6000'



GENERAL NORTH -- SCALE: 1" = 6000'

LEGEND

- CITY LIMITS
- PROJECT LOCATION



Sheet
1
of
1

CITY OF ABILENE, TEXAS
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION

PINE STREET AREA REHABILITATION PROJECT

Designed By: S. CHANDLER

Drawn By: T. MATTHEWS

Checked By: S. CHANDLER

Horizontal Scale: 1"=6000'

Vertical Scale: N.T.S.

Computer File Name:
Project Location Map

Date: JANUARY 2021

Agenda Item: Pine Street Area Rehabilitation Project

**Resolution: Bid Award #CB-2114 Pine Street
Area Rehabilitation Project**

(McCaffery)

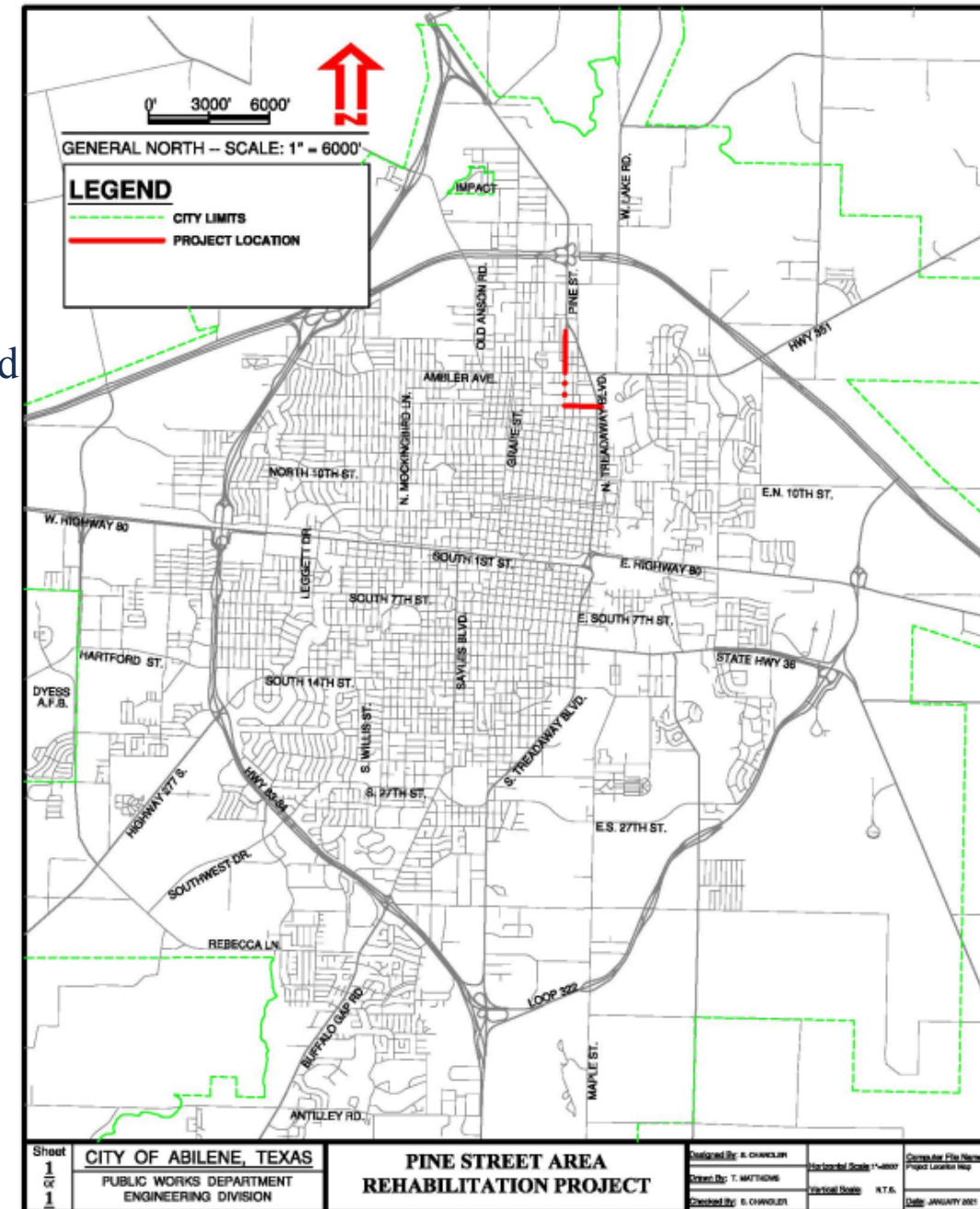


Pine Street Rehabilitation Project

Streets
Pine St
N 18th St
Intersection
Intersection

From
Ambler Ave
Pine St
Pine St
Pine St

To
Treadaway Blvd
Cottonwood St
N 19th St
N 21st St



Agenda Item:

Pine Street Rehabilitation Project

- Construction Contract includes the resurfacing of Pine St from Ambler Ave to N Treadaway, as well as N 18th St from Pine St to Cottonwood St. This contract will also include two concrete intersections along Pine St, one at N 19th St and the second at N 21st St.
- Project Advertised January 3rd 2021 & January 10th 2021, Bids Opened January 19th 2021.
- Three bids were received.
- Staff recommends award of contract to Bontke Brothers, Inc. in the amount of \$888,963.00



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 1/28/2021

TO: Robert Hanna, City Manager

FROM: Rodney Taylor, Director

SUBJECT: 8. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding the Bid for Purchase of SDR35 Pipe and Manholes for Improvements to the Northwest Interceptor Sewer (Rodney Taylor)

GENERAL INFORMATION

Water Utilities staff recommends that the Abilene City Council award the bid for CB-2111 SDR35 Pipe and Manholes to Benchmark Supply Company Inc. (Benchmark) of Abilene, TX in the amount of \$125,670.28. The bid was advertised in the Abilene Reporter news on December 6th and 13th, 2020. Bids were opened on December 22nd, 2020. Three bids were received. Benchmark submitted the lowest priced bid. The material is for replacing a section of the 36" diameter Northwest Interceptor Sewer main.

SPECIAL CONSIDERATIONS

The Northwest Interceptor Sewer is a major sewer main located in northwest Abilene and transports sewage from the southwest and west sides of Abilene. The project is in the vicinity of West Stamford Street and Old Anson Road. Recent inspection and cleaning by the City's contractor revealed that approximately 1,100 feet of existing 36inch diameter vitrified clay piping and the related manholes are in very poor condition. This section of piping is critical to the proper operation of the sewer collection system in that area. The City's Water Utilities construction crew will perform the work.

FUNDING/FISCAL IMPACT

Funding for the purchase will utilize residual fund balances designated for water utilities capital

improvement projects.

STAFF RECOMMENDATION

Staff recommends that the Abilene City Council award the bid to Benmark in the amount of \$125,670.28 for the purchase of SDR35 Pipe and Manholes.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. WrittenResolution-WtrDpt-Award Bid-Benmark Supply-SDR35 Pipe and Manholes-1-28-2021
2. Bid Tab Sheet-CB2111-Benmark Supply-North Diversion Segment-1-28-2021
3. Presentation-Award Bid-Benmark Supply-Purchase of SDR35 Pipe and Manholes-1-28-2021

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AWARDING THE BID TO BENMARK SUPPLY COMPANY INC. FOR THE
PURCHASE OF SDR35 PIPE AND MANHOLES.**

WHEREAS, the City of Abilene (City) owns and operates the publicly owned treatment works including the Hamby Water Reclamation Facility and the sanitary sewer collection system; and

WHEREAS, the City contracted with Insituform Technologies for the cleaning and CCTV inspection of approximately 18,700 liner feet of large diameter vitrified clay sewer interceptors and outfalls in north Abilene, and the contractor identified a section of the Northwest Interceptor Sewer main is in need of replacement; and

WHEREAS, the City's Water Utilities Department construction crew will provide the labor and equipment to replace approximately 1,100 feet of 36inch diameter sewer main and related manholes; and

WHEREAS, the large diameter pipe and manholes are not normally kept in the Water Warehouse inventory thus making it necessary to solicit bids for the list of project materials; and

WHEREAS, Benmark Supply Company Inc. (Benmark) submitted the lowest priced qualifying bid in the amount of \$125,670.28 for the purchase of SDR35 Pipe and Manholes, and City staff has evaluated the bids for conformity with the advertisement for bids and does recommend awarding the bid to Benmark; and

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

That the City Manager is authorized to purchase the SDR35 Pipe and Manholes from Benmark Supply Company Inc. in the amount of \$125,670.28.

ADOPTED this 28th day of January, 2021.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley E. Smith, City Attorney

**CITY OF ABILENE
PURCHASING DIVISION
TABULATION OF BIDS**

PAGE
1 OF 1

DEPARTMENT: WATER
BID NO.: CB-2111
TIME OF OPENING: 11:00 A.M.
DATE OF OPENING: DECEMBER 22, 2020

BENCHMARK SUPPLY
ABILENE, TX

ABILENE PLUMBING
SUPPLY CO
ABILENE, TX

CORE & MAIN
RICHLAND HILLS, TX

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION
	SDR35 PIPE & MANHOLES														
1.	PIPE-SEWER PLASTIC BELLRING 36" SDR35	1092	FT	101.34	110,663.28	106.46	116,254.32	107.68	117,586.56						
2.	PIPE-SEWER PLASTIC BELLRING 27" SDR35	28	FT	51.00	1,428.00	53.51	1,498.28	56.09	1,570.52						
3.	FIBERGLASS MANHOLE-OPEN BOTTOM, 9' HEIGHT X 5' DIAMETER W/38" OPENING ON TOP	2	EA	2,295.00	4,590.00	1,783.34	3,566.68	2,244.33	4,488.66						
4.	FIBERGLASS MANHOLE-OPEN BOTTOM, 12' HEIGHT X 5' DIAMETER W 38" OPENING ON TOP	1	EA	3,015.00	3,015.00	2,185.56	2,185.56	2,952.58	2,952.58						
5.	FIBERGLASS MANHOLE-OPEN BOTTOM, 15' HEIGHT X 5' DIAMETER W/38" OPENING ON TOP	1	EA	3,700.00	3,700.00	2,724.45	2,724.45	3,623.72	3,623.72						
6.	38" MANHOLE FRAME & COVER, 6"FRAME HEIGHT, 2" COVER THICKNESS, HEAVY DUTY, REVERISBLE FRAME	4	EA	568.50	2,274.00	684.22	2,736.88	771.77	3,087.08						
BASE BID					125,670.28		128,966.17		133,309.12						
DISCOUNT															
TOTAL BID					* 125,670.28		128,966.17		133,309.12						

*NOTES: INDICATES RECOMMENDED AWARD

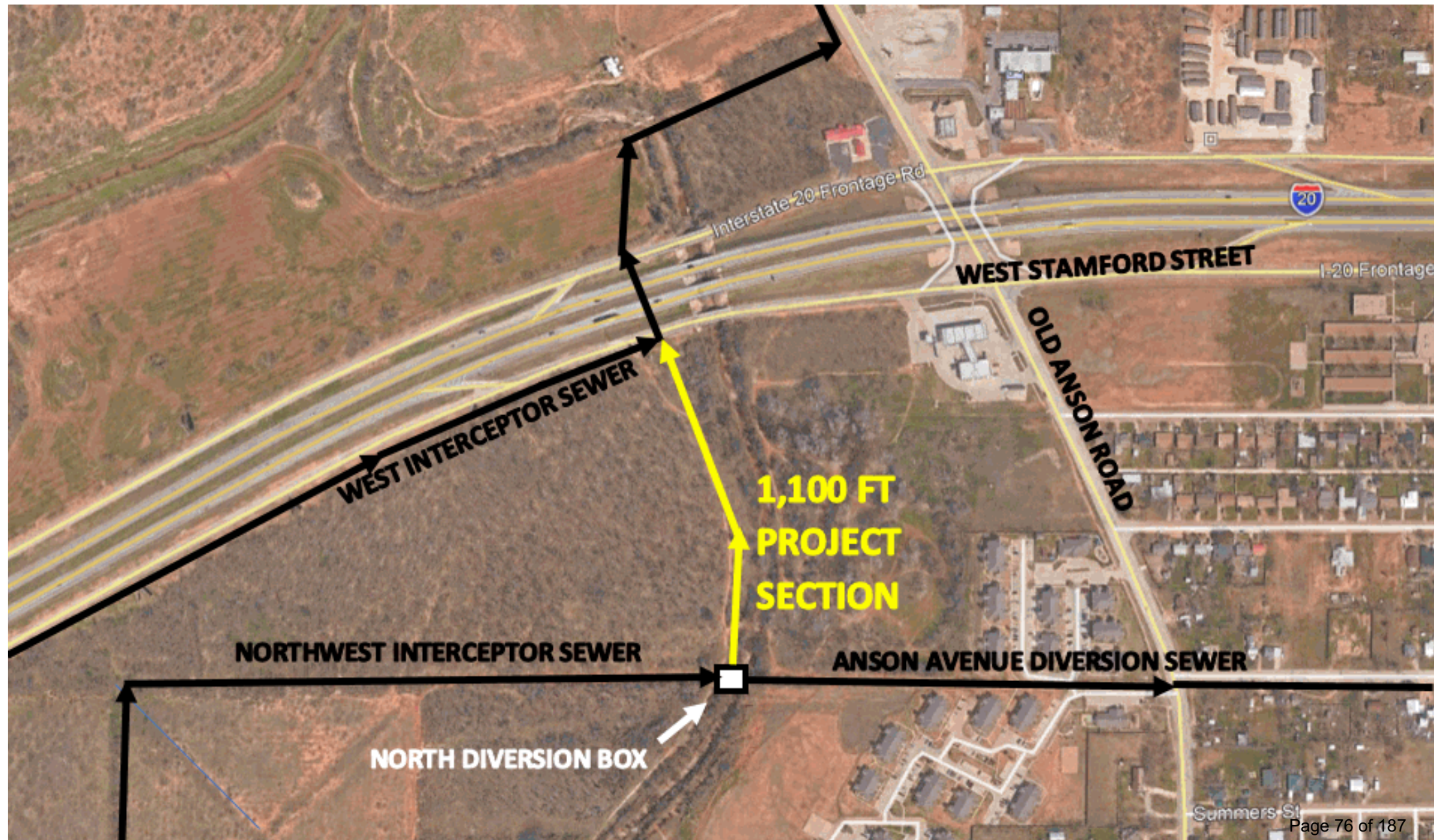
Award Bid to Benmark Supply Company Inc. for the Purchase of SDR35 Pipe and Manholes.



- Award bid to Benmark Supply Company Inc.
- Bid value of \$125,670.28.
- Purchase of approximately 1,100 feet of 36inch PVC pipe and 4 manholes for replacement of failing vitrified clay pipe and brick manholes.
- Water Utilities Department crews will provide the labor and equipment for the installation.
- Project is along the Northwest Interceptor Sewer in the vicinity of West Stamford Street and Old Anson Road in northwest Abilene.



SDR35 PIPE AND MANHOLES



Award Bid to Benmark Supply Company Inc. for the
Purchase of SDR35 Pipe and Manholes.

Questions
?





**City Council
Agenda Memo**

City Council Meeting Date: 1/28/2021

TO: Robert Hanna, City Manager

FROM: Annette Lerma, Director

SUBJECT: 9. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on authorizing the City Manager to Procure Luminare Innoculate in an Amount not to Exceed \$100,000.00 (*Annette Lerma*)

GENERAL INFORMATION

The Health Department is seeking to purchase and implement an electronic tool to automate scheduling, vaccine paperwork, and reporting to ImmTrac2. This tool will allow to automate the registration process and not have to add additional personnel to maintain the staffing model for our Vaccine Hub.

SPECIAL CONSIDERATIONS

This purchase is exempt from competitive bidding requirements, as it is a procurement necessary to preserve or protect the public health or safety of the City's residents. Additionally, upon information provided by the Vendor, this product is available from only one source because of patents and copyrights.

FUNDING/FISCAL IMPACT

The total cost for one year of licensing is \$89,700. The Department of State Health Services Immunization Unit has awarded ATCPHD "one-time" additional funds in the amount of \$64,955 to be used for allowable pandemic vaccination activities. One of the allowable activities is vaccine administration documentation and reporting. The remainder of the cost will be charged to the general fund Minor Improvement Project Fund.

Additionally, we can purchase a 20,000 count texting bundle to have automatic texts sent. Once 20,000 texts are exceeded we will be charged monthly at a rate of \$0.015 (1.5 cents) per text.

STAFF RECOMMENDATION

Staff recommends that the contract be approved as written.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 2021 Resolution-Health Dept. Luminare Innoculate
2. Luminare Agreement Innoculate for Abilene TX 20210128
3. Innoculate Ppt

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH
LUMINARE INC. FOR COVID VACCINE MANAGEMENT SOLUTION SOFTWARE**

WHEREAS, the Abilene-Taylor County Public Health District (ATCPHD) is a designated Vaccination Hub to provide the COVID-19 vaccine for our region; and

WHEREAS, the Department of State Health Services Immunization Unit has awarded ACPHD “one time” funds in the amount of \$64,955 to be used for allowable pandemic vaccination activities; and

WHEREAS, an allowable pandemic vaccination activities is vaccine administration documentation and reporting; and

WHEREAS, the City is seeking to purchase and implement an electronic tool to automate scheduling, vaccine paperwork, and reporting to ImmTrac2, and this product will provide for the automation of the registration and scheduling process for individuals to receive the COVID-19 vaccination in our region; and

WHEREAS, this purchase is necessary to preserve or protect the public health or safety of the municipality’s residents caused by the COVID-19 pandemic.

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

- PART 1: That the City Manager is authorized to enter into a 12-month contract with Luminare Inc. for COVID-19 vaccine administration documentation and reporting in the amount of \$90,000.00.
- PART 2: That this purchase is necessary to preserve and protect the public health or safety of the municipality’s residents caused by the COVID-19 pandemic.
- PART 3: That this Resolution is effective immediately upon adoption.

ADOPTED this 28th day of January, 2021.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley E. Smith, City Attorney

SERVICE AGREEMENT (INNOCULATE)

This Service Agreement (“**Agreement**”), dated as of 1/28/2021 (“**Effective Date**”), is made by and between Luminare Inc., with a place of business at TMC Innovation Institute, 2450 Holcombe Blvd., Suite X, Houston, Texas 77021 (“**Luminare**”), and City of Abilene with a place of business at 555 Walnut, Abilene, TX 79601 (“**Company**”).

The parties agree as follows:

1. **Service.** The parties intend for Company to use Luminare’s Innoculate is identified in Exhibit B, which is attached hereto and incorporated herein by reference, which services are will be provided to Company as a hosted, software-as-a-service application (collectively, the “**Service**”). This agreement is specifically for the Innoculate product. Subject to the terms and conditions of this Agreement, Luminare grants to Company a nonexclusive and nontransferable license to use the Service for the term of this Agreement. Company’s use of the Service will be solely for its own internal purposes of the Company, by its employees and any healthcare providers, pharmacists or other employees who are involved either in patient care or quality management related to patient care and who are authorized by the Company to use the Service at the Company’s facility. Company and Luminare shall each comply with their respective obligations that are set forth on Exhibit A, which is attached hereto and incorporated herein by reference.
2. **Payment.** Company will pay to Luminare the fees and other amounts set forth on Exhibit B or as may be specified in any mutually agreed upon SOW that is signed by both parties and incorporated by reference into this Agreement. All fees and other amounts are exclusive of any sales use or other similar taxes or charges, and Company is responsible for all taxes or charges assessed by any governmental authority in connection with the provision and use of the Service under this Agreement, except for income taxes payable by Luminare. Fees shall be invoiced as set forth in Exhibit B or in the applicable SOW. Unless otherwise specified in Exhibit B or in the applicable SOW, any amount invoiced is due and payable no later than 30 days after the date of invoice.
3. **Term; Termination.** This Agreement commences on the Effective Date and will remain in effect for the term set forth on Exhibit B. The parties may extend this term by executing a signed modification to this Agreement. Either party may terminate this Agreement if the other Party materially breaches the terms and conditions set forth herein, provided however, that such breaching Party is provided no less than thirty (30) days in which to cure such alleged material breach following actual receipt of the written notice from the non-breaching Party describing the alleged breach in reasonable detail. This Agreement also may be terminated no more than seven days after the U.S. government revokes the employer’s rights to collect their employee’s Input Data. Sections 4 through 13 of this Agreement shall survive expiration or termination of this Agreement.
4. **Ownership of Service IP.** As between Company and Luminare, Company acknowledges and agrees that the software and other intellectual property underlying the Service, as well as any Service user materials, are the property of Luminare and are protected under U.S. and international intellectual property laws, including copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights and laws. Luminare reserves all rights not expressly granted in this Agreement. Luminare has the right, but not the obligation, to monitor the Service, Input Data (as defined herein) and Service reports.
5. **Ownership of Input Data; Permitted Use.** “**Input Data**” means all information and data input into Innoculate using the Service. As between Company and Luminare, Luminare acknowledges and

agrees that any Input Data is proprietary to Company and/or third parties, and not proprietary to Luminare. Company represents and warrants that it has all necessary consents, or owns or otherwise controls all necessary rights, to supply Input Data in connection with the Service and that use of Input Data for such purpose will not violate any applicable law or infringe or violate the rights of any third party. Luminare will have no liability under this Agreement for any failure of the foregoing Company representation and warranty. In addition, Company grants Luminare a nonexclusive license to use de-identified and/or aggregated data uploaded to the Service and/or produced from Company's use of the Service, for the purposes of evaluating effectiveness of the Service, making improvements to the Service, and generating statistics regarding (i) any of the results of use of the Service or (ii) the general effectiveness of medications and other treatments, individually and in concert, on disease states.

6. **Limitations of Liability.** Except for any breaches of a party's obligations relating to confidentiality or Company's obligations concerning its use of Luminare's intellectual property, in no event will either party's aggregate liability hereunder to the other party exceed the total fees paid by Company to Luminare for the twelve-month period preceding the date on which the subject liability arose. EXCEPT FOR ANY BREACHES OF A PARTY'S OBLIGATIONS RELATING TO CONFIDENTIALITY OR COMPANY'S OBLIGATIONS CONCERNING ITS USE OF LUMINARE'S INTELLECTUAL PROPERTY HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE, UNDER ANY LEGAL OR EQUITABLE THEORY OF LIABILITY, WITH RESPECT TO THE SERVICE (EXCEPT TO THE EXTENT OTHERWISE REQUIRED BY APPLICABLE LAW OR BY ANOTHER AGREEMENT BETWEEN THE PARTIES HERETO) FOR ANY LOST DATA, LOST PROFITS, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER REGARDLESS OF WHETHER SUCH LOSS WAS FORESEEABLE OR THE PARTY SUFFERING THE LOSS OR DAMAGE WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
7. **Disclaimers.** Company's access to and use of the Service is at Company's sole risk. Company understands and agrees that the Service is provided to you on an "AS IS" and "AS AVAILABLE" basis. Without limiting the foregoing, to the maximum extent permitted under applicable law, LUMINARE DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND WITH RESPECT TO THE SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT
8. **USE WARNINGS. THE COMPANY DOES NOT OFFER MEDICAL ADVICE, DIAGNOSES OR OTHER HEALTH MANAGEMENT SERVICES OR ENGAGE IN THE PRACTICE OF MEDICINE. THE SERVICE IS NOT INTENDED TO BE, AND DOES NOT CONSTITUTE, A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE BY PHYSICIANS OR LICENSED INDEPENDENT PRACTITIONERS, OR A SUBSTITUTE FOR DIAGNOSIS, TREATMENT OR HEALTH MANAGEMENT AND IS OFFERED FOR INFORMATIONAL PURPOSES ONLY. FURTHERMORE, THE INFORMATION PRODUCED BY THE SERVICE IS ONLY USEFUL TO THE EXTENT THAT THE INPUT DATA IS ACCURATE. END USERS SHOULD ALWAYS RELY ON THEIR CLINICAL JUDGMENT WHEN MAKING DECISIONS REGARDING PATIENT CARE. AT ALL TIMES, IT IS THE RESPONSIBILITY OF COMPANY AND ITS END USERS TO ACCESS, REVIEW AND RESPOND TO ALL RESULTS FROM USE OF THE SERVICE, INCLUDING WITHOUT LIMITATION ANY ALERTS MADE AVAILABLE BY THE SERVICE (COLLECTIVELY, SERVICE RESULTS), IN A TIMELY AND CLINICALLY APPROPRIATE MANNER, AND LUMINARE WILL HAVE NO LIABILITY TO COMPANY, ANY END USER OR ANY THIRD PARTY FOR ANY FAILURE OF COMPANY, ANY END USER OR ANY OTHER CLINICIAN TO APPROPRIATELY RESPOND TO ANY SERVICE RESULTS.**

9. **BUSINESS ASSOCIATE AGREEMENT:** EXECUTION OF THIS CONTRACT WILL ALSO RESULT IN EXECUTION OF THE ATTACHED BUSINESS ASSOCIATE AGREEMENT AND THE TERMS INCLUDED THERE.
10. Any feedback provided by the Company regarding the Service (“**Feedback**”) is the proprietary and confidential information of Luminare, and the Company hereby assigns all right, title and interest in and to such Feedback, including all intellectual property rights therein, to Luminare. The Company agrees not to disclose or provide such Feedback to any third party.
11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas exclusively, excluding its conflicts of laws principles. Both the Uniform Computer Information Transactions Act and the United Nations Convention on Contracts for the International Sale of Goods (1980) are excluded in their entirety from application to this Agreement. The parties consent to the exclusive jurisdiction of and venue in the federal and/or state courts for Austin, Texas, for all claims arising out of or relating to this Agreement or the Company’s use of the Service. Notwithstanding any law, rule or regulation to the contrary, the Company agrees that any claim or cause of action it may have arising out of this Agreement or the Company’s use of the Service must be filed within one (1) year after such claim or cause of action arose or be forever barred.
12. This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. Any additional or different terms in any purchase order or other response by the Company shall be deemed objected to by Luminare without need of further notice of objection, and shall be of no effect or in any way binding upon Luminare.
13. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Once signed, any reproduction of this Agreement made by reliable means (e.g., photocopy, PDF) is considered an original. This Agreement may be changed only by a written document signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute this Agreement.

LUMINARE INC.

CLIENT: CITY OF ABILENE

By: _____
Name: Sarma N. Velamuri, M.D.
Title: Chief Executive Officer

By: _____
Name:
Title:

Attachments: BUSINESS ASSOCIATE AGREEMENT

EXHIBIT A
to Service Agreement
Service Use Requirements; Service Specifications

Part 1 – Current Data Input and similar Technical Requirements

Company shall provide or supply, as applicable, the following: Administrative oversight to ensure adequate overview of the use the Innoculate solution for the Company.

Part 2 - Security Matters Concerning Use of Service

Input Data will be supplied to Luminare either by Company or on Company's behalf. In addition, in order to access reports generated by the Service, Company will have access to certain Service web page(s). Company will be responsible for maintaining the security and confidentiality of all activity (i) to supply Input Data to the Service and (ii) to access reports generated for Company by the Service. Company will take reasonable steps, including no less than industry standard security measures, to prevent unauthorized use of the Service, and Company will immediately notify Luminare in writing of any unauthorized use of any of its users' login names or passwords of which such user, or other Company party, becomes aware. Luminare may suspend the Service (in whole or in part), including without limitation suspending access for certain previously authorized users, in the event of the potential or actual compromise or unauthorized use of the Service.

Part 3 – Compliance with Applicable Law

Each party agrees to comply with all applicable federal, state and local laws, orders, regulations and regulatory standards with respect to its respective obligations and performance under this Agreement and, in the case of Company, with respect to Company's use of the Service.

Part 4 – Error Reporting

Company will follow Luminare's reasonable procedures and instructions to report any errors and difficulties it encounters with regard to the Service so as to permit Luminare to recreate and evaluate same.

Part 5 – Additional Restrictions on Company's Use of Service

Company will not (a) use the Service or any documentation, know-how or other information received from Luminare or its representatives or licensors (the "**Evaluation Materials**") to create any similar application or service, (b) decompile, disassemble or otherwise reverse engineer any technology employed by the Service, or use any similar means to discover the source code or trade secrets embodied in the Service, or otherwise circumvent any technical measure that controls access to the Service or (c) permit any third party use the Service to do any of the foregoing. Except for the limited rights and licenses expressly granted in this Agreement, no other license is granted, no other use is permitted and Luminare and its licensors will retain all right, title and interest (including patents, copyrights, trade secrets and trademarks) in and to the Service, Evaluation Materials and any underlying intellectual property (acknowledging that none of the foregoing includes any Input Data). Company will not take any action inconsistent with such ownership.

EXHIBIT B
to Service Agreement
Fee Schedule and Product Services

Contract term: 12-Month term from Contract Date. Will be auto renewed for 6-month terms unless cancelled with 15 days' notice before the end of a term. Luminare will invoice Company on execution of the Agreement listed in the below table.

Proposal items	12 Month
Innoculate for Covid -19 Standard License	\$210,000
Early adopter Discount (press and reference)	\$123,900
Subtotal	<u>\$86,100</u>
One time systems set up fee	\$0
One time Integration and API set up (\$5,000)	\$3,600
Proposal Totals	\$89,700
 <i>Pre-paid text bundle (20,000)</i>	 \$300
<i>Optional Fees texting: \$0.015 cents per text</i>	

Notes:

Minimum Contract length is 12 month (making exception) must renew
Innoculate annual fee includes data retention for all vaccinated individuals
Additional discounts available for multiyear Contract
Pricing valid until January 30, 2021 (agreements and PO)

Special Fees

- Texting or email fees will be billed monthly in arrears for actual usage.
- Customization and/or special project work beyond reasonable scope may be charged at an hourly rate of \$200/hr, with estimates provided for approval prior to proceeding.

Billing Information:

Billing Contact Phone	
Billing Contact Email	
Billing Address	
PO Required (Y/N)?	
Tax Exempt (Y/N)?	_____ If exempt please provide your tax certificate

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “BAA”), is hereby entered into between City of Abilene (“Covered Entity”), with a place of business at 555 Walnut, Abilene, TX 79601 and Luminare Incorporated, a Delaware C-Corp (“Business Associate”) on the date of signature below.

WHEREAS, Covered Entity and Business Associate have executed the Agreement pursuant to which Business Associate provides services (the “Agreement Services”) for Covered Entity that may require Business Associate to access or create health information that is protected by state and/or federal law;

WHEREAS, Business Associate and Covered Entity desire that Business Associate obtain access to such information in accordance with the terms specified herein; and

NOW THEREFORE, in consideration of the mutual promises set forth in this BAA and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

1. Definitions. Unless otherwise specified in this BAA, all capitalized terms not otherwise defined shall have the meanings established in Title 45, Parts 160 and 164, of the United States Code of Federal Regulations, as amended from time to time, and/or in the American Recovery and Reinvestment Act of 2009 (“ARRA”). For purposes of clarification, the following terms shall have the definitions set forth below:

1.1 “Privacy Standards” shall mean the Standards for Privacy of Individually Identifiable Health Information as set forth in 45 C.F.R. Parts 160 and 164.

1.2 “Security Standards” shall mean the Security Standards for the Protection of Electronic Protected Health Information as set forth in 45 C.F.R. Parts 160 and 164.

2. Business Associate Obligations. Business Associate may receive from Covered Entity health information that is protected under applicable state and/or federal law, including without limitation, Protected Health Information (“PHI”). Business Associate agrees not to Use or Disclose (or permit the Use or Disclosure of) PHI in a manner that would violate the requirements of the Privacy Standards or the Security Standards if the PHI were used or disclosed by Covered Entity in the same manner. Business Associate shall use appropriate safeguards to prevent the Use or Disclosure of PHI other than as expressly permitted under this BAA.

3. Use of PHI. Business Associate may use PHI as necessary (i) for performing the Agreement Services, (ii) for the proper management and administration of the Business Associate, or (iii) for carrying out its legal responsibilities, provided in each case that such Uses are permitted under federal and state law. Covered Entity shall retain all rights in the PHI not granted herein.

4. Disclosure of PHI. Business Associate may Disclose PHI as necessary (i) to perform the Agreement Services, (ii) for the proper management and administration of the Business Associate, or (iii) to carry out its legal responsibilities, provided that either (a) the Disclosure is Required by Law or (b) the Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that the information will be held confidential and further Used and Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and such person agrees to immediately notify the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

(i) 5. Reports. Business Associate agrees to report to Covered Entity:

(ii) 5.1 Any Use or Disclosure of PHI not authorized by this BAA within five (5) days of the Business Associate becoming aware of such unauthorized Use or Disclosure;

(iii) 5.2 Any Security Incident within five (5) days of the Business Associate becoming aware of the Security Incident; and

(iv) 5.3 Each report of a Breach of Unsecured PHI Discovered by Business Associate, to the extent Business Associate accesses, maintains, retains, modifies, records, stores, destroys or otherwise holds, Uses or Discloses Unsecured PHI, unless delayed for law enforcement purposes, shall be made without delay and in

no case later than thirty (30) calendar days after Discovery of the Breach, and shall include the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired or Disclosed during such Breach. Notwithstanding anything herein to the contrary, the provisions of this Section 5.3 shall only be applicable to Breaches that are Discovered on or after the date that is thirty (30) days after the date of publication of interim final regulations promulgated by the Secretary that address notifications of Breaches of Unsecured PHI.

- (v) 5.4 Business Associate agrees to indemnify and hold harmless, Covered Entity, its Officers, directors, shareholders, agents, and employees against all liability claims, damages, suits, demands, expenses, and civil monetary penalties (including but not limited to, court costs and reasonable attorneys' fees) of every kind arising out of the negligent errors and omissions or willful misconduct of Business Associate, its agents, servants, employees and independent contractors (excluding Covered Entity) in the performance of or conduct relating to this Section 5.

6. Agents and Subcontractors. If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor (collectively, "Recipients"), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the Business Associate under this BAA.

7. Individual Rights to Access and Amendment.

7.1 *Access*. If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall permit an Individual to inspect or copy PHI contained in that set about the Individual in accordance with the Privacy Standards set forth in 45 C.F.R. § 164.524, as it may be amended from time to time, unless excepted or a basis for denial exists under 45 C.F.R. § 164.524, as determined by the Covered Entity. In the event a Business Associate uses or maintains an Electronic Health Record on behalf of Covered Entity, then, as of the date required by ARRA, an Individual's right of access under 45 C.F.R. § 164.524 shall include the right to obtain a copy of the PHI in an electronic format and, if the Individual chooses in a clear, conspicuous and specific manner, to direct the Business Associate to transmit such copy to any person designated by the Individual. Business Associate shall respond to any request from Covered Entity for access by an Individual within five (5) days of such request unless otherwise agreed to by Covered Entity. The information shall be provided in the form or format requested, if it is readily producible in such form or format, or in summary, if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost based fee may be charged for copying PHI or providing a summary of PHI in accordance with 45 C.F.R. § 164.524(c)(4), provided that any such fee relating to a copy or summary of PHI provided in an electronic form may not be greater than the labor costs incurred in response to the request for the copy or summary.

7.2 *Amendment*. Business Associate shall accommodate an Individual's right to amend PHI or a record about the Individual in a Designated Record Set in accordance with the Privacy Standards set forth at 45 C.F.R. § 164.526, as it may be amended from time to time, unless excepted or a basis for denial exists under 45 C.F.R. § 164.526, as determined by the Covered Entity. Covered Entity shall determine whether a denial to an amendment request is appropriate or an exception applies. Business Associate shall notify Covered Entity within five (5) days of receipt of any request for amendment by an Individual and shall make any amendment requested by Covered Entity within ten (10) days of such request. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set.

8. Accounting of Disclosures.

8.1 *General Accounting Provisions*. Business Associate shall make available to Covered Entity in response to a request from an Individual, information required for an accounting of Disclosures of PHI with respect to the Individual, in accordance with 45 C.F.R. § 164.528, as it may be amended from time to time, unless an exception to such Accounting exists under 45 C.F.R. § 164.528. Such Accounting is limited to Disclosures that were made in the six (6) years prior to the request and shall not include any Disclosures that were made prior to the compliance date of the Privacy Standards. Business Associate shall provide such information necessary to provide an accounting within thirty (30) days of Covered Entity's request.

8.2 *Special Provisions for Disclosures made through an Electronic Health Record*. As of the date required by ARRA, if Covered Entity uses or maintains an Electronic Health Record with respect to PHI and if Business Associate makes Disclosures of PHI for Treatment, Payment or Health Care Operations purposes through such Electronic Health Record, Business Associate will provide an accounting of Disclosures that Covered Entity has determined were for Covered Entity's Treatment, Payment and/or Health Care Operations purposes to Individuals who request an accounting directly from Business

Associate. Any accounting made pursuant to this Section 8.2 shall be limited to Disclosures made in the three (3) years prior to the Individual's request for the accounting. The content of the accounting shall be in accordance with 45 C.F.R. § 164.528, as it may be amended from time to time.

8.3 Fees for an Accounting. Any accounting provided under Section 8.1 or Section 8.2 must be provided without cost to the Individual or to Covered Entity if it is the first accounting requested by an Individual within any twelve (12) month period; however, a reasonable, cost based fee may be charged for subsequent accountings if Business Associate informs the Covered Entity and the Covered Entity informs the Individual in advance of the fee, and the Individual is afforded an opportunity to withdraw or modify the request.

9. Withdrawal of Consent or Authorization. If the use or disclosure of PHI in this BAA is based upon an Individual's specific consent or authorization for the use of his or her PHI, and (i) the Individual revokes such consent or authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the Use and Disclosure of any such Individual's PHI except to the extent it has relied on such Use or Disclosure, or where an exception under the Privacy Standards expressly applies.

10. Records and Audit. Business Associate shall make available to Covered Entity and to the Secretary or her agents, its internal practices, books, and records relating to the Use and Disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Privacy Standards and the Security Standards or any other health oversight agency, in a timely a manner designated by Covered Entity or the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests served upon Business Associate by or on behalf of any and all government authorities relating to PHI received from, or created or received by, Business Associate on behalf of Covered Entity.

11. Notice of Privacy Practices. Covered Entity shall provide to Business Associate its Notice of Privacy Practices ("Notice"), including any amendments to the Notice. Business Associate agrees that it will abide by any limitations set forth in the Notice, as it may be amended from time to time, of which it has knowledge. An amended Notice shall not affect permitted Uses and Disclosures on which Business Associate has relied prior to receipt of such Notice.

12. Security. Business Associate will (i) implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity; and (ii) ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect such information. Further, as of the date required by ARRA, Business Associate shall comply with the standards and implementation specifications set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 with respect to such Administrative, Physical and Technical Safeguards.

13. Term and Termination.

13.1 This BAA shall commence on the effective date of the Agreement and shall remain in effect until terminated in accordance with the terms of this Section 13, provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under this BAA prior to the effective date of termination, all of which shall continue in accordance with their terms.

13.2 Covered Entity shall have the right to terminate this BAA for any reason upon thirty (30) days written notice to Business Associate.

13.3 Covered Entity, at its sole discretion, may immediately terminate this BAA and shall have no further obligations to Business Associate hereunder if any of the following events shall have occurred and be continuing:

(i) Business Associate shall fail to observe or perform any material covenant or agreement contained in this BAA for ten (10) days after written notice thereof has been given to Business Associate by Covered Entity; or

(ii) A violation by Business Associate of any provision of the Privacy Standards, Security Standards, or other applicable federal or state privacy law.

13.4 Upon the termination of the Agreement, this BAA shall terminate simultaneously without additional notice.

13.5 Upon termination of this BAA for any reason, Business Associate agrees either to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise created through the performance of the Agreement Services for Covered Entity, that is in the possession or control of Business Associate or its agents. In the case of information for which it is not feasible to “return or destroy,” Business Associate shall continue to comply with the covenants in this BAA with respect to such PHI and shall comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment. Termination of this BAA shall be cause for Covered Entity to terminate the Agreement.

14. Compliance with Red Flag Policies. Covered Entity shall provide to Business Associate any policies and procedures adopted by the Covered Entity to detect, prevent and mitigate the risk of identity theft in accordance with the “Red Flag Rules” promulgated by the Federal Trade Commission, as well as any amendments to such policies and procedures. Business Associate agrees that it will abide by such policies and procedures, and any amendments to such policies and procedures of which it is aware, in rendering the Agreement Services to Covered Entity.

15. Miscellaneous.

15.1 *Notice.* All notices, requests, demands and other communications required or permitted to be given or made under this BAA shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below.

Business Associate: **Luminare Incorporated**
2450 Holcombe Blvd, Suite X Houston, Tx 77025
Attention:
Sarma Velamuri

Covered Entity: **City of Abilene**
555 Walnut, Abilene, TX 79601
Attention:

15.2 *Waiver.* No provision of this BAA or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

15.3 *Assignment.* Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this BAA without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

15.4 *Compliance with ARRA; Agreement to Amend BAA.* The parties agree that it is their intention (i) to comply with the privacy and security provisions contained in Title XIII of ARRA and (ii) to incorporate those provisions into this BAA to the extent required by ARRA. The parties further agree to amend this BAA to the extent necessary to comply with state and federal laws, including without limitation, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and ARRA, and any regulations promulgated or other guidance issued pursuant to HIPAA and ARRA.

15.5 *Entire Agreement.* This BAA constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this BAA, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this BAA and the terms of the Agreement or any such later agreement(s), the terms of this BAA shall control unless the terms of such Agreement or later agreement comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this BAA shall be binding on either party. This BAA is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third party beneficiary under this BAA, nor shall any third party have any rights as a result of this BAA.

15.6 *Governing Law.* This BAA shall be governed by and interpreted in accordance with the laws of the State of Texas.

15.7 *Counterparts.* This BAA may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this BAA, it shall not be

necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this BAA is sought.

AGREED AND ACKNOWLEDGED:

BUSINESS ASSOCIATE:

Luminare Incorporated

By: _____

Name: Sarma Velamuri

Title: CEO

COVERED ENTITY:

City of Abilene

By: _____

Name: _____

Title: _____

Resolution: INNOCULATE- Vaccination Management



Abilene-Taylor County Public District (ATCPHD) is a designated Vaccination Hub to provide the COVID-19 vaccine for our region. The Department of State Health Services Immunization Unit has awarded ATCPHD “one-time” additional funds in the amount of \$64,955 to be used for allowable pandemic vaccination activities. One of the allowable activities is vaccine administration documentation and reporting.

We are seeking to purchase and implement an electronic tool to automate scheduling, vaccine paperwork, and reporting to ImmTrac2. This tool will allow to automate the registration process and not have to add additional personnel to maintain the staffing model for our Vaccine Hub.



INNOCULATE by Luminare

- Designed for public health systems as an end-to-end solution
- Eliminate all manual processes and recordkeeping surrounding the vaccination process
- Automate prequalification process and obtain consent forms
- Maximize throughput with Integrated scheduling system
- Send automated reminders for vaccination and follow-up doses
- Analyze vaccine efficacy data cross-referencing population that has received vaccine to positive tests
- Integrate with state or national vaccine tracking database
- 12 month service agreement
- Sole Source vendor



Fee Schedule and Product Services

Innoculate for COVID-19 Standard License	\$210,000
Early adopter Discount (press & reference)	(\$123,900)
Subtotal	\$86,100
<u>One time Integration and API set up (5,000)</u>	<u>\$3,600</u>
Proposal Totals	\$89,700

Pre-paid text bundle (20,000) \$300

Optional fees texting: 1.5 cents per text

Texting or email fees will be billed monthly in arrears for actual usage



QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 1/28/2021

TO: Robert Hanna, City Manager

FROM: Mike Warrix, Director

SUBJECT: **10. Ordinance (First Reading) Z-2021-01:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Lane Miller to rezone property from a Planned Development (PD) District primarily limited to residences, to a Neighborhood Office (NO) District and located at 3702 Antilley Road, approximately 0.2 mile east from Buffalo Gap Road (Mike Warrix)

GENERAL INFORMATION

The applicant is requesting to rezone from Planned Development District 4 (PD 4) to Neighborhood Office (NO).

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval of this request by a vote of 5 - 1.

ATTACHMENTS:

1. Z-2021-01 draft ordinance
2. Z-2021-01 Council Staff Report
3. Z-2021-01 Council presentation

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING THE, "LAND DEVELOPMENT CODE" OF THE ABILENE CITY CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That Chapter 2 (Zoning Regulations) of the Land Development Code of the City of Abilene, is hereby amended by changing the zoning district boundaries as set out in Exhibit A, attached hereto and made a part of this ordinance for all purposes.

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 3: That the Planning Director be, and is hereby authorized and directed to change the official Zoning Map of the City of Abilene to correctly reflect the amendments thereto.

PASSED ON FIRST READING the 28th day of January, 2021.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 19th day of December, 2020, the same being more than fifteen (15) days prior to a public hearing held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m. on the 11th day of February, 2021, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FINAL READING THIS 11th day of February, 2021.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

EXHIBIT A

Rezone one tract of land from Planned Development District (PDD 4) to a Neighborhood Office (NO) District.

Legal description being Lot 1, Block A of Antilley Road Addition



Located at 3702 Antilley Road

-END-

ZONING CASE Z-2021-01

STAFF REPORT



REQUEST: Rezone a .52 acre parcel from Planned Development District 4 (PD 4) to Neighborhood Office (NO).

APPLICANT:

Owner: Lane Miller

HEARING DATES:

P & Z Commission: January 5, 2021

City Council 1st Reading: January 28, 2021

City Council 2nd Reading: February 11, 2021

LOCATION:

- 3702 Antilley Road
- Legal description: Lot 1, Block A of Antilley Road Addition

BACKGROUND:

The single family residence which currently exists on the subject property was built in 1957, prior to being annexed in 1963. Sometime between 1963 and 1974 the property was rezoned to Single Family Residential (RS-8). In 2016, Ordinance #20-2016 expanded the boundary of Planned Development District 4 (PD 4) to embrace the subject property. This expansion of PD 4 allowed for the subject property to be developed as patio homes. PD 4 was originally approved in 1978 to embrace what is “The Fairways” subdivision. PD 4 permits a mixture of residential uses to include Single Family (RS-8), Townhomes, Patio Homes and Duplexes. In addition to these residential uses, PD 4 allows a golf course, community pool, tennis courts as well as office uses along Antilley Road within Blocks M and E of the subdivision.

APPLICATION REVIEW:

According to Section 1.4.1.4, Criteria for Approval, of the City of Abilene Land Development Code, in making a determination regarding a requested zoning change, the Planning and Zoning Commission and the City Council may consider the following factors:

- (1) Whether the proposed zoning map amendment implements the policies of the adopted Comprehensive Plan, including the land use classification of the property on the Future Land Use and Development Plan map, as amended;**

The Future Land Use and Development Plan Map of the Comprehensive Plan designates this subject property as low density residential. However, land use immediately west of the subject property at the intersection of Buffalo Gap Road and Antilley Road is designated for future commercial use. Rezoning to neighborhood office will serve to promote the Comprehensive Plan’s objective of promoting a mixture of land uses, creating an appropriate blend of residential, retail, and employment activities.

- (2) Whether the uses permitted by the proposed change in zoning district classification and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified.**

The proposed land use is generally appropriate with the surrounding properties which are primarily residential. Neighborhood Office (NO) Districts are intended to be flexible zoning districts for low intensity office and professional uses in proximity to residential land uses. The district serves as an

appropriate transitional “buffer” zoning from the more intense commercial zoning districts located at the intersection of Buffalo Gap Road and Antilley Road to the lower intensity residential uses east of the subject property.

	Zoning	Existing Land Use
North	PD 4	Vacant Lot
South	MF	Single Family Residences
East	RS-8	Single Family Residence
West	PD 4	Single Family Residence

(3) Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other public services and utilities to the area.

The subject property is currently served with existing utilities and a variety of public amenities that which are adequate.

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

It is the opinion of the staff that there are no other factors present that substantially affect the public health, safety, morals, or general welfare of the City of Abilene.

STAFF COMMENTS:

It is the opinion of staff that rezoning the subject property to Neighborhood Office (NO) is appropriate. The applicant has not expressed interest in demolishing the existing residence, but rather use it for office purposes. The subject property is located along Antilley Road, which is considered a major arterial in the thoroughfare plan and is appropriate for commercial uses due to the high volume of traffic that they accommodate.

STAFF RECOMMENDATION:

City staff recommends approval of the request. The rezoning request was reviewed pursuant to Section 1.4.1.4 (Criteria for Approval) of the Land Development Code.

PLANNING AND ZONING COMMISSION RECOMMENDATION:

The Planning and Zoning Commission recommended approval of this request by a vote of six (5) to one (1) on January 5, 2021.

NOTIFICATION:

The Planning Services Division sent, with a certificate of mailing, public notices to the applicant and property owners within a 200-foot radius.

Owner	Situs	Response
ABILENE ACU 20 LLC	11 HARBOUR TOWN	Opposed
ADAMS ALVIN JOE & LECIA R	6301 DOMINION CT	
AX PROPERTIES		
AX PROPERTIES		
BROWN BROOK BENNETT	3666 ANTILLEY RD	Opposed
DOMINY ANNE R	30 HARBOUR TOWN	
FELTY LARRY WAYNE	6302 DOMINION CT	Opposed
HEB GROCERY COMPANY LP	6401 BUFFALO GAP RD	
KING RODNEY	15 HARBOUR TOWN	
LEMEN HARRISON B	19 HARBOUR TOWN	
LINCH LUTHER WILKINS &	22 HARBOUR TOWN	Opposed
MC LEAN MIKE & MICHELLE	7 HARBOUR TOWN	
SANCHEZ DAMIAN F	6310 DOMINION CT	
SANSOM CONSUELO	9 HARBOUR TOWN	
SORRELLS JUDY LYNN	3702 ANTILLEY RD	
TILMAN DOUGLAS S & JULIE ANN	26 HARBOUR TOWN	In Favor
URETA BRITTANY NICOLE &	17 HARBOUR TOWN	
WEDDLE SCOTT & KIMBERLY	24 HARBOUR TOWN	
WEEKS SHERRY D	28 HARBOUR TOWN	
WYLIE IND SCHOOL DIST	6251 BUFFALO GAP RD	
WYLIE IND SCHOOL DIST	6249 BUFFALO GAP RD	

ATTACHMENTS:

- Application
- PowerPoint





Development Application

Planning

☐ Conditional Use

☐ Easement Release

☒ Rezoning

☐ Other

☐ PDD

☐ Street Name Change

☐ Thoroughfare Abandonment

☐ PDD Amendment

Other: _____

Project Name: _____

Address: 3702 Antilley Road No. of lots: 1 Acreage: .5268

Legal Description: Antilley Rd Addn, Block A, Lot 1, Acres .5628

Subdivision Name: _____ Block: _____ Lot: _____

Current Zoning: P.D.D. Proposed Zoning (if applicable): N.O.

OWNER AND AUTHORIZATION

Owner Name: Lane Miller

Address: 3702 Antilley Road 2150 Robin Road

City, State, Zip: Abilene TX 79605 Fax: _____

Phone: 325-669-8409 Email: Lmm04b@acu.edu

I am the property owner, and I certify that the information included in this application is true to the best of my knowledge. (Name) _____ will act as my agent before the Planning and Zoning Commission.

Agent Name: _____

Address: _____

City, State, Zip: _____ Fax: _____

Phone: _____ Email: _____

I hereby certify that I am the owner of the property and further certify that the information provided on this development application is true and correct. I hereby designate the aforementioned agent to act on my behalf for submittal, processing, representation, and/or presentation of this development application. The designated agent shall be the principal contact person for responding to all requests for information and for resolving all issues of concern relative to this application.

Signature Owner: Lane Miller Date: 12-7-20

FOR OFFICE USE ONLY

Received: 12/07/2020 Fee: \$ 1500.00 Receipt No.: 0001056958

Case No.: 2021-01 Reviewed By: NW



Development Application

Please answer the following question in order to assist Staff with the processing of your Zoning request.

1. Please (if necessary) provide background information for the zoning request and explain why you feel it is appropriate.

I would like to rezone 3702 Antilley to a Neighborhood Office. I will run my Edward Jones Financial Advising office. M-F 9-5 and will do so in a respectful, neighborhood friendly way. Traffic will be light. Besides me and 1 employee there would not be more than two other vehicles on site at any given time. Please Consider
- Jane Miller



Development Application

RECOMMENDATIONS

The Planning & Zoning Commission (P&Z) and the City Council look to the Planning & Development Services staff to make a recommendation for the approval or disapproval of this application. We will make every effort to notify you (FAX or E-mail) of our recommendation at least one (1) week in advance of the scheduled meeting of the P&Z Commission. In the case of a rezoning, and when the public interest requires it, we may recommend a rezoning to a Planned Development District (PDD) or a classification other than the classification requested. We will notify you of our decision to propose a PDD as soon as possible after the application is filed to give you time to prepare a site plan.

PUBLIC NOTIFICATION

The public is entitled to examine this application and participate in the decision-making process. In most cases, we are required to notify all property owners within two hundred feet (200') of the boundaries of your property. To ensure the fullest possible consideration, we may also notify neighborhood groups, organizations or individuals that have a special interest in a particular issue. Except for matters that the Planning & Development Services staff have expressly agreed not to disclose (and provided the law allows us to hold the matter in confidence), then all information that we deem relevant to the review and processing of this application may become public knowledge.

PLEASE READ BEFORE SIGNING

The undersigned has read the above application and hereby certifies that the information contained therein is complete, true and correct; and does hereby request that said application be submitted to the Planning & Zoning Commission at the earliest available meeting.

I understand and acknowledge that it is my responsibility to furnish an accurate and precise legal description of the property, and only the property, that is subject of this application, and that failure to furnish such information prior to the application deadline date will delay the processing of this application. I also understand that the City must notify affected property owners of this application. In the event that I fail to submit in a timely manner any information that the City deems necessary to transmit this application to the Planning & Zoning Commission or City Council, then in lieu of dismissal I hereby request that this application be temporarily withdrawn from further consideration until such information is submitted, and I agree to pay a resubmission fee of \$120 to reimburse the City for the expense of re-notifying affected property owners. I have been informed of the tentative date and time that the Planning & Zoning Commission and City Council will hear this application, and I understand that hearings may be continued from time to time at the discretion of the Commission or Council to allow for full consideration or when the public interest requires a continuation.

SIGNED: _____

Kare Miller

DATE: _____

12-7-20



Development Application

Planning

☐ Conditional Use

☐ Easement Release

☒ Rezoning

☐ Other

☐ PDD

☐ Street Name Change

☐ Thoroughfare Abandonment

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SIGNED: _____

Kare Miller

DATE: _____

12-7-20

CASE #: Z-2021-01

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also email your position to the email address listed below. All correspondence must include your name and address.

Name: TILMAN DOUGLAS S & JULIE ANN
Address: 26 HARBOUR TOWN

Mailing To: Planning and Development Services
P.O. Box 60, Abilene TX 79604-0060

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: _____

Doug S. Tilman

555 WALNUT STREET • P.O. BOX 60 • ABILENE, TEXAS 79604-0060

DEC 28 AM 11:36

We work together to build and maintain a community of the highest quality for present and future generations.

CASE #: Z-2021-01

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also email your position to the email address listed below. All correspondence must include your name and address.

Name: ABILENE ACU 20 LLC
Address: 11 HARBOUR TOWN

Mailing To: Planning and Development Services
P.O. Box 60, Abilene TX 79604-0060

Email: planning@abilenetx.gov

I am in favor ☐
Additional Comments:

I am opposed ☒

Signature:



DEC 28 AM 11:36

555 WALNUT STREET • P.O. BOX 60 • ABILENE, TEXAS 79604-0060

We work together to build and maintain a community of the highest quality for present and future generations.



Sawyers, Cheryl <cheryl.sawyers@abilenetx.gov>

[Planning] Rezoning Application Number Z-2021-011 message

Luther Linch <lutherlinch@gmail.com>
To: planning@abilenetx.gov

Tue, Jan 5, 2021 at 12:12 PM

We are Doris Judd Linch and Luther Wilkins (Pete) Linch. We are 81 and 82 years old, respectively.

We are opposed to the request for rezoning.

We live at 22 Harbour Town Street, at the corner of Antilley Road. Our home is directly across Harbour Town Street from the property that is the subject of the rezoning request.

We are concerned about the added automobile and possible foot traffic that the proposed business concern will bring. Twice each school day, automobile traffic from the entrance to the school backs up out of the school driveway and onto Antilley Road. Very many of the school's young students are transported to and from school by their families by automobile. Additionally, the school busses use the same driveway for the remainder of the children. The school works very responsibly in dealing with the Antilley Road traffic while the great mass of school traffic is leaving all at one time in the afternoon. But take note that most of that traffic comes by the property in question at the end of the school day.

We are especially concerned should there be an automotive entrance/exit built onto Harbour Town Street. To us, this seems to be almost a certainty. That would change their entry from busy Antilley Road to tranquil Harbour Town Street. The automotive traffic would then all travel by our front door.

The concern about foot traffic is obvious. We would not want people from outside the neighborhood wandering about in the neighborhood.

We are concerned, too, about what the future might bring. The described property might be the beginning of expansion at the property, either in added construction or additional businesses in the described structure. Added volume of business on the property would exacerbate all of the problems that the rezoning would bring.

Thank you for considering our concerns in this matter.

Respectfully,
Doris and Pete Linch

--

You received this message because you are subscribed to the Google Groups "Planning Services" group.
To unsubscribe from this group and stop receiving emails from it, send an email to planning+unsubscribe@abilenetx.gov.
To view this discussion on the web visit <https://groups.google.com/a/abilenetx.gov/d/msgid/planning/1244F2E4-6DE0-42C2-BE2-797F3219A2A2%40gmail.com>.

CASE #: Z-2021-01

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also email your position to the email address listed below. All correspondence must include your name and address.

Name: FELTY LARRY WAYNE
Address: 6302 DOMINION CT

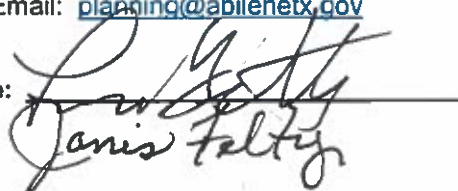
Mailing To: Planning and Development Services
P.O. Box 60, Abilene TX 79604-0060

Email: planning@abilenetx.gov

I am in favor ☐
Additional Comments:

I am opposed ☒

Signature:

A handwritten signature in black ink, appearing to read "Janis Felty", is written over a horizontal line. The signature is cursive and stylized.

555 WALNUT STREET • P.O. BOX 60 • ABILENE, TEXAS 79604-0060

We work together to build and maintain a community of the highest quality for present and future generations.

CASE #: Z-2021-01

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also email your position to the email address listed below. All correspondence must include your name and address.

Name: BROWN BROOK BENNETT
Address: 3666 ANTILLEY RD

Mailing To: Planning and Development Services
P.O. Box 60, Abilene TX 79604-0060

Email: planning@abilenetx.gov

I am in favor ☐
Additional Comments:

I am opposed ☒

Signature:

Brook Brown
Brook Bennett Brown

DEC 28 AM 11:37

555 WALNUT STREET • P.O. BOX 60 • ABILENE, TEXAS 79604-0060

We work together to build and maintain a community of the highest quality for present and future generations.

December 31, 2020

Dear Planning and Zoning Commission and City Staff,

I am writing to you in connection with the zoning application, Z-2021-01, scheduled for hearing on Jan. 5, 2021, at 1:30 pm, at the Abilene City Council chambers, in which the applicant seeks to change the zoning on the property at 3702 Antilley Road from single family residential to Neighborhood Office.

My brother and I own, and my brother lives at, the property next door at 3666 Antilley Road, and oppose the zoning request. I write this letter on behalf of both of us.

The property at 3702 Antilley Road that is the subject of the zoning request is a single family home within a "PD" or Planned District currently consisting solely of single family residences. This property has been a single family residence since the time it was built (1957), is surrounded on all sides by single family residential properties, and is part of the Fairway Oaks planned development.

Under the Land Development Code, all land within the City of Abilene, Texas, is to be used "in conformance with the zoning regulations prescribed for the zoning district in which such land or building is located..." §2.2.3.1(a). The residential zoning of this property would permit an occupant to use it for a "home office"; however, the applicant here seeks to change the zoning map to allow the property to be used as a "Neighborhood Office". The new zoning sought would allow an office building of up to 11,000 square feet and two stories (subject to setback and parking) to be erected on this lot, with operating hours from 6am to 11pm, per information provided to me by Jared Smith, of the planning and zoning department.

The uses that would be permissible under the new zoning are not limited to "office" use, and are outlined in the attached pages from the zoning code. See the attached Zoning matrix of Permitted Uses that list the permitted uses for a "Neighborhood Office". Permitted uses include: bed and breakfast; ATMs, Kiosks, and similar facilities; Day Care Operations; mobile home sales and service office; recreational building; civic, social or fraternal organization. With conditions, permitted uses also include fast food restaurant; standard restaurant; automobile parking; and public utility facility. Even though the applicant states that he will operate his office at this site occupied by himself and one other employee, if zoned "Neighborhood Office", any of these uses would be permissible. Once zoned for Neighborhood Office use, those statements are not binding on his use of the property or any future owner. What controls is the uses permitted under the City's zoning ordinance.

We oppose this zoning change application for the following reasons:

1. The proposed zoning change at issue here - to change a single lot wholly within single family residential zoning, from single family residential zoning to "Neighborhood Office" - amounts to illegal "spot zoning":

In the ruling case on comprehensive zoning and spot zoning, our Texas Supreme Court states:

"A comprehensive zoning ordinance is law that binds the municipal legislative body itself. ... The legislative body does not, on each rezoning hearing, redetermine as an original matter, the city's policy of comprehensive zoning. The law demands that the approved zoning plan should be respected and not

altered for the special benefit of the landowner when the change will cause substantial detriment to the surrounding lands or serves no substantial public purpose. ... The duty to obey the existing law forbids municipal actions that disregard not only the pre-established zoning ordinance, but also long-range master plans and maps that have been adopted by ordinance." ...

"The term, "spot zoning," is used in Texas and most states to connote an unacceptable amendatory ordinance that singles out a small tract for treatment that differs from that accorded similar surrounding land without proof of changes in conditions. Spot zoning is regarded as a preferential treatment which defeats a pre-established comprehensive plan. ... It is piecemeal zoning, the antithesis of planned zoning. ... Amendatory ordinances which have rezoned a single city lot when there have been no intervening changes or other saving characteristic, have almost always been voided in Texas."

City of Pharr v. Tippitt, 616 S.W.2d 173, 176, 177 (Tex. 1981)

The applicant has made no attempt to show any change in conditions to support a finding that the lot in question has changed from residential in nature to office. The home's most recent use was as a residence. That has been the use made of this lot since 1957, when it was built. There have been no changes in the lots that surround this property. All adjacent lots are and remain residential in use. One lot that is catty corner across Antilley Road is designated as "GC/COR", but that use has been so designated for some period of time, and is not a recent zoning change.

The City of Abilene has adopted a comprehensive zoning ordinance, reflected in an official zoning map. The city's zoning districts, shown on the City's zoning map, define the uses for each tract of land within each district. Residential district zones are limited to residential uses. Use of a "neighborhood office" is not permitted within the residential districts.

The City's zoning map defines the boundaries of each zoning district as adopted by the City and, more importantly, incorporates the Council's determination that each tract within a particular zone is "deemed best suited" to that district.^[1] By law, each zoning district reflects the City Council's *"reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings and encouraging the most appropriate use of land in the municipality,"* as required by Local Government Code, Section 211.005(b).

Consequently, according to the City's zoning ordinance and maps, the current residential use of 3702 Antilley Road is City Council's determined most appropriate use, to the exclusion of all other uses. To change this determination, the applicant must show that changed conditions create the need for the proposed change in zoning. No such presentation has been made here. To proceed to change the zoning for this one lot, based on a change in ownership, and not because of a change in conditions affecting the residential use of the lot, is illegal "spot zoning".

2. The lot in question remains suitable for residential use and nothing in the application demonstrates that this lot is no longer suitable for such use, or that the lot has become suitable for "Neighborhood Office" use.

^[1] V.T.C.A., Local Government Code Ch. 211.

Under the Land Development Code, §2.3.2.1 (a), each zoning district is established for a specific purpose: "Each zoning district herein established is provided a specific purpose, in accordance with the Comprehensive Plan, as amended, for the location of various activities throughout the City." Specifically, for RS-8, those purposes are:

- "(1) Protect the residential character of the included areas by excluding most commercial and other incompatible activities, as appropriate.
- (2) Encourage a suitable environment for family life by permitting certain appropriate institutions and facilities to be located in residential neighborhoods.
- (3) Preserve open space and avoid overcrowding by requiring certain minimum yards, open spaces, and lot areas.
- (4) Provide an option for mid-sized lots to serve a range of individual requirements represented by the citizenry of Abilene."

The application does not present facts to demonstrate that the lot is no longer suitable for the above residential uses, nor that the lot, or surrounding lots, have changed so as to support the proposed change in use to "Neighborhood Office".

3. The proposed zoning change places a one lot "Neighborhood Office" within what is zoned today solely for single family use and is not compatible with the existing zoning.

Because this application seeks a change in the designated use, to convert a single family residential lot into a "Neighborhood Office" lot, the zoning code specifies the four factors below to be considered. None of these factors are addressed in the application. Moreover, as addressed in each response below, consideration of these factors precludes a determination that the change of use is warranted:

- (1) Whether the proposed zoning map amendment implements the policies of the adopted Comprehensive Plan, including the land use classification of the property on the Future Land Use and Development Plan map, as amended;

Response: The application is at odds with the existing zoning and the City's Comprehensive Plan, both of which designate this lot as single family residential in nature. The application does not explain how the proposed use is consistent with the family life purposes enumerated in the code for single family districts, as presented in Paragraph 2 above. Nothing establishes that the office zoning sought will protect the residential character of the area or promote and sustain a suitable environment for family life. Neighbors count on neighbors for support, congeniality, carpooling, and similar activities of daily life. Neighbors watch out for each other's children and pets, share a cup of sugar, and neighbors develop that kind of knowledge of each other that allows neighbors to assist each other in times of emergency or adversity. Neighbors' children develop deep bonds with each other and share school experiences. Neighbors know who to call when the dog is out, a child skins a knee, a neighbor has a health emergency, share the joy of a new baby or grandchild, and pick up the paper when a neighbor is on vacation. Its hard to see these forms of relationships being established with office building occupants, and thereby this use diminishes the family life that is promoted by single family zoning.

(2) Whether the uses permitted by the proposed change in zoning district classification and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified;

Response: As addressed below in the paragraph following (4) in more detail, the immediate area, on all sides of the proposed zoning is single family residential. Nothing in the application establishes why an added office use, with a building of 11,000 square feet, and two stories, and open to the public from 6 am to 11 pm, is conducive to the residential community life of this neighborhood.

(3) Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other public services and utilities to the area; and

Response: The application does not address how the proposed use would impact the existing or proposed streets, other public infrastructure or public utilities, which are likely scaled to single family use. I have seen no report as to the impact of this proposed change on water supply, sewers or other public utility services. As to traffic, as residents who live in the area know, there are safety issues with the existing level and speed of traffic along Antilley Road. Due to the level and speed of existing traffic, it is dangerous and hard to turn left onto Antilley Road, from Champions or Harbour Town or driveways of residences in this area. There is limited visibility to see opposing traffic along Antilley road, either eastward or westward, in the portion of Antilley Road from Champions Drive to Laurel Court, making use of the center turning lane very dangerous due to the hill which peaks in the middle of 3600 block of Antilley Road. The addition of an office in this area, whose driveway access is into Antilley Road, will increase traffic, increase left turns into and out of the property, and thereby increasing traffic safety concerns. Or, if a curb cut is permitted on Harbour Town, then that residential street becomes burdened by more traffic and is less safe, particularly for children, walkers, and pets, living along Harbour Town.

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

Response: This community is located within the Wylie School District, a very good public school district, is adjacent to the Wylie West Child Development Center. Many residents in this area are families with school age children who choose it because of the quality of schools, and not for accessibility to offices open from 6am to 11pm, with the attendant traffic. Along Harbour Town are relatively affordable town homes, many chosen due to the Wylie School District. In contrast, the east end of Antilley Road, near US 83/84 has more than adequate space for professional offices or "Neighborhood Office" uses, and there are several lots zoned for office use currently available for sale should the applicant desire office space proximate to the area. There is no need in the 3600 block of Antilley Road to encroach on single family properties by inserting an office lot in an otherwise residential area.

4. The proposed lot is within a residential zone, not at its border, and should not be viewed as "transitional" given the residential uses between it and the outside border of the residential zone.

Based on conversations by telephone with city staff, it is my understanding that staff views this property as adjacent to non-residential uses and therefore appropriate for "Neighborhood Office" zoning as a transitional property edged by non-residential uses. That characterization of the location of this tract is subject to question. The only nearby non-residential property is a tract across Antilley Road and catty-corner to the southwest corner of 3702 Antilley, which is zoned as GC/COR but is currently vacant (and has been vacant for a number of years.) The properties adjacent to this tract along the north side of Antilley and the tracts directly across Antilley Road on the south of this tract are all zoned for residential use. The tracts adjacent to these tracts are also zoned for residential use. All of these tracts are part of a larger residential community surrounding the Fairway Oaks golf course on the north, and on the south are large cul-de-sac residential communities. On the west, beyond these tracts, the nearby churches and schools, being attended by members of the nearby residential community promote the sense of community as neighbors share their school and church life as well as their neighborhood with one another. See attached exhibits A and B, which are from the zoning map and a satellite view showing the surrounding residential community of which this tract is a part.

Lastly and most importantly, if it is the view of the City that a "Neighborhood Office" is compatible with residential use for any subdivision or residential catty-corner to a non-residential use, then the protections that the zoning code provides to residential uses is significantly impaired. If this tract is rezoned, then the sphere in which a non-residential use in a residential community becomes accepted has now grown to the properties adjacent to or catty-corner to this new non-residential lot, and that process proceeds on and on, with the effect of destroying established neighborhoods.

In closing, I grew up in this community, in the home that is 3702 Antilley Road, next door to my grandparents, Henry and Myrtle Antilley for whom Antilley Road is named. This "spectacular" (as described in the recent MLS listing for this property) contemporary home was designed and built by my mother, a Abilene artist and long-time art teacher at Abilene High School, member of the Creative Arts Club, the Center for Contemporary Arts, and docent at The Grace Museum. (My mother, being widowed in 1957, decided to build this home in Abilene, next door to my grandparents, as my brother and I were 5 and 7 at the time and she would need to work to support us.) My grandparents donated substantial land to Wylie ISD and to Wylie Baptist Church, and made affordable home sites available to a number of widows with children for their homes along Buffalo Gap Road. My mother and grandparents were all about creating community, through neighborhood, church and school. I file this protest not out of nostalgia for a former way of life, but in honor of the community my grandparents and mother helped to establish and with the hope that it will be sustained. In addition, I was taught to do unto others as I would have them do unto me - I would not want a two-story, 11,000 office building next to my home. If you feel the same, I ask that you vote "no" on this request. I also grew up in 4-H, whose code includes the obligation to dedicate one's head, heart, hands, and health to "better living for my club, my community, my country and my world." This zoning change does not promote better living within this community, and for that reason, I ask that you vote "no" on this request.

I am happy to answer any questions you might have of me regarding this matter. My telephone number is 512-327-0954 and my email is brook.brown03@gmail.com.

Respectfully yours,



Brook Bennett Brown

307 Nixon Drive

Rollingwood, Texas 78746

PS - I preparing this letter, I found an Abilene Reporter news article, reporting on my grandmother's appearance before the Abilene Planning and Zoning Commission, in 1977, at age 74, regarding the naming of Antilley Drive. I thought you might enjoy this bit of history.

TAYLOR COUNTY
ETJ 5Mile 2001
ETJ 1Mile 1988



All Rights Reserved

Google Maps Antilley Rd



Imagery ©2020 Google, Imagery ©2020 CNES / Airbus, Maxar Technologies, USDA Farm Service Agency, Map data ©2020

500 ft

Marks boundary of residential area - "x" is 3702 Antilley.

HONORS FAMILY

Old Wylie Road Is 'Antilley Drive'

A 74-year-old Abilene woman, whose parents and in-laws were area pioneers, Monday afternoon persuaded the Planning and Zoning Commission to name an Abilene street after her husband's side of the family.

Mrs. H. L. Antilley (pronounced Ant-lee), who lives in the Wylie community in the south section of Abilene, appeared before the P&Z group on a discussion of naming a road in that area. The road runs east and west just south of the Wylie School. Action of the P&Z is subject to final approval of the City Council.

'Wylie Drive' Suggested

A suggestion by city personnel had been made to name the road Wylie Drive because it is commonly known as Wylie Road at this time.

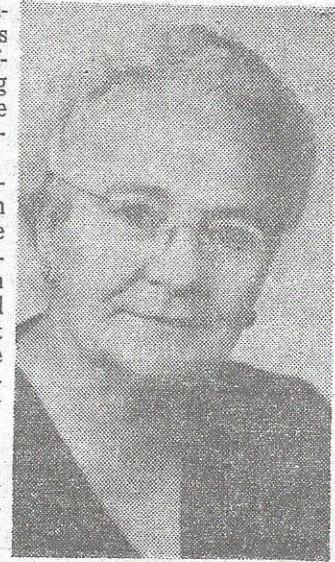
Mrs. Antilley rose and asked the P&Z to call it something other than Wylie Drive, suggesting Buffalo Trail, Country Road or Antilley.

She said that Wylie, which now is inside the Abilene City Limits, is not a city, but a "community" and that there has been constant confusion with a Texas city known as Wylie, which is located about 10 miles northeast of Dallas.

'Confusion' Probable

Mrs. Antilley said calling the road Wylie would only be "adding to the confusion" and the P&Z group agreed.

However, they appeared stumped for a time and asked Mrs. Antilley to suggest some name. She listed the names she had previously mentioned, indicating that she would not be averse to having the street



MRS. H. L. ANTILLEY

... suggestion approved

named Antilley since "they have more of the land in that area than anybody else and the Antilleys have been here a long time."

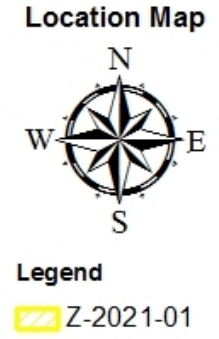
Arrived in 1903

After the P&Z approved calling the road Antilley Drive, Mrs. Antilley said her husband's father had settled in that area after coming from Midland in 1903. Her own father, George Crabtree, came to this area about two years later, she said.

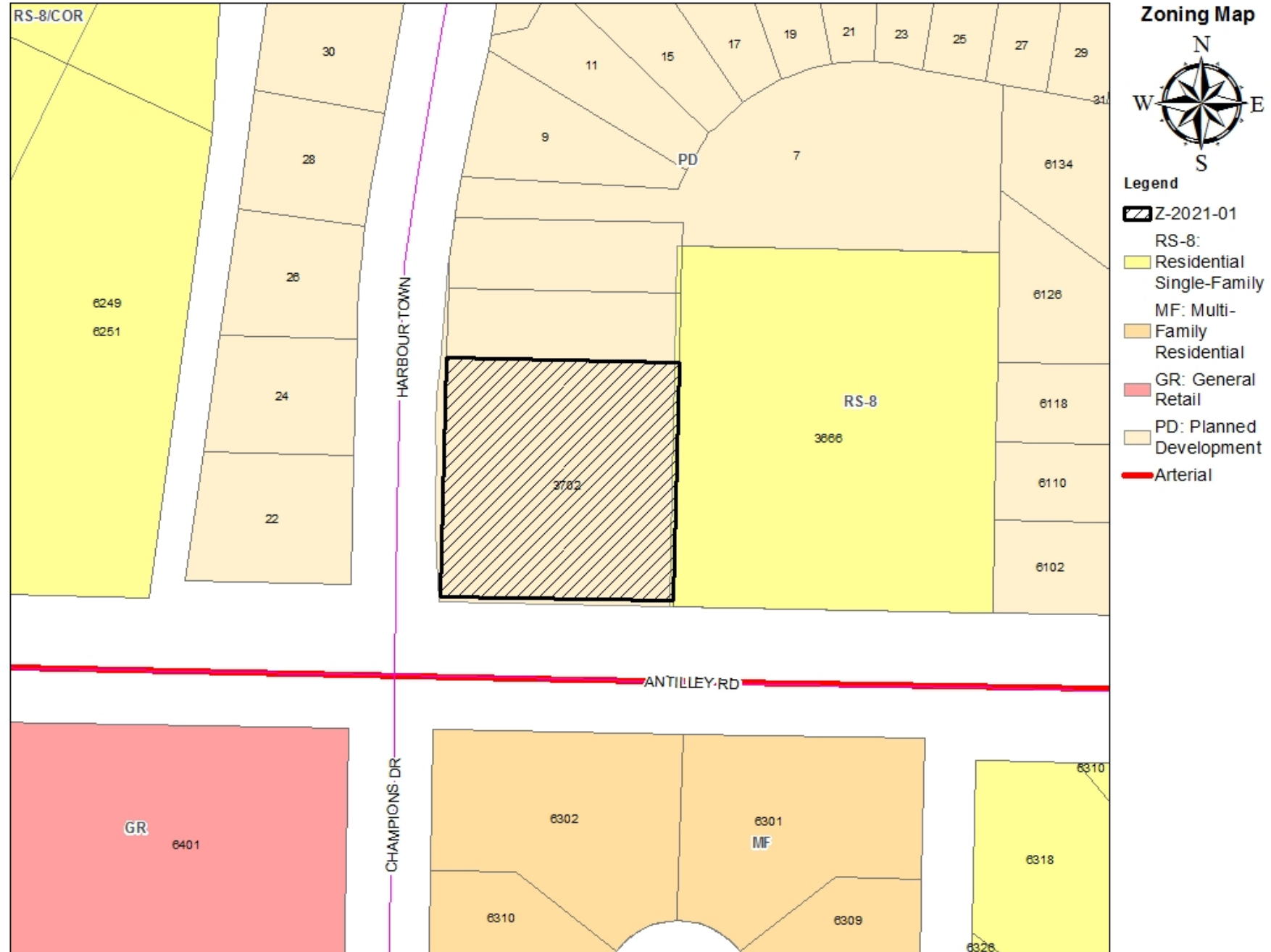
She still owns about 350 acres in the Wylie vicinity north of the newly-named road, and about 170 acres lies inside the City Limits, Mrs. Antilley said, pointing out that she had opposed annexation of the Wylie area by Abilene about 2½ years ago.

Case: Z-2021-01
Owner: Lane Miller
Request: Rezone from Planned Development District 4 (PD 4) to Neighborhood Office (NO).
Location: 3702 Antilley Road
Notification: 1 in Favor, 4 Opposed
Planning & Zoning Recommendation: Approval

Z-2021-01 LOCATION MAP



Z-2021-01 ZONING MAP



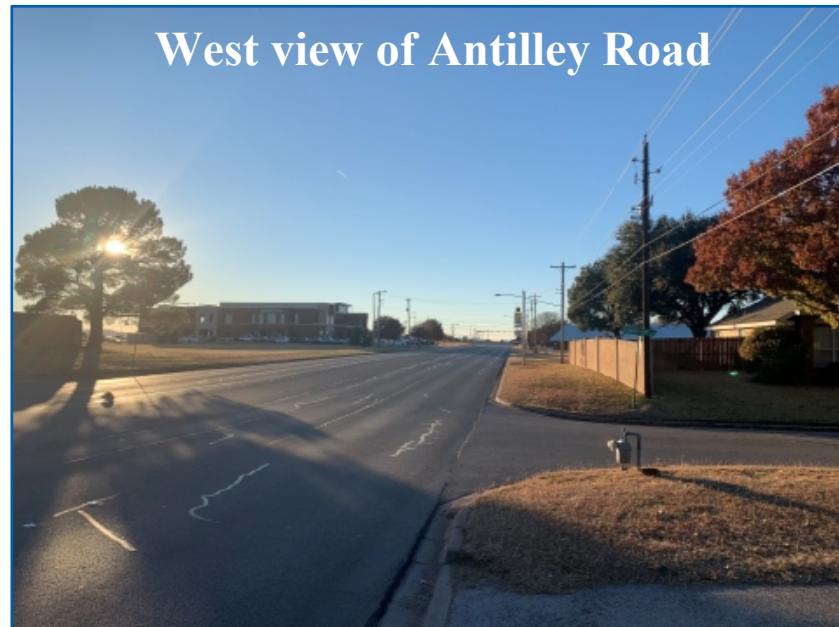
Subject Property



East view of Antilley Road



West view of Antilley Road



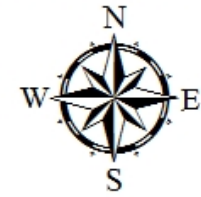
Neighboring property to the west



Z-2021-01 NOTIFICATION AREA MAP



Notification Map



Legend

- 200'
- Notification Area
- Z-2021-01

1- In Favor-



4- Opposed-



30% Opposed
Super Majority Vote Required

- Consistent with *Comprehensive Plan* and *Future Land Use and Development Plan Map*
- Reviewed Pursuant to Section 1.4.1.4 of Land Development Code (Criteria for Approval)
- Staff Recommendation: Approval
- Planning & Zoning Recommendation: Approval

Questions?



**City Council
Agenda Memo**

City Council Meeting Date: 1/28/2021

TO: Robert Hanna, City Manager

FROM: Mike Warrix, Director

SUBJECT: 11. Ordinance (First Reading) Z-2021-02: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Pattie Hollingsworth and Matthew Gjerstad to rezone property from an Agricultural Open Space (AO) to a Residential Single-Family (RS-6) District and located on approximately 0.79 acre at 5526 and 5534 Highway 277, approximately 0.62 mile southwest from Texas Avenue's intersection with Highway 277 (Mike Warrix)

GENERAL INFORMATION

Owners of the subject two properties seek approval of their application to change the zoning of both properties, from Agricultural Open Space (AO) to a Residential Single-Family (RS-6) District. A change to RS-6 zoning will make these two properties conform to minimum lot size requirements of local zoning regulations. In AO zoning districts, the minimum size required of any lot or tract of land is 5.00 acres. The subject properties at 5526 and 5534 Highway 277 South are only 0.61 acre and 0.18 acre in size, respectively. The minimum lot size required in the proposed RS-6 District is only approximately 0.14 acre. Approving a change to RS-6 zoning will make both properties conform to local zoning regulations.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval of this request by a vote of 6 - 0.

ATTACHMENTS:

1. Z-2021-02 draft ordinance
2. Z-2021-02 Council staff report
3. Z-2021-02 Council presentation

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING THE, "LAND DEVELOPMENT CODE" OF THE ABILENE CITY CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That Chapter 2 (Zoning Regulations) of the Land Development Code of the City of Abilene, is hereby amended by changing the zoning district boundaries as set out in Exhibit A, attached hereto and made a part of this ordinance for all purposes.

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 3: That the Planning Director be, and is hereby authorized and directed to change the official Zoning Map of the City of Abilene to correctly reflect the amendments thereto.

PASSED ON FIRST READING the 28th day of January, 2021.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 19th day of December, 2020, the same being more than fifteen (15) days prior to a public hearing held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m. on the 11th day of February, 2021, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FINAL READING THIS 11th day of February, 2021.

ATTEST:

CITY SECRETARY

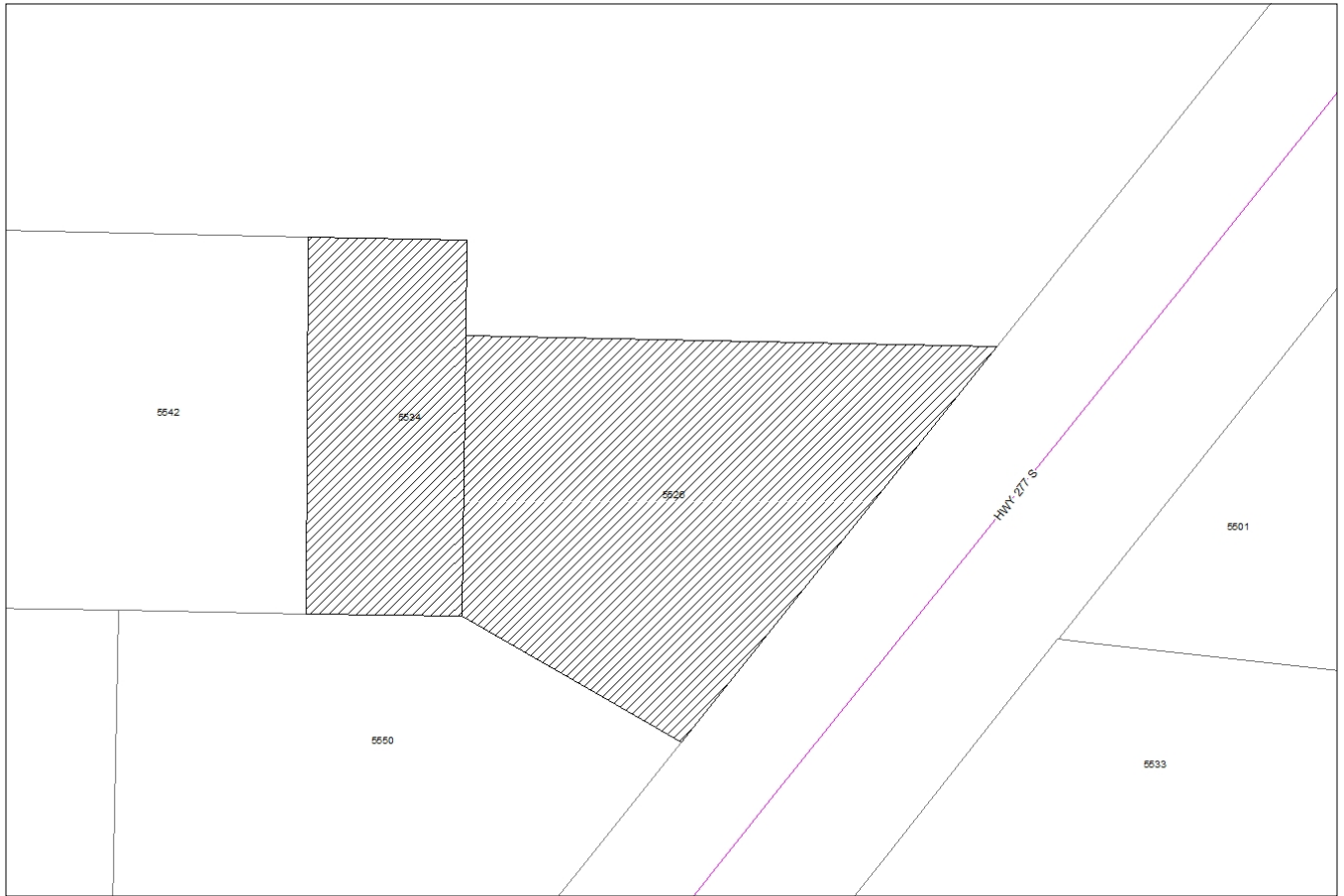
MAYOR

APPROVED:

CITY ATTORNEY

EXHIBIT A

Change the zoning classification of the following described tract, from Agricultural Open Space (AO) District to a Single Family Residential (RS-6) District:



Location: 5526 and 5534 Highway 277 South

Legal description being approximately 0.79 acre out of William Bishop Survey 43 in Abilene, Taylor County, Texas.

-END-

ZONING CASE Z-2021-02

STAFF REPORT



REQUEST: Rezone approximately 0.79 acres from Agricultural Open Space (AO), to Residential Single-Family (RS-6).

APPLICANT:

Owners: Pattie Hollingsworth and Matthew Gjerstad

HEARING DATES:

P & Z Commission: January 5, 2021

City Council 1st Reading: January 28, 2021

City Council 2nd Reading: February 11, 2021

LOCATION:

5526 Highway 277 South and an adjacent vacant site tentatively addressed at 5534 Highway 277 South, both of which are located approximately 0.62 mile southwest from Texas Avenue's intersection with Highway 277 South. These two adjacent properties together comprise approximately 0.79 acre out of William Bishop Survey 43 in Abilene, Taylor County, Texas.

PROPOSAL AND REQUESTED ACTION:

Owners of the subject properties seek approval of their application to change the zoning of both properties, from Agricultural Open Space (AO) to Residential Single-Family (RS-6). A change to RS-6 zoning will bring into these two properties conformance with the minimum lot size requirements. In AO zoning districts, the minimum size required of any lot or tract of land is 5.00 acres. The subject properties at 5526 and 5534 Highway 277 South are only 0.61 acre and 0.18 acre in size, respectively. The minimum lot size required in the proposed RS-6 is 6,000 square feet.

BACKGROUND: The subject properties and adjacent tracts were annexed into the City limits in 1959. They are believed to have both been occupied by residences at that time. The subject properties were embraced within an Agricultural Open Space (AO) zoning district in 1974 and remain so today. The AO zoning classification is most often used as a "holding" zone until some more intensive use of that land is deemed appropriate and zoning for such is approved. In 2005, the residence at 5534 Highway 277 South was demolished, leaving that 0.18 acre of land vacant.

The owner of this 0.18-acre tract is seeking to build a new home on this acreage. A necessary prerequisite to obtaining a building permit for construction is that the property is platted. In this case, a subdivision plat cannot be approved due to the building site not meeting the minimum 5.00-acre lot size required by AO zoning.

Additionally the owner of an adjacent 0.61-acre tract has joined with the owner of the 0.18-acre tract, in seeking RS6 zoning. That 0.61-acre tract is presently occupied by a residence at 5526 Highway 277 South.

APPLICATION REVIEW:

According to Section 1.4.1.4, Criteria for Approval, of the City of Abilene Land Development Code, in making a recommendation regarding a requested zone change, the Planning and Zoning Commission and City Council should consider the following factors:

- (1) Whether the proposed zoning map amendment implements the policies of the adopted Comprehensive Plan, including the land use classification of the property as shown on the Future Land Use and Development Plan map, as amended.**

The Future Land Use and Development Map shows the subject acreage and surrounding properties to be within an area where “low-density residences” are proposed and is more than ½ mile from any major commercial/business center. Proposed RS-6 zoning is consistent with the plan’s recommendation for low-density residential use.

- (2) Whether the uses permitted by the proposed change in zoning classification (and the standards applicable to such uses) will be appropriate in the immediate area of the land to be reclassified.**

The closest residential districts (not zoned AO) to these subject properties are in RS-6, MD and MH zoning districts. Each of these is consistent with the Comprehensive Plan’s recommendation for low-density residential use.

	Zoning	Existing Land Use
North	AO	agriculture
South	PD 39	residence and automotive engine repair
East	PD 89 and O	church and office building
West	AO	residence and agriculture

- (3) Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other public services and utilities to the area.**

The subject property is currently served with a variety of existing utilities and a variety of public amenities that are considered adequate.

- (4) Any other factors, which will substantially affect the public health, safety, morals, or general welfare.**

It is the opinion of staff that there are no other factors,that substantially affect the public health, safety, morals, or general welfare of residents in Abilene.

STAFF RECOMMENDATION:

City staff recommends approval of this rezone request.

PLANNING AND ZONING COMMISSION RECOMMENDATION:

The Planning and Zoning Commission recommended approval of this request by a vote of six (6) to zero (0) on January 5, 2021.

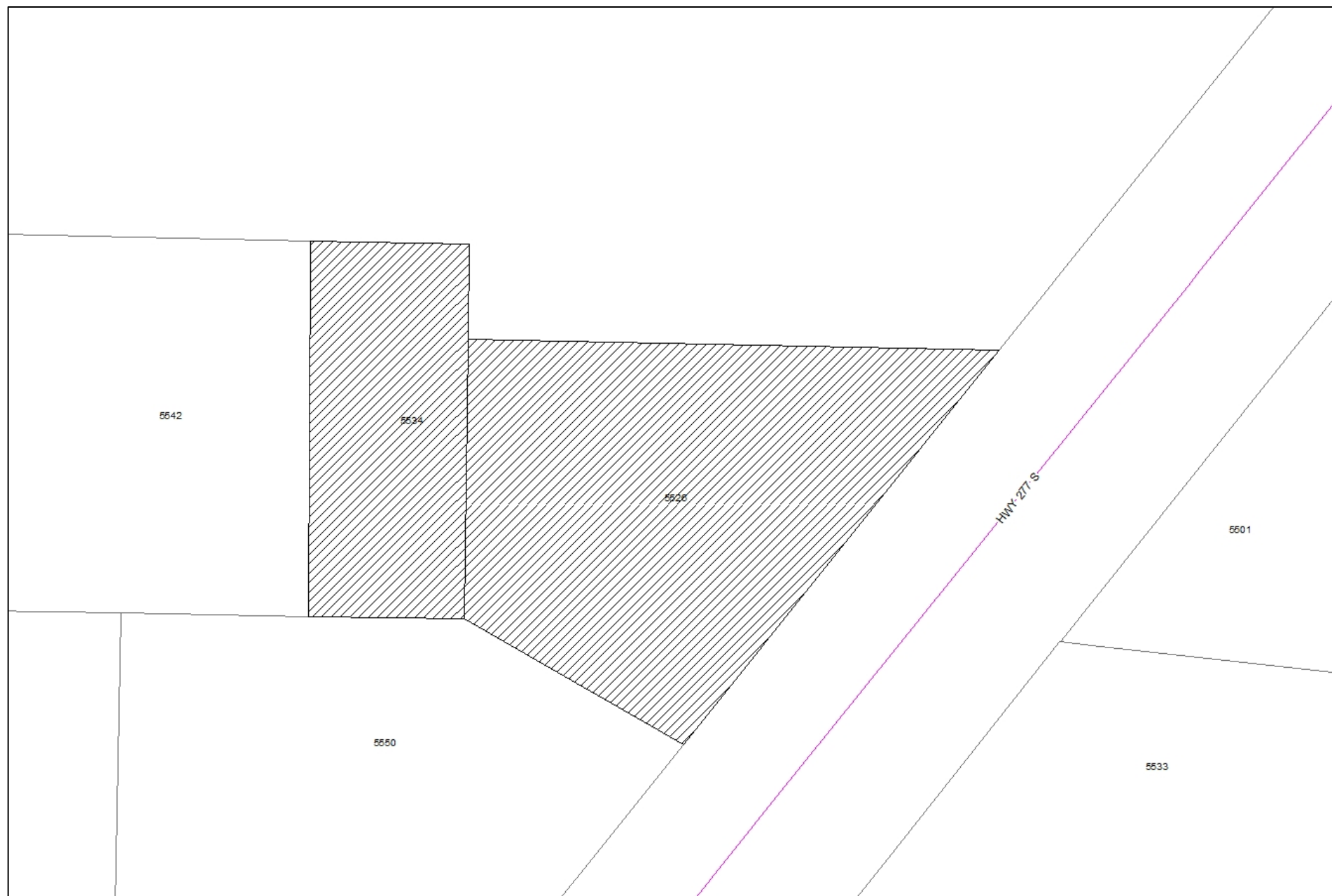
NOTIFICATION:

The Planning Services Division sent, with a certificate of mailing, public notices to the applicant and to owners of property within a 200-foot radius of this subject property:

Owner	Situs	Response
ATHENS MONUMENT LLC	5601 HWY 277 S	
BARBER MIKE	5533 HWY 277 S	
BOUTWELL MICHAEL LYNN &	5542 HWY 277 S	
BROOKS JAMES E	5458 HWY 277 S	
BROWDER EDDIE		In Favor
BROWDER EDDIE ET AL		In Favor
FAITH DELIVERANCE COMMUNITY	5501 HWY 277 S	
GJERSTAD MATTHEW VERNON JR	5526 HWY 277 S	
HOLLINGSWORTH PATTIE	5534 HWY 277 S	In Favor
LEGACY FUNERAL HOLDINGS LLC	5726 HWY 277 S	
WEST JARROD	5550 HWY 277 S	
WHITNEY ENTERPRISE LLC		

ATTACHMENTS:

- Application
- PowerPoint





Development Application

Planning

☐ Conditional Use

☐ Easement Release

☒ Rezoning

☐ Other

☐ PDD

☐ Street Name Change

☐ Thoroughfare Abandonment

☐ PDD Amendment

Other: _____

Project Name: _____

Address: 5526/5534 HWY 277 S No. of lots: _____ Acreage: _____

Legal Description: ADD 18 Sur 43 William Bishop, Acres .18 and

Subdivision Name: ADD 18 Sur 43 William Bishop, Acres .01 Block: _____ Lot: _____

Current Zoning: A0 Proposed Zoning (if applicable): R8

OWNER AND AUTHORIZATION

Owner Name: Pattie Hollingsworth - and - Matthew Gjerstad

Address: 7365 Mountain View Road 5526 Hwy. 277 South

City, State, Zip: Abilene, TX 79602 Abilene TX 79606-1223 Fax: _____

Phone: 817-964-8901 Email: pattieh200@gmail.com

I am the property owner, and I certify that the information included in this application is true to the best of my knowledge. (Name) _____ will act as my agent before the Planning and Zoning Commission.

Agent Name: _____

Address: _____

City, State, Zip: _____ Fax: _____

Phone: _____ Email: _____

I hereby certify that I am the owner of the property and further certify that the information provided on this development application is true and correct. I hereby designate the aforementioned agent to act on my behalf for submittal, processing, representation, and/or presentation of this development application. The designated agent shall be the principal contact person for responding to all requests for information and for resolving all issues of concern relative to this application.

Signature Owner: Pattie Hollingsworth (see attached) Date: 12-7-2020

FOR OFFICE USE ONLY

Received: 12/10/2020 Fee: \$ 1500 Receipt No.: 000657018

Case No.: 2-2020-02 Reviewed By: NW

Matthew Gjerstad@hotmail.com

Gjerstad, Matthew Vernon Jr.

I am trying to reach you regarding your property located at this address.

I own the vacant lot behind you and wanted to ask you a few questions.

Will you please call me at your earliest convenience.

Thank you
Dattie Hollingsworth
817 964-8901

I Matthew Gjerstad Give The city of Abilene permission to change my horse zoning from Open Agriculture to Residential. Address (5526 US 277 Abilene TX 79606) I AM Deploying Dec 09, 20 until June 2021. Feel free to reach out to me at Matthew.Gjerstad@Hotmail.com

- M 



Development Application

Please answer the following question in order to assist Staff with the processing of your Zoning request.

1. Please (if necessary) provide background information for the zoning request and explain why you feel it is appropriate.

This property has been in my family since the early 1960's. I would like to build on this lot for my homestead.

Property does have shared access off Hwy 277 with a 30' right of way Easement in place.

The lot did have a home on it that burned down.



Development Application

RECOMMENDATIONS

The Planning & Zoning Commission (P&Z) and the City Council look to the Planning & Development Services staff to make a recommendation for the approval or disapproval of this application. We will make every effort to notify you (FAX or E-mail) of our recommendation at least one (1) week in advance of the scheduled meeting of the P&Z Commission. In the case of a rezoning, and when the public interest requires it, we may recommend a rezoning to a Planned Development District (PDD) or a classification other than the classification requested. We will notify you of our decision to propose a PDD as soon as possible after the application is filed to give you time to prepare a site plan.

PUBLIC NOTIFICATION

The public is entitled to examine this application and participate in the decision-making process. In most cases, we are required to notify all property owners within two hundred feet (200') of the boundaries of your property. To ensure the fullest possible consideration, we may also notify neighborhood groups, organizations or individuals that have a special interest in a particular issue. Except for matters that the Planning & Development Services staff have expressly agreed not to disclose (and provided the law allows us to hold the matter in confidence), then all information that we deem relevant to the review and processing of this application may become public knowledge.

PLEASE READ BEFORE SIGNING

The undersigned has read the above application and hereby certifies that the information contained therein is complete, true and correct; and does hereby request that said application be submitted to the Planning & Zoning Commission at the earliest available meeting.

I understand and acknowledge that it is my responsibility to furnish an accurate and precise legal description of the property, and only the property, that is subject of this application, and that failure to furnish such information prior to the application deadline date will delay the processing of this application. I also understand that the City must notify affected property owners of this application. In the event that I fail to submit in a timely manner any information that the City deems necessary to transmit this application to the Planning & Zoning Commission or City Council, then in lieu of dismissal I hereby request that this application be temporarily withdrawn from further consideration until such information is submitted, and I agree to pay a resubmission fee of \$120 to reimburse the City for the expense of re-notifying affected property owners. I have been informed of the tentative date and time that the Planning & Zoning Commission and City Council will hear this application, and I understand that hearings may be continued from time to time at the discretion of the Commission or Council to allow for full consideration or when the public interest requires a continuation.

SIGNED: _____

Patricia Holbe

DATE: _____

12-7-2020

Date: 2/2/2007

CITY OF ABILENE

Building Permit Application #: BU070416

Fee: \$30.00 ☐ Charge ☒ Paid Receipt #: 8875

By: ABILENE\FletcherR

Valuation: \$0

Address: 5534 HWY 277 S

CTA#: A0018000700

Lot:

Block: ACRES

Subdiv: A0018 SUR 43 WILLIAM BISHOP

Owner: GARY NUTT

Phone:

Address:

Contractor: STARKS CONSTRUCTION CO.

Phone: 668-2271

Address: 7449 LANTANA AVE

Architect/Designer:

Phone:

Address:

Engineer:

Phone:

License:

Address:

License:

Set backs

Front:

Back:

Side:

Side:

Dimension of building:

Sq.Ft - Occupied:

Building:

Garage:

Porch:

Building class: Demolish

Change of use: From:

To:

Zoning:

Parkway width:

Type of const.:

Occ. group:

Division:

Building SqFt:

Stories:

Max. Occ. Load:

Gutter elevation:

Fire sprinklers required: ☐

Description: DEMOLISH SFR

Application accepted by

Plans checked by

Approved for issuance by

NOTICE

Separate permits are required for ELECTRICAL, PLUMBING, HEATING, VENTILATING or AIR CONDITIONING.

THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITH 180 DAYS, OR IF CONSTRUCTION OR WORK IS SUSPENDED OR ABANDONED FOR A PERIOD OF 180 DAYS AT ANY TIME AFTER WORK IS COMMENCED.

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

Temporary utilities may be requested for this project for the purposes of construction, or testing of equipment. It is understood that the temporary service shall be limited to ninety (90) days unless extensions are renewed with approval. I understand that the building MAY NOT BE OCCUPIED without a Certificate of Occupancy or temporary occupancy approval. The limits and safety requirements for temporary utilities have been provided to me and I agree with the terms of the policy. Separate permits and inspections will be obtained by the respective subcontractors for temporary service approval.

Height of building:

Min. floor elevation:

☐ _____ feet

☐ 18" above gutter, grade

Flood plain: ☐ Yes ☐ No

Eng. comments:

SPECIAL APPROVALS

* Zoning required: ☒

Approval: JF

Engineering required: ☐

Approval:

Other required: ☐

Approval:

Comments: REMOVE ALL CONC FOOTINGS, SLABS, ETC., CLEAR AND LEVEL LOT, CAP SEWER

* a NEW house can not be built on this lot because it does not have street frontage.
2-9-07- Demo- sewer capped FB

Applicant

Date

[Signature]

Signature of Contractor or Authorized Agent

Date

Signature of Owner (if Owner builder)

Date

CASE #: Z-2021-02

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also email your position to the email address listed below. All correspondence must include your name and address.

Name: BROWDER EDDIE

Address:

Mailing To: Planning and Development Services
P.O. Box 60, Abilene TX 79604-0060

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: Eddie Browder

DEC 28 AM 11:36

555 WALNUT STREET • P.O. BOX 60 • ABILENE, TEXAS 79604-0060

We work together to build and maintain a community of the highest quality for present and future generations.

Please call (325) 676-6237 if you have any questions about this notice.

CASE #: Z-2021-02

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also email your position to the email address listed below. All correspondence must include your name and address.

Name: BROWDER EDDIE ET AL

Address:

Mailing To: Planning and Development Services
P.O. Box 60, Abilene TX 79604-0060

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: Eddie Browder

DEC 28 AM 11:36

555 WALNUT STREET • P.O. BOX 60 • ABILENE, TEXAS 79604-0060

We work together to build and maintain a community of the highest quality for present and future generations.

For the PLANNING & ZONING COMMISSION

Please call (325) 676-6237 if you have any questions about this notice.

CASE #: Z-2021-02

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also email your position to the email address listed below. All correspondence must include your name and address.

Name: HOLLINGSWORTH PATTIE

Address: 5534 HWY 277 S

Mailing To: Planning and Development Services
P.O. Box 60, Abilene TX 79604-0060

Email: planning@abilenetx.gov

I am in favor ☒

I am opposed ☐

Additional Comments:

Signature: Pattie Hollingsworth

555 WALNUT STREET • P.O. BOX 60 • ABILENE, TEXAS 79604-0060

We work together to build and maintain a community of the highest quality for present and future generations.

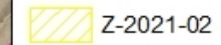
Case:	Z-2021-02
Owner:	Pattie Hollingsworth & Matthew Gjerstad
Request:	Rezone from Agricultural Open Space (AO) to Residential Single-Family (RS-6) Zoning District
Location:	5534 and 5526 Highway 277 South
Notification:	3 in Favor, 0 Opposed
Planning & Zoning Recommendation:	Approval

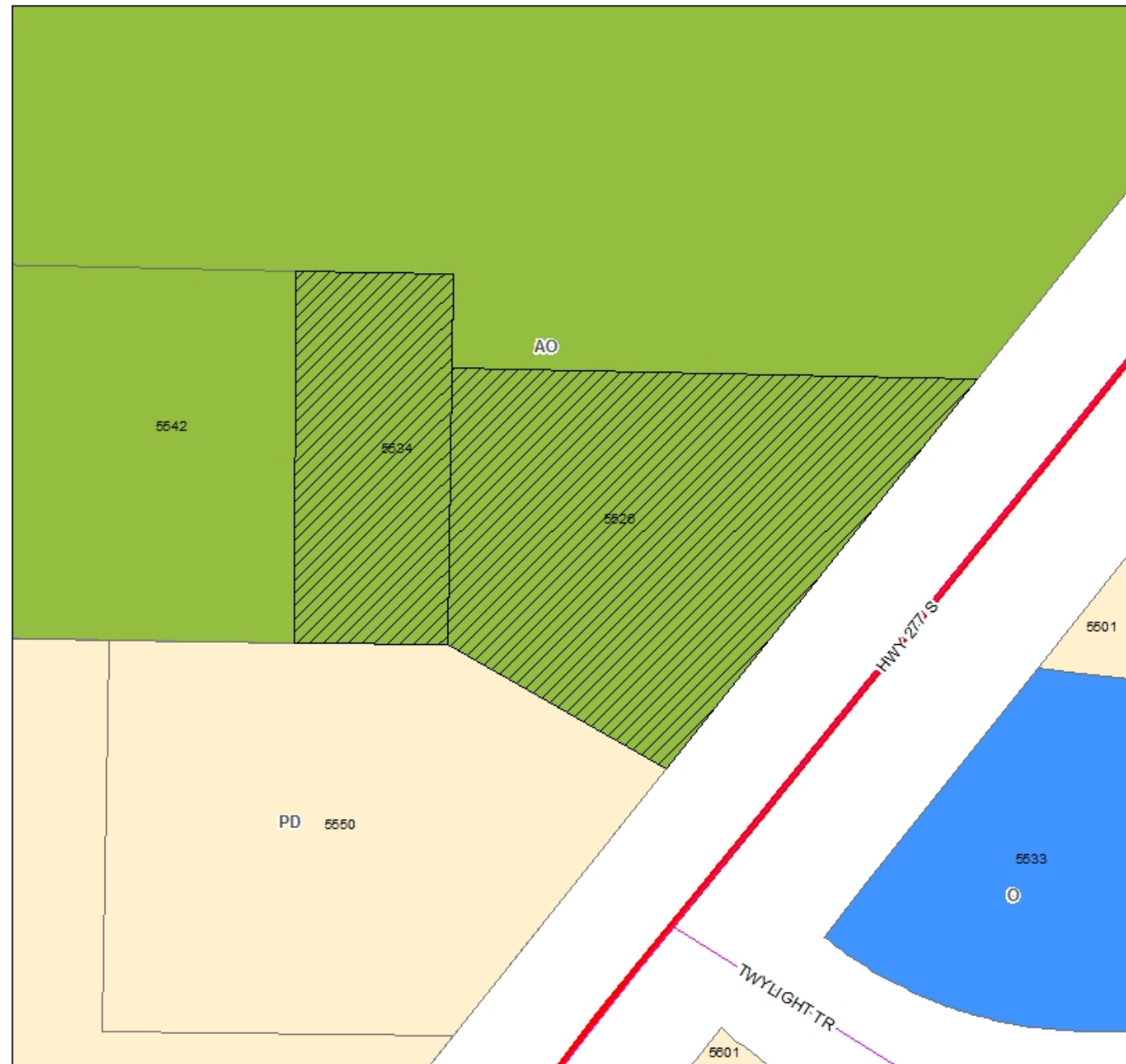


Location Map



Legend





Zoning Map



Legend

-  Z-2021-02
-  AO - Agricultural Open Space
-  O: Office
-  PD: Planned Development
-  Arterial



South view of subject property



Subject property & shared driveway



Neighboring property to the west



Neighboring property to the north

Z-2021-02 NOTIFICATION AREA MAP



- Consistent with *Comprehensive Plan* and *Future Land Use and Development Plan Map*
- Reviewed Pursuant to Section 1.4.1.4 of Land Development Code (Criteria for Approval)
- Staff Recommendation: Approval
- Planning & Zoning Recommendation: Approval

Questions?



**City Council
Agenda Memo**

City Council Meeting Date: 1/28/2021

TO: Robert Hanna, City Manager

FROM: Mike Warrix, Director

SUBJECT: **12. Ordinance (First Reading) TC-2021-01: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Leonor Rivera, agents Anton and Francesca Barnett, to abandon the public right-of-way (40-feet) of Sunrise Avenue extending between Minda Street (on the south) and Hailey Street (on the north) and located approximately 650 feet east from T&P Lane in east central Abilene (Mike Warrix)**

GENERAL INFORMATION

This 40-foot unimproved right-of-way is located between Blocks 25 and 26 of the Williams Estate Subdivision, a part of sections 37 and 38 of Blind Asylum Lands, Taylor County, Texas (filed in 1937). The applicants would like to abandon this right-of-way to incorporate the land within their properties.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval subject to approval and subsequent recording of a re-plat showing how the right-of-way (authorized to be abandoned) will be integrated with one or more adjacent

new lot(s).

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval of this request by a vote of 6 - 0.

ATTACHMENTS:

1. TC-2021-01 authorizing ordinance
2. TC-2021-01 Council Staff Report
3. TC-2021-01 Council presentation

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR ABANDONMENT OF THE COMPLETE 40-FOOT-WIDTH OF PUBLIC RIGHT-OF-WAY AVAILABLE FOR SUNRISE AVENUE EXTENDING BETWEEN MINDA STREET AND HAILEY STREET, PROVIDING FOR TERMS AND CONDITIONS OF SUCH ABANDONMENT, AND CALLING A PUBLIC HEARING.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That the following described portion of public right-of-way for Sunrise Avenue, as described on Exhibit "A" attached hereto and made part of this ordinance for all purposes, be and the same is hereby abandoned, vacated and closed insofar as the right, title or easement of the City of Abilene is concerned, subject to the underlying property owner(s) graphically re-subdividing (by replat,) the subject portion of public right-of-way into the adjoining properties.

PART 2: That said portion of public right-of-way is not needed for public purposes, and it is in the public interest to abandon the above described portion of public right-of-way.

PART 3: That the abandonment provided for herein shall extend only to the public right, title and easement in and to the tract of land specifically described in Part 1 of this ordinance, and shall be construed only to that interest the governing body of the City of Abilene may legally and lawfully abandon.

PASSED ON FIRST READING THE 28th day of January, A.D. 2021.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 19th day of December, 2020, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 11th day of February, 2021, to permit the public to be heard prior to final consideration of this ordinance.

PASSED ON FINAL READING THIS 11th day of February, 2021.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT “A”

The City of Abilene hereby abandons the following within the complete 40-foot-width of public right-of-way available for Sunrise Avenue extending between Minda Street (on the south) and Hailey Street (on the north) and located approximately 650 feet east from T&P Lane in east central Abilene.



-END-

TC-2021-01

STAFF REPORT



REQUEST: Abandon the public right-of-way of Sunrise Avenue between Hailey and Minda Streets.

APPLICANT: Leonor Rivera

AGENT: Anton & Francesca Barnett

HEARING DATES:

P & Z Commission: January 5, 2021

City Council 1st Reading: January 28, 2021

City Council 2nd Reading: February 11, 2021

LOCATION:

- The 40-foot unimproved right-of-way of Sunrise Avenue between Hailey and Minda Streets.

BACKGROUND AND REQUESTED ACTION:

This 40-foot unimproved right-of-way is located between Blocks 25 and 26 of the Williams Estate Subdivision, a part of sections 37 and 38 of Blind Asylum Lands, Taylor County, Texas (filed in 1937). The applicants are requesting abandonment this right-of-way.

REQUEST ANALYSIS:

The proposed abandonment was reviewed by the City of Abilene's Development Review Committee (DRC) and there were no objections from members of the DRC.

APPLICATION REVIEW:

Pursuant to Section 3.2.7.4, Street, Alley Abandonment, and Closure Policy, of the Land Development Code, any closure or abandonment shall follow the same public hearing process as required for a zoning change.

STAFF RECOMMENDATION:

City staff recommends approving the requested abandonment subject to approval and subsequent recording of a re-plat showing how the right-of-way (authorized to be abandoned) will be integrated with one or more adjacent new lot(s).

PLANNING AND ZONING COMMISSION RECOMMENDATION:

The Planning & Zoning Commission recommended approval of this request by a vote of six (6) to zero (0) on January 5, 2021.

NOTIFICATION:

The Planning Services Division sent written notice of this request (with certificate of mailing) to all owners of property within a 200-foot radius of this subject property.

Owner	Situs	Response
BATISTE PROPERTIES LLC	858 MINDA ST	In Favor
GINDRATT CURTIS & BETTYE	824 MINDA ST	
GUAJARDO RAYMOND JR	889 HAILEY ST	
GUAJARDO RAYMOND JR	897 HAILEY ST	
GUERRERO MONICA ANN	897 MINDA ST	
HIRSCHFELD PROPERTIES LP	771 VIRGIL ST	
KIMMEL KAX INC	902 MINDA ST	
MATTEA ROGER	850 MINDA ST	
MC LAMORE HARLAN F &	909 HAILEY ST	
MINDA ST CHURCH OF CHRIST	855 MINDA ST	
MINDA ST CHURCH OF CHRIST	701 MINDA ST	
MORREN MYRTLE FRANCES	857 HAILEY ST	
MORREN MYRTLE FRANCES	849 HAILEY ST	
RAMIREZ ROY	901 MINDA ST	
RIVERA LEONOR H LF EST	866 MINDA ST	In Favor
RIVERA LEONOR H LF EST	890 MINDA ST	
SERRANO PEDRO	618 SUNRISE AV	
YOUNG MAE DELL LIFE ESTATE	610 SUNRISE AV	

ATTACHMENTS: 1) Application 2) PowerPoint





Development Application

Planning

- ☐ Conditional Use
 ☐ Easement Release
 ☐ Rezoning
 ☐ Other
☐ PDD
 ☐ Street Name Change
 ☒ Thoroughfare Abandonment
 ☐ PDD Amendment

Other: _____

Project Name: Thoroughfare Closure
 Address: 866 Minda St + 890 Minda St No. of lots: 1 Acreage: _____
 Legal Description: ~~The West 1/2 of~~ Sunrise Ave between Minda St and Hailey St
 Subdivision Name: Williams Estate Block: 25 Lot: _____
 Current Zoning: Street between two plots Proposed Zoning (if applicable): to be absorbed into ECAs

OWNER AND AUTHORIZATION

Owner Name: Leonor Rivera
 Address: 866 Minda St
 City, State, Zip: Abilene, TX 79602 Fax: _____
 Phone: 325-677-6841 Email: _____

I am the property owner, and I certify that the information included in this application is true to the best of my knowledge. (Name) Anton + Francesca Barnett will act as my agent before the Planning and Zoning Commission.

Agent Name: Anton + Francesca Barnett
 Address: 941 Luzon St
 City, State, Zip: Abilene, TX 79602 Fax: _____
 Phone: 325-829-4209 Email: francescaj88@gmail.com

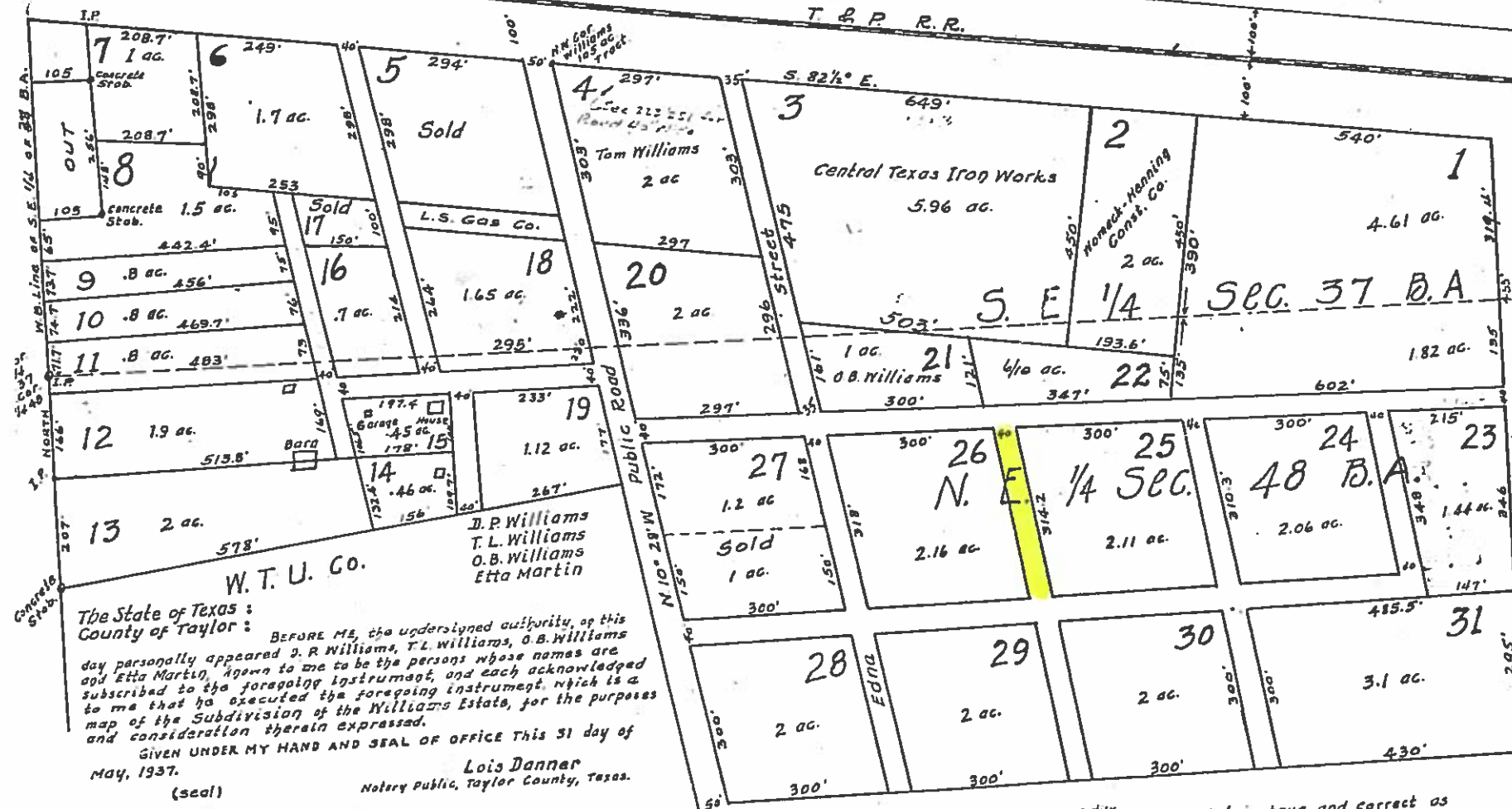
I hereby certify that I am the owner of the property and further certify that the information provided on this development application is true and correct. I hereby designate the aforementioned agent to act on my behalf for submittal, processing, representation, and/or presentation of this development application. The designated agent shall be the principal contact person for responding to all requests for information and for resolving all issues of concern relative to this application.

Signature Owner: Leonor Rivera Date: 11/13/2020

FOR OFFICE USE ONLY

Received: _____ Fee: \$ 150.00 Receipt No.: 0001056910 trn 6881
 Case No.: TC-2020-08 Reviewed By: _____

Williams Estate Subdivision
of
Port of Sections 37 & 48
Blind Asylum Lands
Taylor Co. Texas.



The State of Texas :
County of Taylor :

BEFORE ME, the undersigned authority, of this day personally appeared J. R. Williams, T. L. Williams, O. B. Williams and Etta Martin, known to me to be the persons whose names are subscribed to the foregoing instrument, and each acknowledged to me that he executed the foregoing instrument, which is a map of the Subdivision of the Williams Estate, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE This 31 day of May, 1937.

(seal)

Lois Danner
Notary Public, Taylor County, Texas.

FILED FOR RECORD JUNE 1, 1937 at 10:00 o'clock A.M.
RECORDED JUNE 30, 1937 at 5:00 o'clock P.M.

Vivian Fryar
County Clerk, Taylor County, Texas

File No 2400.

I, G. M. Thomason, do hereby certify the above plat is true and correct as surveyed by me on the ground March 25 & April 5 & 6, 1937.

G. M. Thomason,
Licensed Land Surveyor,
Abilene, Tex.



Development Application

Please answer the following question in order to assist Staff with the processing of your Zoning request.

1. Please (if necessary) provide background information for the zoning request and explain why you feel it is appropriate.

We are sending this request for consideration of thoroughfare closure of the "platted street" labeled as Sunrise Ave between Minda Street and Hailey Street, that is not developed or paved as a street, and has not been maintained as a Street in any way by the city. Essentially this "street" is just an overgrown dirt and grass road that runs between two plots of land owned by Leonor Rivera who resides at 866 Minda St. Our desire is to have this part of Sunrise Ave deemed abandoned so that the properties can be flurid plots in order for her family to prepare for future projects. One of which is completing a fence across all of the property, to close off additional access points for her + her property's protection. This project is a bit time sensitive as we would like to get the fencing done before winter weather comes in. These plots of land have been family land for almost 100 years and it is our wish to connect the plots and keep them in the family for many more years to come. Your consideration and review of this application is greatly appreciated, thank you for your time.

For the PLANNING & ZONING COMMISSION

Please call (325) 676-6237 if you have any questions about this notice.

JAN 4 AM 9:47

CASE #: TC 2021-01

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also email your position to the email address listed below. All correspondence must include your name and address.

Name: BATISTE PROPERTIES LLC

Address: 858 MINDA ST

Mailing To: Planning and Development Services
P.O. Box 60, Abilene TX 79604-0060

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: _____

James Batiste

BATISTE
PROPERTIES
LLC

555 WALNUT STREET • P.O. BOX 60 • ABILENE, TEXAS 79604-0060

We work together to build and maintain a community of the highest quality for present and future generations.

DEC 28 AM 11:37

CASE #: TC 2021-01

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also email your position to the email address listed below. All correspondence must include your name and address.

Name: RIVERA LEONOR H L F EST
Address: 866 MINDA ST

Mailing To: Planning and Development Services
P.O. Box 60, Abilene TX 79604-0060

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: _____

Leonor Rivera

555 WALNUT STREET • P.O. BOX 60 • ABILENE, TEXAS 79604-0060

We work together to build and maintain a community of the highest quality for present and future generations.

CITY OF ABILENE

THOROUGHFARE CLOSURE COMMENT FORM

12/11/2020

CASE # TC-2021-01

THOROUGHFARE LOCATION: A 314.2 foot portion of Sunrise Ave. between Hailey Street and Minda Street located approximately 640 feet east of T&P Lane and 1480 feet west of S. Judge Ely Blvd.

CITY DEPARTMENT/PVT. UTILITY CO.: AEP Texas Abilene Distribution

REPRESENTATIVE: Athan Himmelstein

TITLE: Distribution Engineer

I HAVE REVIEWED THE ABOVE THOROUGHFARE CLOSURE REQUEST AND FIND IT TO BE:



SATISFACTORY



UNSATISFACTORY (explain below:



SATISFACTORY WITH CONDITIONS

THE FOLLOWING CONDITIONS AND/OR CORRECTIONS ARE RECOMMENDED:

AEP has an existing 7.2 kV single phase overhead line that runs north to south parallel to the property lines and has a 120/240 volt line that goes west crossing this thoroughfare. Will need to keep access and utility rights to maintain this line.

12/11/2020

DATE

Athan Himmelstein

SIGNED: DIRECTOR / REPRESENTATIVE



CITY OF ABILENE

THOROUGHFARE CLOSURE COMMENT FORM

12/14/2020

CASE # TC-2021-01

THOROUGHFARE LOCATION: A 314.2 foot portion of Sunrise Ave.
between Hailey Street and Minda Street located approximately 640
feet east of T&P Lane and 1480 feet west of S. Judge Ely Blvd.

CITY DEPARTMENT/PVT. UTILITY CO.: Water Administration

REPRESENTATIVE: Kevin Jaeger

TITLE: Utility Engineer

I HAVE REVIEWED THE ABOVE THOROUGHFARE CLOSURE REQUEST AND FIND
IT TO BE:



SATISFACTORY



UNSATISFACTORY (explain below:



SATISFACTORY WITH CONDITIONS

THE FOLLOWING CONDITIONS AND/OR CORRECTIONS ARE RECOMMENDED:

12/14/20
DATE

Kevin Jaeger

SIGNED: DIRECTOR / REPRESENTATIVE

CITY OF ABILENE

THOROUGHFARE CLOSURE COMMENT FORM

01/25/2021

CASE # TC-2021-01

THOROUGHFARE LOCATION: A 314.2 foot portion of Sunrise Ave.
between Hailey Street and Minda Street located approximately 640
feet east of T&P Lane and 1480 feet west of S. Judge Ely Blvd.

CITY DEPARTMENT/PVT. UTILITY CO.: WATER UTILITIES MAPPING

REPRESENTATIVE: WAYNE TERRELL

TITLE: ENGINEER TECHNICIAN III

I HAVE REVIEWED THE ABOVE THOROUGHFARE CLOSURE REQUEST AND FIND
IT TO BE:

☐

SATISFACTORY

☐

UNSATISFACTORY (explain below:

☒

SATISFACTORY WITH CONDITIONS

THE FOLLOWING CONDITIONS AND/OR CORRECTIONS ARE RECOMMENDED:

An existing 6" AC water main crosses Sunrise Avenue in the south
right-of-way of Hailey Street. This must remain owned and
maintained by the City of Abilene.

12/11/2020
DATE

SIGNED: Wayne Terrell DIRECTOR / REPRESENTATIVE

Case:	TC-2021-01
Owner:	Leonor Rivera
Agent:	Anton & Francesca Barnett
Request:	The 40-foot unimproved right-of-way of Sunrise Avenue between Hailey Street and Minda Street
Location:	Sunrise Ave approximately 650 feet east from T&P Lane in east central Abilene
Notification:	2 in Favor, 0 Opposed
Planning & Zoning Recommendation:	Approval

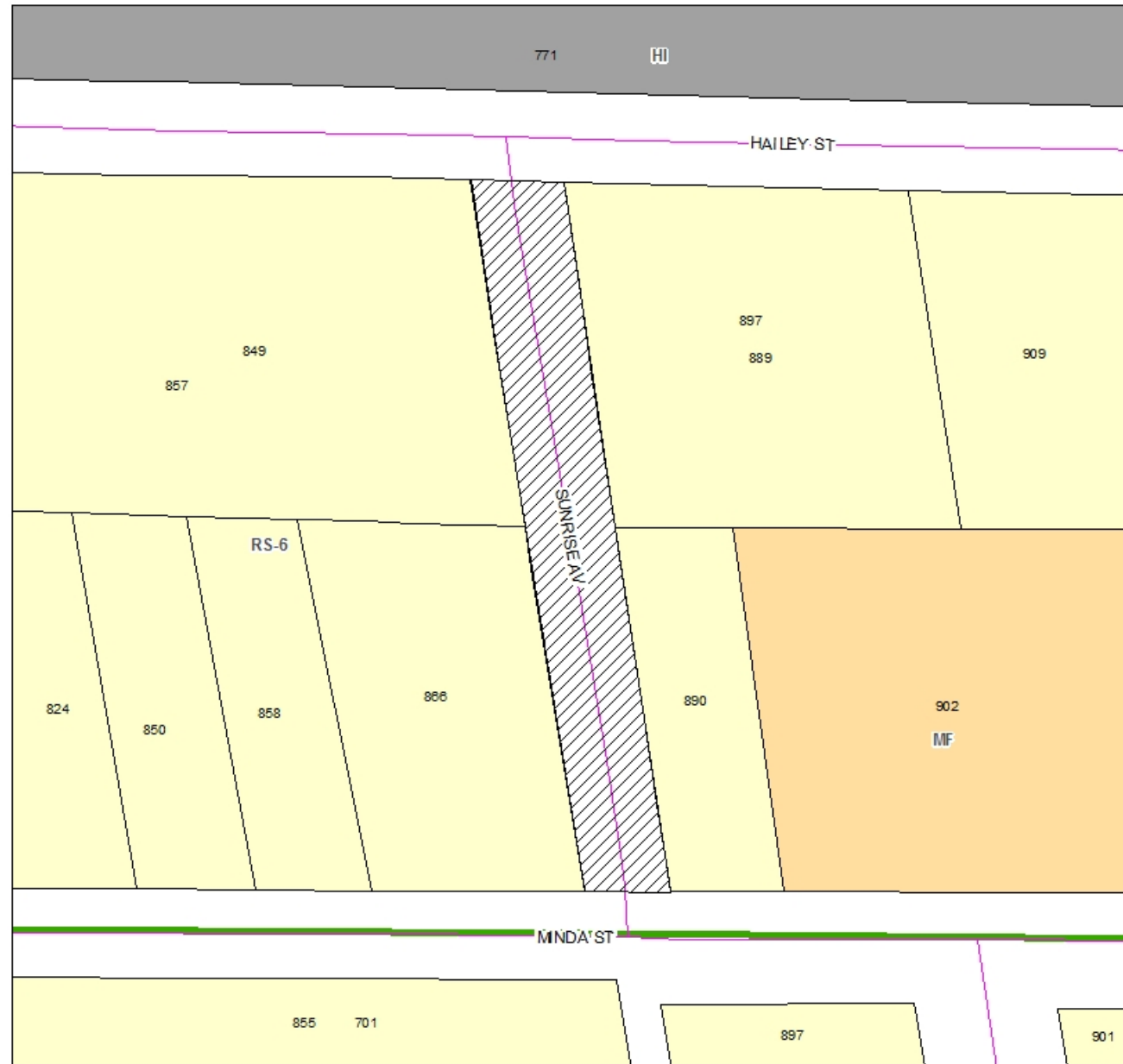


Location Map

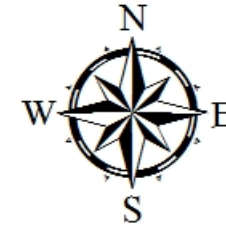


Legend





Zoning Map



Legend

-  TC-2021-01
-  RS-6:
Residential
Single-Family
-  MF: Multi-
Family
Residential
-  HI: Heavy
Industrial
-  Collector

North View of Sunrise Ave.



South View of Sunrise Ave.



**West Neighboring Property:
Minda St.**



**East Neighboring Property:
Minda St.**



**East Neighboring Property:
Hailey St.**



North Neighboring Property



TC-2021-01 NOTIFICATION AREA MAP



- Consistent with *Comprehensive Plan* and *Future Land Use and Development Plan Map*
- Reviewed Pursuant to Section 1.4.1.4 of Land Development Code (Criteria for Approval)
- DRC Recommendation: Satisfactory
- Staff Recommendation: Approval
- Planning & Zoning Recommendation: Approval

Questions?



**City Council
Agenda Memo**

City Council Meeting Date: 1/28/2021

TO: Honorable Mayor & Members of City Council

FROM: Robert Hanna, City Manager

SUBJECT: 13. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Confirming the Appointment of Marcus Dudley as the Police Chief of the Abilene Police Department (*Robert Hanna*)

GENERAL INFORMATION

On January 1, 2021, City Manager Robert Hanna appointed Marcus Dudley as the Police Chief of the Abilene Police Department.

Pursuant to Section 143.013(a), Local Government Code, the Police Department Head (Police Chief) shall be appointed by the municipality's chief executive and confirmed by the municipality's governing body.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends the City Council to confirm the appointment of Marcus Dudley as the Police Chief of the Abilene Police Department, effective January 1, 2021.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 2021 RESOLUTION Appointing Marcus Dudley Police Chief
2. Police Chief PPT

RESOLUTION _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
CONFIRMING THE APPOINTMENT OF THE POLICE CHIEF OF THE ABILENE
POLICE DEPARTMENT**

WHEREAS, Section 143.013, Local Government Code, provides that, unless elected, each department head is appointed by the municipality's chief executive and confirmed by the municipality's governing body; and

WHEREAS, on January 1, 2021, the City Manager of the City of Abilene appointed Marcus Dudley as the Police Chief of the Abilene Police Department.

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

That the City Council of the City of Abilene hereby confirms of the appointment of Marcus Dudley as the Police Chief (Department Head) of the Abilene Police Department, effective January 1, 2021, and finds that he meets all of the qualifications and requirements to be appointed.

ADOPTED this 28TH day of January, 2021.

ATTEST:

City Secretary

Mayor

APPROVED:

City Attorney

Resolution: Appointment of the Police Chief



QUESTIONS?



Oath of Office – Police Chief Marcus Dudley





**City Council
Agenda Memo**

City Council Meeting Date: 1/28/2021

TO: Honorable Mayor and City Council Members

FROM: Stanley Smith, City Attorney

SUBJECT: 15. The City Council of the City of Abilene reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed below, as authorized by the noted Texas Government Code Sections:

GENERAL INFORMATION

The City Council of the City of Abilene reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed below, as authorized by the noted Texas Government Code Sections:

A. 551.071 (Consultation with Attorney)

1. Robert Steven Reitz v. City of Abilene, Texas, et al., Case No. 1:16-cv-00181-BL; In the U.S. District Court, Northern District of Texas, Abilene Division, filed October 10, 2016
2. Officer Patrick Sumrall and City of Abilene, Case No. 01-18-000-8653; Appeal of Indefinite Suspension to Arbitration, filed February 6, 2018
3. Alfredo Valencia v. Corey Davis and City of Abilene; Case No. 1:19-cv-00017-C; In the United States District Court, Northern District of Texas, Abilene Division, filed February 4, 2019.
4. City of Abilene v. Patrick Sumrall; Cause No. 27,733-B, In the 104th Judicial District Court, Taylor County, Texas, filed May 28, 2019
5. City of Abilene v. 3118 South 22nd Street, Abilene, Texas, et al.; Cause No. 11968-D, In the 350th Judicial District Court, Taylor County, Texas; filed October 11, 2019
6. City of Abilene, Texas and Garfield Public/Private LLC v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-20-000900, In the 261st Judicial District Court, Travis County, Texas, filed February 13, 2020
7. Chandler Brooks v. Taylor County, et al.; Civil Action No. 1:20-cv-00049, In the United States District Court, Northern District of Texas, Abilene Division; filed March 5, 2020

8. John Doe v. Robert Hanna, Individually and as City Manager; Cause No. 28078-B; In the 104th Judicial District Court, Taylor County, Texas; filed July 7, 2020
9. The City of Abilene, Texas v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-20-004598, In the 53rd Judicial District Court, Travis County, Texas; filed September 1, 2020
10. Cockrell Investment Partners, L.P. v. Middle Pecos Groundwater Conservation District, et al.; Cause No. P-8277-83-CV, In the 83rd Judicial District Court, Pecos County, Texas; filed September 11, 2020
11. Sharra Sampson v. City of Abilene; Cause No. 8144-B, In the 104th Judicial District Court, Taylor County, Texas; filed September 14, 2020
12. The City of Abilene, Texas v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-20-007028, In the 459th Judicial District Court, Travis County, Texas; filed November 18, 2020
13. Governor's Executive Orders COVID-19

B. 551.072 (Deliberations about Real Property)

1. Clyde Water
2. 28.014 acres at 125 E South 7th Street and Six Vacant Contiguous Lots south of E South 7th Street in Abilene, Taylor County, Texas

C. 551.073 (Deliberations about Gifts and Donations)

D. 551.074 (Personnel Matters)

1. City Council may consider appointment, employment, compensation, reassignment, duties, discipline, or dismissal of public officers or employees, City Manager, City Attorney, Municipal Court Judge, City Secretary, and City Board and Commission Members
2. City of Abilene Boards and Commissions may be discussed, as needed for (re)appointment

E. 551.076 (Deliberations about Security Devices)

F.551.087 (Business Prospect/Economic Development)

1. Abilene Convention Center Hotel Project

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

None