



City of Abilene City Council Agenda

Kyle McAlister, Mayor Pro-tem
Weldon Hurt, Council Member
Lynn Beard, Council Member
Robert Hanna, City Manager

Anthony Williams, Mayor

Donna Albus, Council Member
Shane Price, Council Member
Travis Craver, Council Member
Stanley Smith, City Attorney
Shawna Atkinson, City Secretary

AMENDED

Notice is hereby given of a meeting of the City Council of City of Abilene to be held on February 10, 2022 at 8:30 a.m., at the Abilene Public Library, South Branch, Mall of Abilene, 4310 Buffalo Gap Road, Abilene, Texas, 79606, 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

INVOCATION

1. Deputy Mayor Pro-tem Travis Craver

PLEDGE TO THE UNITED STATES FLAG AND THE TEXAS FLAG

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS AND ANNOUNCEMENTS

2. **Employee Service Awards:**

- Lois Woods - Public Health - 25 Years
- Cody Davis - Fire - 20 Years
- Richard Fuentes - Fire - 20 Years
- J Sanders - Fire - 20 Years
- Martin Sanders - Fire - 20 Years
- Jeremy Williams - Fire - 20 Years

CONSENT AGENDA AND PUBLIC COMMENTS

All items listed in the Consent Agenda are considered routine by the City Council and will be enacted by one motion. There will be no separate discussion or presentation of these items unless otherwise requested by a Council Member. In the event one or more Council Members remove an item from the consent Agenda for separate discussion or presentation, the item or items removed will be considered in

numerical order as part of the Regular Agenda and shall include a public hearing.

After the Council Members have requested any item on the consent Agenda be considered separately, the public comment period will be held. The public comment section of the consent agenda allows members of the public to present any ideas or information to the City Council and staff, and also allows for public comment on the consent agenda items not otherwise pulled for separate consideration. Neither the City Council nor staff will engage in discussion with the public during the public comments unless the item is listed on the Council agenda.

Members of the public will have a total time limit of three (3) minutes to speak during the public comments section.

3. **Minutes:** Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on January 27, 2022 **(Shawna Atkinson)**
4. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Ordering a City of Abilene General Election to be Held on Saturday, May 7, 2022, for the Purpose of Electing Members to City Council Places 5 and 6 **(Shawna Atkinson)**
5. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Authorizing a Joint Election Agreement and Contract for Election Services with Taylor County for a General Election to be Held on Saturday, May 7, 2022, and Authorizing the Extension of this Contract to Cover a Runoff Election, if Needed **(Shawna Atkinson)**
6. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Modifying and Extending the Declaration of Local Disaster (COVID-19) **(Robert Hanna)**
7. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Approving the Contract with Child's Play, Inc. for the Purchase and Installation of a New Playground in Oscar Rose Park **(Lesli Andrews)**
8. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Awarding Bid No. 2221 to Bontke Brothers Co. Inc., for Street Resurfacing Project Work Zone N15A **(Max Johnson)**
9. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Authorizing a Professional Services Contract for the Design of the Second Pressure Plane Pump Station - Phase 3 **(Rodney Taylor)**
10. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Awarding the Bid for the Ivie Booster Pump Station Ground Storage Tank Silt Removal and Butterfly Valve Installation Project **(Rodney Taylor)**
11. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Authorizing the First Amendment to Services Contract Between the City of Abilene and Smith Pump Company, Inc. for the Repair of the Raw Water Intake Pump #1 **(Rodney Taylor)**
12. **Resolution:** Receive a Report, Hold a Discussion and Take Action on the Approval of the Use of the DEAG grant funds for the Dyess Air Force Base Security Gate Project **(Michael Rice)**

REGULAR AGENDA - ORDINANCES AND PUBLIC HEARINGS - RESOLUTIONS

13. **Presentation:** Receive a Report, Hold a Discussion and Public Hearing on the Development Corporation of Abilene FY 2021 Annual Report **(Misty Mayo)**
14. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving Purchase Agreement with Motorola Solutions for the Body-Worn Camera/In-Car Video Project & Real-Time Intelligence Center Project **(Marcus Dudley)**

15. **Ordinance (Final Reading)**: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Amend Chapter 10, Article III, “Fire Prevention Code”, Division 1, Sec. 10-46 of the Abilene Municipal Code (**Cande Flores**).
16. **Ordinance (Final Reading) Z-2021-38**: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Exceptional Holdings LP (represented by Michael Burton) to amend terms and conditions of Planned Development District Number 122 (a.k.a. PD 122) specifically to modify the requirement for screening along or near the north and east boundaries of a tract occupied by an existing restaurant building at 3001 South Danville Drive (**Tim Littlejohn**).
17. **Ordinance (Final Reading) Z-2022-01**: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Lien Jung and Yi-Chien (represented by Jacob & Martin LLC) to change zoning from Agricultural Open Space (AO) to a Planned Development (PD) District allowing landscape contractor services, in addition to uses commensurate with General Retail zoning, on approximately 12.94 acres of now-vacant land at the southwest corner of Antilley Road and Fairway Oaks Boulevard in south Abilene (**Tim Littlejohn**).
18. **Ordinance (Final Reading) Z-2022-02**: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Houston Polasek (represented by Heath Polasek) to change zoning from Agricultural Open Space (AO) to a Residential Single-Family Patio Home (PH) District, on 46.25 acres of existing agricultural land at the southwest corner of Maple and East South 27th Streets in southeast Abilene (**Tim Littlejohn**).

EXECUTIVE SESSION

19. **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. 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
 3. 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
 4. 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
 5. 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
 6. Sharra Sampson v. City of Abilene; Cause No. 8144-B, In the 104th Judicial District Court, Taylor County, Texas; filed September 14, 2020
 7. 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
 8. Natasha Jones v. City of Abilene, Texas; EEOC Charge of Discrimination, 450-2020-06446; filed September 15, 2020
 9. Alton H. Smith, Jr. and Alicia Malorie Smith v. City of Abilene, Texas; Cause No. 51055-A, In the 42nd Judicial District Court, Taylor County, Texas; filed March 11, 2021
 10. Steve Van Horne, et al. v. City of Abilene, et al.; Cause No. 12530-D, In the 350th Judicial District Court, Taylor County, Texas; filed September 7, 2021
 11. Cockrell Investment Partners, L.P. v. Middle Pecos Groundwater Conservation District, et al.; Cause No. P827783CV, in the 83rd Judicial District Court, Pecos County, Texas; filed

September 11, 2020

12. The City of Abilene, Texas v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-21-006299, In the 250th Judicial District Court, Travis County, Texas; filed October 20, 2021

13. James Easley v. City of Abilene, Appeal of Temporary Suspension to Hearing Examiner, filed September 22, 2021

14. Samuel Hightower v. City of Abilene, Appeal of Temporary Suspension to Hearing Examiner, filed December 28, 2021

15. Zach Williams v. City of Abilene, Appeal of Temporary Suspension to Hearing Examiner, filed December 28, 2021

16. Governor's Executive Orders - COVID-19

B. 551.072 (Deliberations about Real Property)

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)

RECONVENE

REGULAR AGENDA

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 AMENDED meeting notice was posted on the bulletin board at the City Hall of the City of Abilene, Texas, on the 7th day of February, 2022, at 7:50 a.m.

Shawna Atkinson, TRMC, CMC
City Secretary



**City Council
Agenda Memo**

City Council Meeting Date: 2/10/2022

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 27, 2022 (*Shawna Atkinson*)

GENERAL INFORMATION

Approval of the Minutes from the Regular Meeting Held on January 27, 2022

SPECIAL CONSIDERATIONS

None.

FUNDING/FISCAL IMPACT

None

STAFF RECOMMENDATION

Approval of the Minutes

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 01-27-2022 Minutes - Regular - Morning

CITY COUNCIL MEETING
January 27, 2022 at 8:30 a.m.

CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
SOUTH BRANCH LIBRARY

The City Council of the City of Abilene, Texas met in Regular Session on January 27, 2022, at 8:30 a.m. at the South Branch Library, Mall of Abilene, 4310 Buffalo Gap Road. Mayor Anthony Williams was present and presiding, along with Mayor Pro-tem Kyle McAlister, Deputy Mayor Pro-tem Travis Craver, and Councilmembers Shane Price, Lynn Beard, Donna Albus, and Weldon Hurt. Also present were Transportation Services Director Don Green, City Attorney Stanley Smith, and City Secretary Shawna Atkinson.

Councilmember Shane Price delivered the invocation.

Sabrina Cannon, 4th grader at Wylie, Natalie Cannon, 5th grader at Wylie, and Roselynn Brown, 4th grader at Wylie, led the Pledge of Allegiance to the Flag of the United States of America and State of Texas Flag.

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS, ANNOUNCEMENTS

- Proclamation:
 - National Mentoring Month – accepted by Talan Cobb and Big Brothers Big Sisters Abilene.

PRESENTATION OF CONSENT AGENDA

The Consent Agenda consisted of items 3-13. No items were pulled for individual consideration.

PUBLIC COMMENTS

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

- David Swart – requested that the new downtown hotel have electric car charging stations in the parking lot. Mr. Swart also spoke about the Mockingbird underpass lighting that has been out for some time.
- David Beckham – spoke on behalf of the Southern Little League. Mr. Beckham gave a brief overview of the decreased numbers in their league. Mr. Beckham relates this decrease in participation due to the city's player fee, and asked Council to consider removing this required fee.
- Darryl Ellis – spoke on behalf of the Abilene Slow-pitch Softball Association. Mr. Ellis stated they are also seeing a decrease in signups due to the new player fee and asked Council to consider removing it.
- Cynthia Alvidrez – requested the City use ARPA funds towards Parks and Recreation items. Ms. Alvidrez also stated that citizens are stating that housing vouchers are not being allocated fairly and requested a more fair approach to appointing board members.
- Dorothy Clay – spoke in favor of making Abilene a sanctuary city for the unborn.

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

Councilmember McAlister was absent for the beginning of the meeting, but came in during the public comment section.

CONSENT AGENDA

Councilmember Hurt moved to approve the consent agenda, consisting of items 3-13. Councilmember Albus seconded the motion. Motion carried.

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

NAYS (0): None

Councilmember Hurt had a conflict of interest on item 5 and abstained from voting. A conflict of Interest Affidavit was filled out before the meeting and filed with the City Secretary's office. The vote for item 5 was as follows:

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

NAYS (0): None

ABSTAIN (1): Councilmember Hurt

3. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on January 13, 2022
4. Resolution: Receive a Report, Hold a Discussion and Take Action on Appointing Members to Various Boards and Commissions per the City Charter
[ASSIGNED RESOLUTION NO. 09-2022]

<i>Abilene Housing Authority</i>	
Roberta Thompson [Reappointment]	November 2023

5. Resolution: Receive a Report, Hold a Discussion and Take Action to Amend the Airport Use Agreement with Shift Sector to Extend it One Year
[ASSIGNED RESOLUTION NO. 10-2022]
6. Resolution: Receive a Report, Hold a Discussion and Take Action on a Request from Frontier Texas! to Change their Board Bylaws
[ASSIGNED RESOLUTION NO. 11-2022]
7. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving Amendment 2 with Freese & Nichols, Inc. for the Archeological Survey of the Cedar Creek Trail
[ASSIGNED RESOLUTION NO. 12-2022]
8. Resolution: Receive a Report, Hold a Discussion and Take Action on Authorizing a Professional Services Contract for the Dry Polymer Feed, Sodium Hydroxide Tanks, and Grimes Evaluation Project
[ASSIGNED RESOLUTION NO. 13-2022]
9. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving the Renewal of the Water Supply Contract with the Hawley Water Supply Corporation
[ASSIGNED RESOLUTION NO. 14-2022]
10. Resolution: Receive a Report, Hold a Discussion and Take Action on Executing a Professional Services Contract with West Texas Occupational Corporate Health Solutions (WTX-OCHS) and Screening For Life to Conduct Annual Medical Physicals for Employees of the Abilene Fire Department
[ASSIGNED RESOLUTION NO. 15-2022]

11. Ordinance (First Reading) Z-2021-38: Receive a Report, Hold a Discussion and Take Action on a request from Exceptional Holdings LP (represented by Michael Burton) to amend terms and conditions of Planned Development District Number 122 (a.k.a. PD 122) specifically to modify the requirement for screening along or near the north and east boundaries of a tract occupied by an existing restaurant building at 3001 South Danville Drive
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REGULAR AGENDA

14. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving Purchase Agreement with Motorola Solutions for the Body-Worn Camera/In-Car Video Project & Real-Time Intelligence Center Project
[NOT CONSIDERED]

This item was pulled from consideration prior to the meeting.

15. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Approve a Task Order with Corgan for Design and Construction Management of an Airport Terminal Interior Improvements Project
[ASSIGNED RESOLUTION NO. 17-2022]

Don Green, Director of Transportation, presented the item. Adoption of the item would approve a Task Order with Corgan for the design and construction management of the Airport Terminal interior improvements, which include restroom upgrades, and a design refresh.

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

- David Swart – questioned if this included lighting and if so, if it will be LED lighting.

Mr. Green stated that all the lights in the terminal are currently LED lighting. The lighting aspect was part of an energy savings package with Schnieder Electric several years ago.

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

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

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

NAYS (0): None

16. Ordinance (Final Reading): Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Amend Chapter 10, Article III, "Fire Prevention Code", Division 1, Sec. 10-46 of the Abilene Municipal Code
[NOT CONSIDERED]

This item was pulled from consideration prior to the meeting.

17. Presentation: Receive a Report, Hold a Discussion and Public Hearing on the City of Abilene Pavement Evaluation, 2021

Max Johnson, Interim Director of Public Works, introduced Dr. Sirous Alavi with Fugro, who gave a presentation on the findings of the roadway network pavement condition study that was completed in 2021. The study showed Abilene roads had an average Pavement Condition Index (PCI) of 46, which is a decline from the study done in 2016 that had an average of 50. Dr. Alavi went over the different types of roads and their PCI averages, a comparison with other cities, and different budget and bond options to increase Abilene's PCI index over the next several years.

Councilmembers expressed their concerns and asked questions in regards to where our roads need to be to be able to start the maintaining process.

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

- David Swart – stated he has attended several Street Maintenance Board meetings and was told that 58 PCI is where we needed to be. Mr. Swart also spoke about his concerns with the increase in pricing in order to fix the streets.
- Charles Byrn – stated that increasing the Street Maintenance Fee or considering a bond is not what the tax payers want, and asked why we are not using concrete, as it lasts longer.
- Samuel Garcia – stated that the problem is fundamental and council should be questioning everything in this presentation. Mr. Garcia stated that we do not need another bond for streets and that he will do everything he can to oppose it.
- Cynthia Alvidrez – stated that MIP funds and ARPA funds went to fund the downtown hotel, and people need to pay attention to the fact that we are pushing projects on tax payers that they can't afford because of that.

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

This item was for presentation only. No votes or action were taken.

EXECUTIVE SESSION

Mayor Williams recessed into Executive Session at 9:54 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. D. 551.071 (Consultation with Attorney)
2. Samuel Hightower v. City of Abilene, Appeal of Temporary Suspension to Hearing Examiner
 3. Zach Williams v. City of Abilene, Appeal of Temporary Suspension to Hearing Examiner

The Executive Session ended at 10:23 a.m. and reconvened to Open Session. Mayor Williams reported no votes or action were taken in Executive Session.

ADJOURNMENT

There being no further business, the meeting adjourned at 10:09 a.m.

Shawna Atkinson
City Secretary

Anthony Williams
Mayor

Minutes approved on: _____



City Council Agenda Memo

City Council Meeting Date: 2/10/2022

TO: Honorable Mayor & Members of City Council

FROM: Shawna Atkinson, City Secretary

SUBJECT: 4. Resolution: Receive a Report, Hold a Discussion and Take Action on Ordering a City of Abilene General Election to be Held on Saturday, May 7, 2022, for the Purpose of Electing Members to City Council Places 5 and 6 (*Shawna Atkinson*)

GENERAL INFORMATION

Article III (Elections), Section 24 (Annual elections), of the Abilene City Charter provides for the order of an election for those members whose terms are expiring and that the election shall be held on such date as prescribed by the election laws of the State of Texas. Further, Section 25 (Regulation of Elections), requires all elections be held in accordance with the laws of the State of Texas regulating the holding of municipal elections and in accordance with this Charter and ordinances or resolutions adopted by the council for the conduct of elections.

In May 2022, the terms expire for City Council Places 5 and 6. Therefore, an election must be held for City Council Places 5 and 6 in May 2022.

Section 3.005(c) of the Texas Election Code requires a May election be ordered not later than the 78th day before election day. For the May 7th election, the deadline for ordering the election is Friday, February 18, 2022. Thursday, February 10, 2021, is the last City Council meeting day to order the election without having to schedule a special meeting.

Texas Election Code, Chapter 43, authorizes countywide polling place programs. Taylor County, through its Elections Department, utilizes Vote Centers. Use of these vote centers will apply to this election.

SPECIAL CONSIDERATIONS

Council seats up for Election in May 2022 are City Council Place 5 (at-large), City Council

Place 6 (at-large)

FUNDING/FISCAL IMPACT

None.

STAFF RECOMMENDATION

Staff recommends approval of the Resolution ordering the election.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. ENGLISH Resolution Order 2022 General Election - Places 5 & 6
2. SPANISH Resolution Order 2022 General Election - Places 5 & 6
3. Exhibit A - Proposed County Wide Vote Center Locations
4. Exhibit B - Proposed Early Voting Schedule
5. Presentation - Ordering 2022 Elections

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS ORDERING A GENERAL ELECTION TO BE HELD ON SATURDAY, MAY 7, 2022, FOR THE PURPOSE OF ELECTING ONE COUNCILMEMBER FROM PLACE 5 AND ONE COUNCILMEMBER FROM PLACE 6.

WHEREAS, Taylor County, pursuant to Texas Election Code 43.007 allows the Commissioners Court to participate in the program to eliminate county election precinct polling places and establish countywide polling places for each election held on the uniform election date in May; and,

WHEREAS, each countywide polling place must allow a voter to vote in the same election in which the voter would be entitled to vote in the county election precinct in which the voter resides; and

WHEREAS, Taylor County has been approved by the Secretary of State to utilize countywide polling places; and

WHEREAS, locations of the polling places are as designated in Exhibit A, attached to this resolution, but which locations may be changed by Taylor County, and which changes, if any, are hereby made part of this resolution by reference and can be found by visiting the Taylor County webpage: <http://www.taylorcountytexas.org/214/current-elections> or by contacting:

Taylor County Elections Administrator
400 Oak Street, #101, Abilene, Texas 79602
(325) 674-1216

WHEREAS, early voting will be conducted at the locations and during the dates and times established by Taylor County, Texas, as reflected in Exhibit B, attached to this resolution, but which locations may be changed by Taylor County, and which changes, if any, are hereby made part of this resolution by reference and can be found by visiting the Taylor County webpage: <http://www.taylorcountytexas.org/214/current-elections> or by contacting:

Taylor County Elections Administrator,
400 Oak Street, #101, Abilene, Texas 79602
(325)674-1216

WHEREAS, applications for ballots by mail must be received no later by 5:00 p.m., Tuesday, April 26, 2022, and sent to the following:

Freda Ragan
Taylor County Elections Administrator
P. O. Box 3318
Abilene, Texas 79604
Email: raganfr@taylorcountytexas.org

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

An election is hereby ordered to be held on Saturday, May 7, 2022, for the purpose of:

Electing one Councilmember from Place 5 and one Councilmember from Place 6,
for the City of Abilene.

That this Resolution shall take effect immediately from and after its passage, as indicated below.

ADOPTED by the City Council of the City of Abilene on the 10th day of February, 2022.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

RESOLUCIÓN NUM. _____

UNA RESOLUCIÓN DEL CONSEJO DE LA CIUDAD DE ABILENE, TEXAS, PIDIENDO UNA ELECCIÓN GENERAL QUE SE LLEVARA A CABO EL SABADO, 7 DE MAYO DEL 2022, CON EL PROPÓSITO DE ELEGIR UN MIEMBRO DEL CONSEJO PARA EL LUGAR 5 Y UN MIEMBRO DEL CONSEJO PARA EL LUGAR 6.

CONSIDERANDO que, el Condado de Taylor, conforme con el Código de Elección de Texas 43.007 que permite que la Corte de Comisionados del Condado a participar en el programa para eliminar en la elección del condado los casillas electorales por recinto y establecer casillas electorales a lo largo y ancho del condado por cada elección que tiene lugar en la fecha uniforme de elección en Mayo; y,

CONSIDERANDO que, cada casilla electoral a lo largo y ancho del condado debe permitir a un votante votar en la misma elección en la cual el votante tiene derecho a votar en el recinto de elección del condado en el cual reside el votante; y

CONSIDERANDO que, el Condado de Taylor ha sido aprobado por el Secretario de Estado para utilizar casillas electorales a lo largo y ancho del condado; y

CONSIDERANDO que, las ubicaciones de los centros de votación son las designadas en el Anexo A adjunto a esta resolución, pero que el Condado de Taylor puede cambiar las ubicaciones y cuales cambios, si corresponde, se incluyen en esta resolución por referencia y pueden encontrarse por visitando la página web del condado de Taylor: <http://www.taylorcountytexas.org/214/current-elections> o contactando:

Taylor County Elections Administrator
400 Oak Street, #101, Abilene, Texas 79602
(325) 674-1216

CONSIDERANDO que, la votación anticipada se llevara a cabo en las ubicaciones y fechas establecidas por Taylor County, Texas, como se refleja en el Anexo B adjunto a esta resolución, pero que el Condado de Taylor puede cambiar las ubicaciones y, en su caso, los cambios, se hace parte de esta resolución por referencia y se puede encontrar visitando la página web del condado de Taylor: <http://www.taylorcountytexas.org/214/current-elections> o contactando:

Taylor County Elections Administrator,
400 Oak Street, #101, Abilene, Texas 79602
(325)674-1216

CONSIDERANDO que, solicitudes de balotas por correo deberan recibirse a mas tarde de las 5:00 p.m. el Martes, 26 de Abril del 2022, y enviarse a lo siguiente:

Freda Ragan
Taylor County Elections Administrator
P. O. Box 3318
Abilene, Texas 79604
Email: raganfr@taylorcountytexas.org

AHORA POR LO TANTO, SEA RESUELTO POR EL CONSEJO DE LA CIUDAD DE ABILENE, TEXAS:

Una elección se pide por este medio para que se lleve acabo el Sabado, 7 de Mayo del 2022, para el propósito de:

Elegir un Miembro del Consejo para el Lugar 5, y un Miembro del Consejo para el Lugar 6 de la Ciudad de Abilene.

Que esta resolución tomará efecto inmediatamente y después de su paso, según lo indicado abajo.

ADOPTADO por el Consejo de la Ciudad de Abilene este dia 10 de febrero del 2022.

DA FE:

Secretaria de la Ciudad

Alcade

APROBADO:

Abogado de la Ciudad

PROPOSED

COUNTY WIDE VOTE CENTER LOCATIONS

UBICACIONES DEL CENTRO DE VOTACIÓN EN TODO EL CONDADO

Joint Constitutional Amendment and City and School General Elections – May 7, 2022

Enmienda Constitucional Conjunta y Elecciones Municipales y Escolares - 7 de mayo de 2022

7:00 a.m. – 7:00 p.m.

Taylor County voters may vote at **ANY ONE** of the following locations on Election Day

Los votantes del condado de Taylor pueden votar en **CUALQUIERA** de los siguientes lugares el día de las elecciones

Vote Center	Physical Address	Location
Abilene City Hall	555 Walnut Street, Abilene, TX 79601	E. Entrance, Main Lobby <i>Entrada este, vestíbulo principal</i>
Buffalo Gap Church of Christ	741 Litel Street, Buffalo Gap, TX 79508	Fellowship Hall <i>Salón de becas</i>
Church of Christ–S. 11 th & Willis	3333 S. 11 th Street, Abilene, TX 79605	West Building, multi-purpose room <i>Edificio Oeste, sala de usos múltiples</i>
Elm Valley Community Church	142 CR 675, Tuscola, TX 79562	Fellowship Hall <i>Salón de becas</i>
First Baptist Church – Merkel	307 Locust Street, Merkel, TX 79536	Family Life Center <i>Centro de Vida Familiar</i>
First Baptist Church – Tuscola	632 Kent Avenue, Tuscola, TX 79562	Family Life Center <i>Centro de Vida Familiar</i>
Hillcrest Church of Christ	650 E. Ambler Ave., Abilene, TX 79601	Gym <i>Gimnasio</i>
Lawn Baptist Church	518 Avenue D, Lawn, TX 79530	Family Life Center <i>Centro de Vida Familiar</i>
New Beginnings United Pentecostal	5535 Buffalo Gap Road, Abilene, TX 79606	Main Foyer <i>Vestíbulo principal</i>
Oldham Lane Church of Christ	5049 Oldham Lane, Abilene, TX 79602	Special Events Room <i>Sala de eventos especiales</i>
Rise Church	517 N. Pioneer Drive, Abilene, TX 79603	Gym <i>Gimnasio</i>
River of Life Church	539 Hwy 83/84, Abilene, TX 79606	Main Foyer <i>Vestíbulo principal</i>
Sears Park Recreation Center	2250 Ambler Ave., Abilene, TX 79603	Gym <i>Gimnasio</i>
Southern Hills Church of Christ	3666 Buffalo Gap Road, Abilene, TX 79605	Auditorium Foyer <i>Vestíbulo del auditorio</i>
Taylor County Plaza	400 Oak Street, Abilene, TX 79602	Suite 101-A
Thomas Elementary School	1240 Lakeside Drive, Abilene, TX 79602	Gym <i>Gimnasio</i>
Trent United Methodist Church	226 S. Mesquite Street, Trent, TX 79561	Fellowship Hall <i>Salón de becas</i>
Tye Industrial Park Small Business Incubator	649 Scott Street, Tye, TX 79563	Suite 215
View Baptist Church	250 Boynton Road, Abilene, TX 79606	Fellowship Hall <i>Salón de becas</i>
Westminster Presbyterian Church	4515 South 14 th Street, Abilene, TX 79605	Gym <i>Gimnasio</i>
Woodlawn Church of Christ	922 Woodlawn Drive, Abilene, TX 79603	Multi-purpose room <i>Sala de usos múltiples</i>
Zion Lutheran Church	2801 Antilley Road, Abilene, TX 79606	Large Fellowship Hall <i>Gran Salón de becas</i>

PROPOSED

EARLY VOTING SCHEDULE

April 25, 2022 – May 3, 2022

Joint Constitutional Amendment and City and School Elections
May 7, 2022

MAIN EARLY VOTING LOCATION		
Taylor County Plaza	April 25th – April 29th	8:00 a.m. – 5:00 p.m.
400 Oak Street, Suite 101	Monday – Friday	
Abilene, TX 79602		
Extended Hours	May 2nd & May 3rd	7:00 a.m. – 7:00 p.m.
	Monday & Tuesday	

TEMPORARY BRANCH LOCATIONS		
Mall of Abilene	April 25th – April 29th	10:00 a.m. – 6:00 p.m.
4310 Buffalo Gap Road	Monday – Friday	
Abilene, TX 79605	May 2nd & May 3rd	10:00 a.m. – 6:00 p.m.
	Monday & Tuesday	
Abilene City Hall	April 25th – April 29th	8:00 a.m. – 5:00 p.m.
555 Walnut Street	Monday – Friday	
Abilene, TX 79601	May 2nd & May 3rd	8:00 a.m. – 5:00 p.m.
	Monday & Tuesday	
Tye City Hall	April 25th – April 29th	8:00 a.m. – 5:00 p.m.
205 North Street	Monday – Friday	
Tye, TX 79563	May 2nd & May 3rd	8:00 a.m. – 5:00 p.m.
	Monday & Tuesday	
Merkel City Hall	April 25th – April 29th	8:00 a.m. – 5:00 p.m.
100 Kent Street	Monday – Friday	
Merkel, TX 79536	May 2nd & May 3rd	8:00 a.m. – 5:00 p.m.
	Monday & Tuesday	
Merkel ISD Administration Bldg.	April 25th – April 29th	8:00 a.m. – 4:00 p.m.
1512 South 5 th Street	Monday – Friday	
Merkel, TX 79536	May 2nd & May 3rd	8:00 a.m. – 4:00 p.m.
	Monday & Tuesday	
Trent City Hall	April 25th – April 29th	8:00 a.m. – 12:00 p.m.
100 N. Main Street	Monday – Friday	1:00 p.m. – 5:00 p.m.
Trent, TX 79561	May 2nd & May 3rd	8:00 a.m. – 12:00 p.m.
	Monday & Tuesday	1:00 p.m. – 5:00 p.m.
Trent ISD Administration Bldg.	April 25th – April 29th	8:30 a.m. – 4:30 p.m.
12821 E I-20	Monday – Friday	
Trent, TX 79561	May 2nd & May 3rd	8:30 a.m. – 4:30 p.m.
	Monday & Tuesday	
Jim Ned CISD Administration Bldg.	April 25th – April 29th	8:00 a.m. – 4:00 p.m.
441 Graham Street	Monday – Friday	
Tuscola, TX 79562	May 2nd & May 3rd	8:00 a.m. – 4:00 p.m.
	Monday & Tuesday	

TEMPORARY BRANCH LOCATIONS - continued		
Buffalo Gap City Hall	April 25th – April 29th	8:00 a.m. – 12:00 p.m.
709 Litel Street	Monday – Friday	1:00 p.m. – 5:00 p.m.
Buffalo Gap, TX 79508	May 2nd & May 3rd	8:00 a.m. – 12:00 p.m.
	Monday & Tuesday	1:00 p.m. – 5:00 p.m.
Tuscola City Hall	April 25th – April 29th	8:00 a.m. – 12:00 p.m.
418 Graham Street	Monday – Friday	1:00 p.m. – 5:00 p.m.
Tuscola, TX 79562	May 2nd & May 3rd	8:00 a.m. – 12:00 p.m.
	Monday & Tuesday	1:00 p.m. – 5:00 p.m.
Lawn City Hall	April 25th – April 29th	8:00 a.m. – 4:00 p.m.
150 Main Street	Monday – Friday	
Lawn, TX 79530	May 2nd & May 3rd	8:00 a.m. – 4:00 p.m.
	Monday & Tuesday	

April 7, 2022 – Last day to register to vote for the May 7, 2022 Joint Constitutional Amendment and City and School Elections

April 26, 2022 – Last day to RECEIVE an application for a ballot by mail.

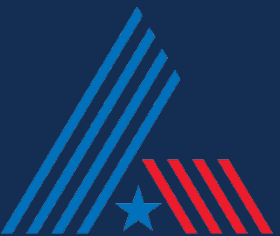
Taylor County Elections
 400 Oak Street, Suite 101
 Abilene, TX 79602
 325-674-1216
www.taylorcountytexas.org

Resolution: Ordering a General Election for May 7, 2022

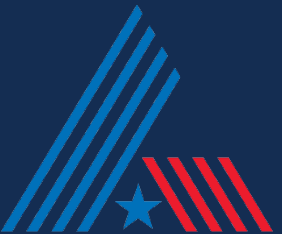


General Election Order

- Election Day: Saturday, May 7, 2022
- Ballot: City Council Places 5 & 6
- Contract: Taylor County for the administration of elections
- Locations: Countywide Vote Centers through contractual agreement with Taylor County
- Cost: None; only the contract (\$18,981.91 Estimate)
- Early Voting: Monday, April 25 through Tuesday, May 3, 2022
- Election Day Voting: Saturday, May 7
- Canvass scheduled for Monday, May 16 at 10:00 a.m. (Special Mtg.)
- Runoff Election, if needed: Saturday, June 11



QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 2/10/2022

TO: **Honorable Mayor and Members of City Council**

FROM: **Shawna Atkinson, City Secretary**

SUBJECT: **5. Resolution: Receive a Report, Hold a Discussion and Take Action on Authorizing a Joint Election Agreement and Contract for Election Services with Taylor County for a General Election to be Held on Saturday, May 7, 2022, and Authorizing the Extension of this Contract to Cover a Runoff Election, if Needed (*Shawna Atkinson*)**

GENERAL INFORMATION

Subchapter D of Chapter 31 of the Texas Election Code provides the City may contract with the County Elections Administrator for certain election services. Chapter 271 of the Texas Election Code provides that the City may enter into an agreement with other jurisdictions that may be conducting elections on the same day in election precincts that can be served by common polling places. The City of Abilene, Taylor County, and other Taylor County political jurisdictions will conduct elections on Saturday, May 7, 2022. This action authorizes the City to hold the election jointly with jurisdictions that share common polling places and contract with the Taylor County Elections Department for election services, including the selection, training and compensation of precinct election judges.

On February 10, 2022, City Council will be authorizing a General Election for Saturday, May 7, 2022, for the purpose of electing members to the City Council for Place 5 (at-large), and Place 6 (at-large). This item provides for election services for this election.

At this time, there is only a cost estimate from Taylor County Elections department, who performs a post-election audit of the actual expenses incurred to conduct the election(s). The City will receive the invoice for payment after the audit is finalized.

SPECIAL CONSIDERATIONS

If adopted, this contract will extend to a runoff election, if any is needed.

FUNDING/FISCAL IMPACT

Overall estimated cost of the May 7, 2022 General Election is \$18,981.91. The total number of participants are unknown at this time. The last day for ordering the election for the May 7, 2022, Uniform Election day is Friday, February 18, 2022. After that date, the list of participating jurisdictions will be available.

STAFF RECOMMENDATION

Staff recommends approval of the Resolution authorizing the joint election agreement and contract for election services with Taylor County Elections Department.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. Resolution - Contract with Taylor County - Places 5 & 6
2. Joint Election Agreement_Contract_CityAbilene
3. Estimated Cost - City of Abilene
4. Presentation - Elections Contract 2022

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS AUTHORIZING A JOINT ELECTION AGREEMENT AND CONTRACT FOR ELECTION SERVICES WITH TAYLOR COUNTY FOR A GENERAL ELECTION TO BE HELD SATURDAY, MAY 7, 2022.

WHEREAS, the City Council has ordered a general election to be held Saturday, May 7, 2022; and

WHEREAS, the general election is for the purpose of electing members to City Council Places 5 and 6; and

WHEREAS, it is the desire of the Abilene City Council to continue contractual services with Taylor County for the administration of its general election as done in the past; and

WHEREAS, Taylor County has been approved by the Secretary of State to utilize countywide polling places, which serves as a further convenience to City of Abilene qualified voters to vote at any of the authorized locations for both election day and early voting; and

WHEREAS, Taylor County shall be responsible for the appointment of the presiding judge and alternate judge for each polling location in accordance with Chapter 32 of the Texas Election Code and may employ other personnel necessary for the proper administration of the election; and

WHEREAS, Taylor County may appoint other deputy early voting clerks to assist in the conduct of early voting as necessary pursuant to Section 83.052 of the Texas Election Code for the proper administration of the election; and

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

That the City Manager is hereby authorized to enter into a Joint Election Agreement and Contract for Election Services with Taylor County, approved as to form by the City Attorney, for a general election to be held Saturday, May 7, 2022, to be administered by the Taylor County Elections Administrator in accordance with Subchapter D of Chapter 31 and Chapter 271 of the Texas Election Code.

That the contract will provide that the Elections Administrator is to perform or supervise the performance of any or all of the corresponding duties and functions for the election as required under the terms of the Joint Election Agreement and Contract for Election Services.

That the City of Abilene shall have the option of extending the terms of this agreement through its runoff election, if applicable, and in the event of such a runoff election, the terms of this agreement shall automatically extend unless the City notifies the Elections Administrator in writing within 10 days of the original election.

That this Resolution shall take effect immediately from and after its passage, as indicated below.

ADOPTED by the City Council of the City of Abilene on the 10th day of February, 2022.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

**THE STATE OF TEXAS
COUNTY OF TAYLOR**

JOINT ELECTION AGREEMENT AND CONTRACT FOR ELECTION SERVICES

THIS JOINT AGREEMENT AND CONTRACT FOR ELECTIONS SERVICES is made by and between Taylor County, a body corporate and politic under the laws of the State of Texas, hereinafter referred to as “County” , acting by and through Freda Ragan, Taylor County Elections Administrator, hereinafter referred to as “Elections Administrator, and the City of Abilene, hereinafter referred to as “Political Subdivision.”

This joint election agreement and contract for election services (“Agreement”) is made pursuant to Texas Election Code Sections 31.092 and 271.002 for a joint **May 7, 2022** election to be administered by Freda Ragan, Taylor County Elections Administrator, hereinafter referred to as “Elections Administrator.”

RECITALS

WHEREAS, The City of Abilene is holding a General Election on May 7, 2022 for the purpose of electing Place 5 and Place 6 Municipal Officers.

WHEREAS, The County owns an electronic voting system, the Hart Intercivic Verity Touch Voting System, which has been duly approved by the Secretary of State pursuant to Texas Election Code Chapter 122 as amended, and is compliant with the accessibility requirements for persons with disabilities, set forth by Texas Election Code Section 61.012. Political Subdivision desires to use the County’s electronic voting system and to compensate the County for such use and to share in certain other expenses connected with joint elections in accordance with the applicable provisions of Chapters 31 and 271 of the Texas Election Code, as amended.

NOW THEREFORE, in consideration of the mutual covenants, agreements, and benefits to the parties, **IT IS AGREED** as follows:

I. ADMINISTRATION

The parties agree to hold a “Joint Election” in accordance with Chapter 271 of the Texas Election Code and this agreement. The Taylor County Elections Administrator shall coordinate, supervise, and handle all aspects of administering the Joint Election as provided in this agreement. Political Subdivision agrees to pay the Taylor County Elections Administrator for equipment, supplies, services, and administrative costs as provided in this agreement. The Taylor County Elections Administrator shall serve as the administrator for the Joint Election; however, the Political Subdivision shall remain responsible for the lawful conduct of its election. The Elections Administrator shall provide advisory services in connection with decisions to be made and actions to be taken by the officers of the Political Subdivision.

It is understood that other political subdivisions may wish to participate in the use of the County’s electronic voting system and polling places, and it is agreed that Taylor County and the Elections Administrator may enter into other joint election agreements and contracts for election services for those purposes on terms and conditions generally similar to those set forth in this contract. Political Subdivision agrees that Taylor County may enter into joint election agreements with other political subdivisions that may have territory located partially or wholly within the boundaries of Political Subdivision, and in such case all parties sharing common territory shall share a joint ballot on the county’s electronic voting system at the applicable polling places.

At each polling location, joint participants shall share voting equipment and supplies to the extent possible. The participating parties shall share a mutual ballot in those precincts where jurisdictions overlap. However, in no instance shall a voter be permitted to receive a ballot containing an office or proposition stating a measure on which the voter is ineligible to vote. Multiple ballot styles shall be available in those shared polling places where jurisdictions do not overlap.

II. LEGAL DOCUMENTS

Political Subdivision shall be responsible for the preparation, adoption, and publication of all required election orders, resolutions, notices, and any other pertinent documents required by the Texas Election Code and/or Political Subdivision's governing body, charter, or ordinances.

Preparation of the necessary materials for notices and the official ballot shall be the responsibility of Political Subdivision, including translation to languages other than English.

III. VOTING LOCATIONS

Taylor County has adopted a countywide polling place program. Voters from Political Subdivisions participating in this Joint Election may cast a ballot at any polling location open for this election. The Elections Administrator will coordinate and arrange for the use of Early Voting and Election Day voting Locations. A list of the **proposed** countywide polling locations are included with this agreement. The Elections Administrator shall notify each participating Political Subdivision of any changes from the locations listed. The Elections Administrator will finalize the countywide polling locations as soon as possible before this Joint election.

The parties agree and acknowledge that early and Election Day polling locations, as well as dates and times for voting, are subject to change, if a change must be made to comply with social distancing, health, or safety requirements or restrictions, or any other requirement or restriction, established by a Governor's Executive Order or local emergency declaration or order.

If polling places for the May 7, 2022 joint election are different from the polling place(s) used by the Political Subdivision in its most recent election, the Elections Administrator agrees to post a notice no later than Wednesday, April 27, 2022 at the entrance to any previous polling places in the jurisdiction stating that the polling location has changed and stating the polling place names and addresses in effect for the May 7, 2022 election.

IV. ELECTION JUDGES, CLERKS, AND OTHER PERSONNEL

Taylor County shall be responsible for the appointment of the presiding judge and alternate judge for each polling location in accordance with Chapter 32 of the Texas Election Code. The Elections Administrator shall recruit polling place officials who are bilingual (fluent in both English and Spanish). The Elections Administrator shall make emergency appointments of election officials if necessary.

The Elections Administrator shall notify all election judges of the eligibility requirements of Subchapter C of Chapter 32 of the Texas Election Code, and will take the necessary steps to insure that all election judges appointed for the Joint Election are eligible to serve.

The Elections Administrator shall arrange for the training and compensation of all election judges and clerks. The Elections Administrator shall arrange for the date, time, and place for presiding election judges to pick up their election supplies. Each presiding election judge will be sent a letter from the Elections Administrator notifying the person of the appointment, the time and location of training and distribution of election supplies, and the number of election clerks that the presiding judge may appoint.

Each election judge and clerk will receive compensation at an hourly rate established by Taylor County pursuant to Texas Election Code Section 32.091. Judges and Clerks will be compensated for actual time working at a polling place and time spent attending any training classes required to successfully conduct the election. The election judge will receive an additional sum of \$25.00 for picking up the election supplies prior to Election Day and for returning the supplies and equipment to the central counting station after the polls close.

The Elections Administrator may employ other personnel necessary for the proper administration of the election, including such part-time help as is necessary to prepare for the election, to ensure the timely delivery of supplies during early voting and on Election Day, and for the efficient tabulation of ballots at the central counting station. Part-time personnel working in support of the Early Voting Ballot Board and/or central counting station on election night will be compensated at the rate set by Taylor County.

V. PREPARATION OF SUPPLIES AND VOTING EQUIPMENT

The Elections Administrator shall arrange for all election supplies and voting equipment including, but not limited to official ballots, sample ballots, voter registration lists, and all forms, signs, maps and other materials used by the election judges at the voting locations. At each polling location, joint participants shall share voting equipment and supplies to the extent possible. The participating parties shall share a mutual ballot in those precincts where jurisdictions overlap. However, in no instance shall a voter be permitted to receive a ballot containing an office or proposition stating a measure on which the voter is ineligible to vote. Multiple ballot styles shall be available in those shared polling places where jurisdictions do not overlap.

Political Subdivision shall furnish the Elections Administrator a list of candidates and/or propositions showing the exact manner in which the candidate names and/or proposition(s) are to appear on the official ballot. Once all candidate filing deadlines and candidate withdrawal deadlines have passed, the Elections Administrator shall coordinate with political subdivision to determine the date and time to conduct the ballot drawing. Ballot drawing will be conducted at the office of the Elections Administrator. Candidate names will be listed on the official ballot in the order determined by the ballot drawing. Political Subdivision shall be responsible for proofreading and approving the ballot insofar as it pertains to political subdivision's candidates and/or propositions.

VI. EARLY VOTING

The participating authorities agree to conduct joint early voting and to appoint the Elections Administrator as the Early Voting Clerk in accordance with Sections 31.097 and 271.006 of the Texas Election Code. The participating authorities agree to appoint the Elections Administrator's permanent county employees as deputy early voting clerks. The participating authorities further agree that the Elections Administrator may appoint other deputy early voting clerks to assist in the conduct of early voting as necessary, and that these additional deputy early voting clerks shall be compensated at an hourly rate set by Taylor County pursuant to Section 83.052 of the Texas Election Code.

The Elections Administrator will coordinate and arrange for the use of early voting locations. After all candidate filing deadlines and candidate withdrawal deadlines have passed, final early voting locations will be determined based upon which Political Subdivisions will be holding an election. The Elections Administrator shall notify each participating Political Subdivision of the early voting locations and any necessary changes to the locations. Any qualified voter of the Joint Election may vote early by personal appearance at any one of the joint early voting locations.

As Early Voting Clerk, the Elections Administrator shall receive applications for early voting ballots to be voted by mail in accordance with Chapters 31 and 86 of the Texas Election Code. Any requests for early voting ballots to be voted by mail received by Political Subdivision shall be forwarded immediately by regular mail, email, fax or courier to the Elections Administrator for processing.

The Elections Administrator will make the information on the roster for a person who votes an early voting ballot by personal appearance available for public inspection in accordance with Section 87.121(g) of the Election Code. In addition, the information on the roster for a person who votes an early voting ballot by mail will also be made available in accordance with Section 87.121(h) of the Election Code. The rosters showing the previous day's early voting activity will be posted to the county website not later than 11:00 AM each business day.

VII. EARLY VOTING BALLOT BOARD

Taylor County shall create an Early Voting Ballot Board (EVBB) to process early voting results from the Joint Election. The Presiding Judge, with the assistance of the Elections Administrator, shall appoint two or more additional members to constitute the Early Voting Ballot Board.

VIII. CENTRAL COUNTING STATION AND ELECTION RETURNS

The Elections Administrator shall be responsible for establishing and operating the central counting station to receive and tabulate the voted ballots in accordance with the provisions of the Texas Election Code and of this agreement.

The participating authorities hereby, in accordance with Section 127.002, 127.003, and 127.005 of the Texas Election Code, appoint the following central counting station officials:

Counting Station Manager	Freda Ragan, Elections Administrator
Tabulation Supervisor	Traci Appleton, Deputy Elections Clerk
Presiding Judge	Vicki Adams

The Counting Station Manager or his representative shall deliver timely cumulative reports of the election results as precincts report to the central counting station and are tabulated. The Counting Station Manager shall be responsible for releasing cumulative totals and precinct returns from the election to the joint participants, candidates, press, and general public by distribution of hard copies or electronic transmittals by facsimile (when so requested).

The Elections Administrator will prepare the unofficial canvass reports after all ballots have been counted, and will deliver a copy of the unofficial canvass to the Political Subdivision as soon as possible after all returns have been tabulated. All participating authorities shall be responsible for the official canvass of their respective elections.

The Elections Administrator shall be responsible for conducting the post-election manual recount required by Section 127.201 of the Texas Election Code unless a waiver is granted by the Secretary of State

IX. RUNOFF ELECTION

Political Subdivision shall have the option of extending the terms of this agreement through its runoff election, if applicable. In the event of such runoff election, the terms of this agreement shall automatically extend unless the Political Subdivision notifies the Elections Administrator in writing within 10 days of the original election.

Political Subdivision shall reserve the right to reduce the number of early voting locations and/or Election Day voting locations in any runoff election.

X. ELECTION EXPENSES AND ALLOCATION OF COSTS

Any election held by Political Subdivision will be at the expense of the Political Subdivision. In the event of joint elections, it is agreed between all participating authorities to share the costs of administering the Joint Election. Allocation of costs, unless specifically stated otherwise, is mutually agreed to be shared among the total number political subdivisions.

Share of Election Costs: The political subdivision's share of election costs will be (i) a base fee of \$1,000.00, (ii) plus a pro rata share of the total of all costs incurred by the County in connection with the administration of elections of other entities held at the same time as the Election. The sum of the base charges from all participating political subdivisions will be subtracted from the total of all costs before allocating the remaining costs to each political

subdivision. Each participating political subdivision's share of the remaining (allocated) costs will be determined as follows: The number of registered voters in each individual participating political subdivision will be divided by the number of all registered voters of all participating political subdivisions to determine each subdivision's pro rata share expressed as a percentage, which will then be multiplied against each of the allocated costs (remaining costs after base charges are subtracted) as itemized on the final Total Cost report/invoice submitted to each political subdivision after the election. The end result will be a charge to the political subdivision of \$1,000.00 plus the subdivision's allocated share of county-wide election costs not covered by the sum of all base fees received.

Each participating political subdivision agrees to pay Taylor County Elections Administrator an administrative fee equal to ten percent (10%) of its total billable costs (but not less than \$75.00) in accordance with Section 31.100(d) of the Texas Election Code.

Costs for Early Voting by Mail shall be allocated according to the actual number of ballots mailed to each participating political subdivision's voters.

Each participating political subdivision shall share the cost and reimburse Taylor County for the wages of Early Voting Election Clerks that are appointed and employed to work at the following early voting locations:

Taylor County Plaza

Mall of Abilene

Abilene City Hall

It is agreed that charges for Election Day Judges and Clerks shall be shared equally among each participating political subdivision.

It is agreed that each participating political subdivision shall share the cost and reimburse Taylor County for overtime wages at time and a half to the permanent employees of the Elections Administrator for contractual duties performed outside the normal business hours of Taylor County in accordance with Section 31.100(e) of the Texas Election Code.

Political Subdivision agrees to pay Taylor County an administrative fee equal to ten percent (10%) of its total billable costs in accordance with Section 31.100(d) of the Texas Election Code.

A cost estimate for the services, equipment and supplies provided by the County is attached and made a part of this agreement. This cost estimate shall serve as the cost schedule agreed upon by each political subdivision, as referenced in Section 31.093(a) of the Texas Election Code.

XI. WITHDRAWAL FROM CONTRACT DUE TO CANCELLATION OF ELECTION

Political Subdivision may withdraw from this agreement and the Joint Election should it cancel its election in accordance with Sections 2.051 – 2.053 of the Texas Election Code. The Elections Administrator shall be entitled to receive an administrative fee of \$75.00. The Elections Administrator shall submit an invoice for such fee within 15 days of the cancellation notice.

XII. RECORDS OF THE ELECTION

The Elections Administrator is hereby appointed general custodian of the voted ballots and all records of the Joint Election as authorized by Section 271.010 of the Texas Election Code.

Access to the election records shall be available to each participating authority as well as to the public in accordance with applicable provisions of the Texas Election Code and the Texas Public Information Act. The election records shall be stored at the office of the Elections Administrator. The Elections Administrator shall ensure that the records are maintained in an orderly manner so that the records are clearly identifiable and retrievable.

Records of the election shall be retained and disposed of in accordance with the provisions of Section 66.058 of the Texas Election Code. If records of the election are involved in any pending election contest, investigation, litigation, or open records request, the Elections Administrator shall maintain the records until final resolution or until final judgment, whichever is applicable. It is the responsibility of Political Subdivision to bring to the attention of the Elections Administrator any notice of pending election contest, investigation, litigation or open records request which may be filed with Political Subdivision.

XIII.RECOUNTS

A recount may be obtained as provided by Title 13 of the Texas Election Code. Political Subdivision agrees that any recount shall take place at the offices of the Elections Administrator, and that the Elections Administrator shall serve as Recount Supervisor and Political Subdivision's official or employee who performs the duties of a secretary under the Texas Election Code shall serve as Recount Coordinator.

XIV. MISCELLANEOUS PROVISIONS

1. It is understood that to the extent space is available, that other districts and political subdivisions may wish to participate in the use of the County's election equipment and voting places, and it is agreed that the Elections Administrator may contract with such other districts or political subdivisions for such purposes and that in such even there may be an adjustment of the share to be paid to the County by the participating authorities.
2. The Elections Administrator shall file copies of this document with the Taylor County Treasurer and the Taylor County Auditor in accordance with Section 31.099 of the Texas Election Code.
3. In the event that legal action is filed challenging Political Subdivision's election, each party hereto shall defend its own actions, officials and employees. If it is determined that the actions of Political Subdivision resulted in legal action against Taylor County or the Taylor County Elections Administrator or any additional election personnel, then Political Subdivision shall provide to the fullest extent allowed by law, at its own expense, legal counsel for the County, the Elections Administrator, and additional election personnel as necessary save and except in any instance whereby an unlawful or otherwise improper act or omission of the County, the Election Administrator or another participating authority in the election has precipitated such legal action.
4. Nothing in this contract prevents any party from taking appropriate legal action against any other party and/or other election personnel for a breach of this contract or a violation of the Texas Election Code.
5. No Party to this Agreement shall be liable for delay or failure in the performance of its contractual obligations caused by or arising from any one or more events that are beyond its reasonable control, including, but not limited to, the following events: act of God; war; terrorism; riot; plague; epidemic; pandemic; outbreak of infectious disease or any other public health crisis or disaster; order or act of civil or military authority; or compliance with any law or governmental order, rule, regulation, or direction. Upon such delay or failure affecting one Party, that Party shall notify the other Party and use all reasonable efforts to cure or alleviate the cause of such delay or failure with a view to resuming performance of its contractual obligations as soon as practicable. Notwithstanding the foregoing, in every case the delay or failure to perform must be beyond the control and without the fault or negligence of the Party claiming excusable delay.
6. Taylor County and Political Subdivision agree that under the Constitution and laws of the State of Texas, neither Taylor County nor the Political Subdivision can enter into an agreement whereby either party agrees to indemnify or hold harmless another party; therefore, all references of any kind, if any, to indemnifying or holding or saving harmless for any reason are hereby deleted.

7. This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Taylor County, Texas.
8. In the event one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
9. All parties shall comply with all applicable laws, ordinances, and codes of the State of Texas, all local governments, and any other entities with local jurisdiction.
10. The waiver by any party of a breach of any provision of this agreement shall not operate as or be construed as a waiver of any subsequent breach.
11. Any amendments of this agreement shall be of no effect unless in writing and signed by all parties hereto.

XV. FINAL OBLIGATION AND PAYMENT

Political Subdivision agrees it is obligated to pay to Taylor County all of the Political Subdivision's joint election charges, fees, expenses, and costs as set forth under the terms of this Contract, with the exact amount of the Political Subdivision's financial obligation under the terms of this Contract to be timely calculated after the joint election.

XVI. JOINT CONTRACT ACCEPTANCE AND APPROVAL

IN TESTIMONY HEREOF, this agreement has been executed on behalf of the parties hereto as follows, to-wit:

- (1) It has on the ____ day of _____, 2022 been executed by the Taylor County Elections Administrator pursuant to the Texas Election Code so authorizing;
- (2) It has on the ____ day of _____, 2022 been executed on behalf of the City of Abilene pursuant to an action of the City of Abilene so authorizing;

ACCEPTED AND AGREED TO BY THE CITY OF ABILENE:

APPROVED:

ATTESTED:

Robert Hanna, City Manager

Shawna Atkinson, City Secretary

APPROVED:

City Attorney

ACCEPTED AND AGREED TO BY TAYLOR COUNTY ELECTIONS ADMINISTRATOR:

APPROVED:

Freda Ragan
Elections Administrator

ESTIMATED COST
City of Abilene General Election
Saturday, May 7, 2022

EQUIPMENT

Early Voting

Controllers / Touch / Touch Access @ \$186.00 each \$ 8,742.00

Election Day

Controllers / Touch / Touch Access @ \$186.00 each \$ 30,504.00

Transportation of Equipment/Equipment Preparation \$ 1,100.00 \$ **40,346.00**
(includes delivery and pickup_ Election Day)

LEGAL

Internal L&A Testing No Charge
Notice of Public L&A Testing \$ 325.00 \$ **325.00**

MISCELLANEOUS SERVICES

Election Kits for Judges @ \$50.00 each

Early Voting \$ 600.00
Election Day \$ 1,100.00

Internet Connectivity @ Polling Locations

Early Voting \$ 250.00
Election Day \$ 475.00

Mail Ballot Packets

800 @ \$2.25 each (includes postage) \$ 1,800.00 \$ **4,225.00**

PERSONNEL

Early Voting Ballot Board \$ 400.00
Central Counting Station \$ 200.00
Early Voting \$ 9,500.00
Election Day \$ 15,000.00
County Employee Overtime \$ 4,000.00 \$ **29,100.00**

TOTAL ESTIMATED COST FOR ENTIRE ELECTION \$ 73,996.00

Total Estimated Cost of Election \$73,996.00
Less \$1,000 base cost for each entity that will potentially hold elections **(\$16,000.00)**
Total to be used to allocate % Cost to each entity \$57,996.00

CITY OF ABILENE ESTIMATED COST

% Cost is based upon number of registered voters in district = 66,126

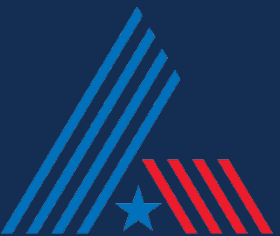
City of Abilene portion of cost = \$57,996.00 @ 28.03% \$ 16,256.28
Base Cost \$ 1,000.00
Sub Total \$ 17,256.28
10% Administrative Fee (minimum \$75.00) \$ 1,725.63
TOTAL ESTIMATED COST \$ 18,981.91

Resolution: Elections Contract with Taylor County



Elections Contract

- Contract: Taylor County for the administration of elections
- Term: General Election, and Runoff if any
- Services: General Election (City Council Places 5 and 6)
- Locations: Countywide Polling Locations
- Cost: Estimated at \$18,981.91 (total number of participants unknown)



COST ESTIMATE

EQUIPMENT

Early Voting

Controllers / Touch / Touch Access @ \$186.00 each \$ 8,742.00

Election Day

Controllers / Touch / Touch Access @ \$186.00 each \$ 30,504.00

Transportation of Equipment/Equipment Preparation

(includes delivery and pickup_ Election Day)

\$ 1,100.00 \$ 40,346.00

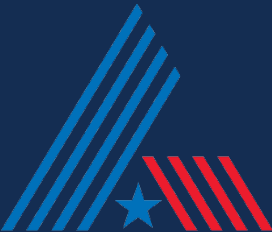
LEGAL

Internal L&A Testing

No Charge

Notice of Public L&A Testing

\$ 325.00 \$ 325.00



COST ESTIMATE - CONTINUED

MISCELLANEOUS SERVICES

Election Kits for Judges @ \$50.00 each

Early Voting	\$	600.00	
Election Day	\$	1,100.00	

Internet Connectivity @ Polling Locations

Early Voting	\$	250.00	
Election Day	\$	475.00	

Mail Ballot Packets

800 @ \$2.25 each (includes postage)	\$	1,800.00	\$	4,225.00
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COST ESTIMATE - CONTINUED

PERSONNEL

Early Voting Ballot Board	\$	400.00	
Central Counting Station	\$	200.00	
Early Voting	\$	9,500.00	
Election Day	\$	15,000.00	
County Employee Overtime	\$	4,000.00	\$ 29,100.00

TOTAL ESTIMATED COST FOR ENTIRE ELECTION **\$ 73,996.00**

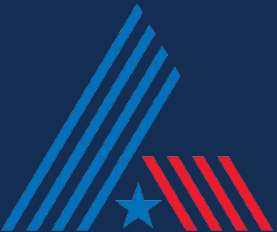
<i>Total Estimated Cost of Election</i>	\$73,996.00
<i>Less \$1,000 base cost for each entity that will potentially hold elections</i>	<u>(\$16,000.00)</u>
<i>Total to be used to allocate % Cost to each entity</i>	\$57,996.00

CITY OF ABILENE ESTIMATED COST

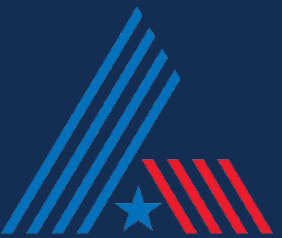
% Cost is based upon number of registered voters in district = 66,126

City of Abilene portion of cost = \$57,996.00 @ 28.03%	\$	16,256.28
Base Cost	\$	1,000.00
Sub Total	\$	<u>17,256.28</u>
10% Administrative Fee (minimum \$75.00)	\$	1,725.63

TOTAL ESTIMATED COST **\$ 18,981.91**



QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 2/10/2022

TO: Honorable Mayor & Members of City Council

FROM: Robert Hanna, City Manager

SUBJECT: 6. Resolution: Receive a Report, Hold a Discussion and Take Action on Modifying and Extending the Declaration of Local Disaster (COVID-19) (*Robert Hanna*)

GENERAL INFORMATION

On January 13, 2022, the City Council adopted a Further Modification and Extension of Declaration of Local Disaster due to the COVID-19 pandemic. That extension lasts through February 10, 2022.

On July 29, 2021, the Governor of the State of Texas issued his Executive Order GA-38, relating to the continuing response to the COVID-19 disaster.

On August 25, 2021, the Governor of the State of Texas issued his Executive Order GA-39, relating to vaccine mandates.

On January 22, 2022, the Governor of the State of Texas extended the State of Disaster for all counties in Texas due to the continuing COVID-19 pandemic.

SPECIAL CONSIDERATIONS

The Governor's Executive Orders GA-38 and GA-39 supersede any conflicting order issued by local officials in response to the COVID-19 disaster.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 27th Resolution Extending Declaration of Local Disaster COVID-19 redline draft
2. EO-GA-38-continued-response-to-the-COVID-19-disaster-IMAGE-07-29-2021 (1)
3. GA-39
4. proc01222022_COVID
5. Disaster Declaration PPT

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL, CITY OF ABILENE, TEXAS, FURTHER MODIFYING ITS EXTENSION OF DECLARATION OF DISASTER (COVID-19).

WHEREAS, on March 16, 2020, the Mayor of the City of Abilene, by proclamation, issued a Declaration of Local Disaster regarding COVID-19; and

WHEREAS, on March 23, 2020, the City Council issued its Resolution Renewing and Continuing the Mayor's Declaration of Disaster Issued on March 16, 2020, which prohibited the social gathering of more than 10 persons; and

WHEREAS, on March 30, 2020, the City Council issued its Resolution Modifying its Extension of Declaration of Disaster, which created a limited shelter in place through 11:59 p.m., April 14, 2020; and

WHEREAS, on April 13, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which continued the limited shelter in place through 11:59 p.m., April 30, 2020; and

WHEREAS, on April 30, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-18; and

WHEREAS, on May 15, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-21; and

WHEREAS, on June 1, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-23, which was effective until June 25, 2020; and

WHEREAS, on June 25, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-26, which was effective until July 23, 2020; and

WHEREAS, on July 23, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-28, as amended, and Executive Order GA-29, which was effective until August 27, 2020; and

WHEREAS, on August 27, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which continued to adopt the regulations and restrictions issued in the Governor's Executive Order GA-28, as amended, and Executive Order GA-29, which was effective until September 24, 2020; and

WHEREAS, on September 24, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which continued the adopt the regulations and restrictions issued in the Governor's Executive Order GA-29, and Executive Order GA-30, which was effective until October 22, 2020; and

WHEREAS, on October 22, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-29, and Executive Order GA-32, which was effective until November 19, 2020; and

WHEREAS, on November 19, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-29, and Executive Order GA-32, which was effective until December 17, 2020; and

WHEREAS, on December 17, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-29, and Executive Order GA-32, which was effective until January 14, 2021; and

WHEREAS, on January 14, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-29, and Executive Order GA-32, which was effective until February 11, 2021; and

WHEREAS, on February 11, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-29, and Executive Order GA-32, which was effective until March 11, 2021; and

WHEREAS, on March 11, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Order GA-34, which was effective until April 8, 2021; and

WHEREAS, on April 8, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Order GA-34, and which was effective until May 13, 2021; and

WHEREAS, on May 13, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Order GA-34, and which was effective until June 10, 2021; and

WHEREAS, on June 10, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions

issued in the Governor's Executive Orders GA-34 and GA-36, and which was effective until July 8, 2021; and

WHEREAS, on July 8, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Orders GA-34 and GA-36, and which was effective until August 12, 2021; and

WHEREAS, on August 12, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Order GA-38, and which was effective until September 9, 2021; and

WHEREAS, on September 9, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Order GA-38, and which was effective until October 14, 2021; and

WHEREAS, on October 14, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Order GA-38, and which was effective until November 4, 2021; and

WHEREAS, on November 4, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Order GA-38 and GA-39, and which was effective until December 2, 2021; and

WHEREAS, on December 2, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Orders GA-38 and GA-39, and which was effective until January 13, 2022; and

WHEREAS, on January 13, 2022, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Orders GA-38 and GA-39, and which was effective until February 10, 2022; and

WHEREAS, on July 29, 2021, the Governor of the State of Texas issued his Executive Order GA-38, effective until it is modified, amended, rescinded, or superseded by the Governor, and which related to the continue response to the COVID-19 disaster; and

WHEREAS, on August 25, 2021, the Governor of the State of Texas issued his Executive Order GA-39, effective until it is modified, amended, rescinded, or superseded by the Governor, which related to vaccine mandates; and

WHEREAS, on ~~January 22~~~~December 23, 2022~~²¹, the Governor of the State of Texas renewed his disaster proclamation for all counties in Texas due to COVID-19 continuing a state of disaster; and

WHEREAS, because of the continuing risk of the rapid spread of the COVID-19 virus, the need to protect the most vulnerable members of the community, the intent to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services and commerce to continue, and the desire to slow the spread of COVID-19 to maximum extent possible, this Order is required; and

WHEREAS, this Order is issued based on evidence of the continuing occurrence of COVID-19 within the City of Abilene and Taylor County, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically; and

WHEREAS, the City Council has determined that extraordinary and immediate measures must continue to be taken to respond quickly to prevent and slow down community spread of COVID-19 in the City of Abilene; and

WHEREAS, the City Council finds that it is in the public interest to authorize additional authority as described herein pursuant to the Texas Disaster Act of 1975, as amended, Texas Government Code, and provide rules to protect the health of persons in the City of Abilene, pursuant to the Texas Government Code and Texas Health and Safety Code.

NOW THEREFORE, IT IS HEREBY RESOLVED AND DECLARED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

1. The foregoing recitals as incorporated herein and made findings of fact.
2. That the City Council, effective immediately, hereby renews and continues the local state of disaster for the City of Abilene, Texas, pursuant to Section 418.108(b) of the Texas Government Code.
3. Pursuant to Section 418.108(c) of the Government Code, this renewal and continuation of the declaration of a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the City Secretary.
4. Pursuant to Section 418.108(d) of the Government Code, this renewal and continuation of the declaration of a local state of disaster continues activation of the emergency management plan for the City of Abilene. The furnishing of aid and assistance under the declaration is hereby authorized. The appropriate preparedness and response aspects of the plan are continued.
5. The use of all available resources of the City of Abilene that are reasonably necessary to cope with this disaster are hereby authorized.

6. To the extent permitted by law, any local ordinance or administrative rule prescribing the procedures for conduct of City business or any local ordinance or administrative rule that would in any way prevent, hinder, or delay necessary action in coping with this disaster, including any local ordinance or administrative rule regarding contracting or procurement with would impede the City's emergency response necessary to cope with this declared disaster, are hereby suspended, but only for the duration of this declared local disaster and only for that limited purpose.
7. Pursuant to Section 418.108(g) of the Government Code, the City of Abilene may control ingress to and egress from a disaster area within the incorporated limits of the City of Abilene and control the movement of persons and the occupancy of premises in that area.
8. Pursuant to Section 122.006 of the Texas Health and Safety Code, the City of Abilene may adopt rules to protect the health of persons in the municipality, including quarantine rules to protect the residents against communicable disease.
9. The intent of this Order is to protect the physical health and well-being of City of Abilene residents, to protect the financial health and well-being of City of Abilene residents and businesses, and to slow the spread of COVID-19 to the maximum extent possible while safeguarding the Constitutional liberties of City of Abilene residents by utilizing the least restrictive means possible and encouraging the highest level of personal responsibility.

All persons should follow the CDC recommended guidelines to protect themselves from exposure and to protect the public from further community spread.

10. The City of Abilene hereby adopts and incorporates herein Governor Greg Abbott's Executive Orders GA-38 and GA-39, the same as if they were copied and set-forth at length herein. The City of Abilene will follow and enforce the conditions and restrictions as set forth in GA-38 and GA-39, and adopts and incorporates any further Proclamations modifying, amending or superseding GA-38 or GA-39 during the term of Abilene's declaration of local disaster.

The City Manager is authorized without further Council action to enforce these provisions to the fullest extent allowed by law.

11. In the event the Governor of the State of Texas amends or modifies his Executive Order GA-38 or GA-39, this Declaration and Order is automatically amended or modified without further Council action to reflect said amendments or modifications to the Governor's Executive Orders. It being the express intent of the City Council and this Declaration and Order to follow the Governor's Executive Orders.

12. All public, private and commercial laboratories operating within the City of Abilene and performing COVID-19 testing shall report by 5:00 p.m. each day, Monday through Friday, but excluding holidays, for the period since the last report, to the Abilene-Taylor County Public Health District the following information:

- (a) The number of COVID-19 tests performed;
- (b) The number of positive COVID-19 tests; and
- (c) The patient names and demographic information of positive COVID-19 tests.

This information will be used solely for public health purposes to monitor the testing conducted in the City of Abilene, and mitigate and contain the spread of COVID-19.

13. That any City ordinance or regulation imposing a time requirement for payment, filing or appealing a decision, may be extended by the Mayor without further confirmation by the City Council.

14. That the Mayor may suspend or modify any other ordinance or regulation of the City of Abilene for a period of not more than seven days from the date of this resolution unless continued or renewed by the City Council.

15. That the City Manager or designee of the City Manager is authorized, without further approval of the City Council, to:

- (a) Make application for local, state and federal assistance as necessary and/or applicable;
- (b) Accept on behalf of the City services, gifts, grants, equipment, supplies, and/or materials whether from private, nonprofit, or governmental sources;
- (c) Enter into Interlocal cooperation agreements or memorandums of understanding with other cities, counties, or jurisdictions to provide for law enforcement assistance or other shared services to assist in this Resolution or the COVID-19 pandemic;
- (d) Contract for expenditures for budgeted items and emergency expenditures in an amount not to exceed \$250,000; and
- (e) Defer any fines or fees imposed by the City.

After cessation of this emergency and state of disaster, the City Manager shall provide the City Council a list of all actions taken under this paragraph.

16. That although not required by law and out of an abundance of caution, the City Manager is authorized to (and any prior acts in response to the COVID-19 pandemic are ratified):

- (a) Close, including closure to the public, of any City offices, facilities, or properties, including parks, playgrounds, or playground equipment; and
 - (b) Provide city services by means other than in-person delivery, such as accepting permit applications online or by mail only, and/or to cease any city service that are not required by state or federal law.
- 17. That any ordinances, rules, or regulations of the City of Abilene, Texas, that conflict with this Resolution are hereby suspended, such suspension to remain in effect until the state of disaster is terminated or until there is a subsequent Resolution of this Council, whichever occurs first.
- 18. That pursuant to Section 418.020(d) of the Texas Government Code, the City of Abilene is authorized to:
 - (a) Temporarily or permanently acquire by lease, purchase, or other means sites required for installation of temporary housing units or emergency shelters for disaster victims; and
 - (b) Enter into arrangements necessary to prepare or equip the site to use the housing units or shelters, including arrangements for the purchase of temporary housing units or shelters and the payment of transportation charges.
- 19. That failure to comply with any of the provisions of this Order constitutes an imminent threat to public health.
- 20. Pursuant to Section 418.173, Government Code, failure to comply with this Order is an offense punishable by a fine not to exceed \$1,000, except as otherwise provided in the Governor's Executive Orders GA-38 or GA-39.
- 21. That any violation of this Resolution, Declaration and Order can be enjoined by the City of Abilene by a suit filed in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this Resolution, Declaration and Order or in the Code of Ordinances, City of Abilene, Texas.
- 22. That nothing in this Resolution, Declaration and Order shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this Resolution.

23. All provisions of this Resolution, Declaration and Order should be interpreted to effectuate its intent.

24. That this Declaration and Order is effective immediately and continues until 11:59 p.m. ~~March~~February 10, 2022 unless otherwise modified, terminated or extended.

25. That the terms and provisions of this Resolution, Declaration and Order shall be deemed to be severable and that if any section, subsection, sentence, clause, phrase or word herein shall be declared to be invalid or unconstitutional, the same shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word herein, and the remainder of this Resolution, Declaration and Order shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

ADOPTED this ~~10~~13th day of ~~February~~January, 2022.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney



GOVERNOR GREG ABBOTT

July 29, 2021

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

3:15 PM O'CLOCK

JUL 29 2021

Secretary of State

Mr. Joe A. Esparza
Deputy Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Deputy Secretary Esparza:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-38 relating to the continued response to the COVID-19 disaster.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,

A blue ink signature of Gregory S. Davidson, written in a cursive style.

Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
July 29, 2021

EXECUTIVE ORDER GA 38

Relating to the continued response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all Texas counties; and

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, from March 2020 through May 2021, I issued a series of executive orders aimed at protecting the health and safety of Texans, ensuring uniformity throughout Texas, and achieving the least restrictive means of combatting the evolving threat to public health by adjusting social-distancing and other mitigation strategies; and

WHEREAS, combining into one executive order the requirements of several existing COVID-19 executive orders will further promote statewide uniformity and certainty; and

WHEREAS, as the COVID-19 pandemic continues, Texans are strongly encouraged as a matter of personal responsibility to consistently follow good hygiene, social-distancing, and other mitigation practices; and

WHEREAS, receiving a COVID-19 vaccine under an emergency use authorization is always voluntary in Texas and will never be mandated by the government, but it is strongly encouraged for those eligible to receive one; and

WHEREAS, state and local officials should continue to use every reasonable means to make the COVID-19 vaccine available for any eligible person who chooses to receive one; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility “for meeting ... the dangers to the state and people presented by disasters” under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the “governor may issue executive orders ... hav[ing] the force and effect of law;” and

WHEREAS, under Section 418.016(a), the “governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance with the provisions ... would in any way prevent, hinder, or delay necessary action in coping with a disaster;” and

WHEREAS, under Section 418.018(c), the “governor may control ingress and egress to

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:15pm O'CLOCK

JUL 29 2021

and from a disaster area and the movement of persons and the occupancy of premises in the area;” and

WHEREAS, under Section 418.173, the legislature authorized as “an offense,” punishable by a fine up to \$1,000, any “failure to comply with the [state emergency management plan] or with a rule, order, or ordinance adopted under the plan;”

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

1. To ensure the continued availability of timely information about COVID-19 testing and hospital bed capacity that is crucial to efforts to cope with the COVID-19 disaster, the following requirements apply:
 - a. All hospitals licensed under Chapter 241 of the Texas Health and Safety Code, and all Texas state-run hospitals, except for psychiatric hospitals, shall submit to the Texas Department of State Health Services (DSHS) daily reports of hospital bed capacity, in the manner prescribed by DSHS. DSHS shall promptly share this information with the Centers for Disease Control and Prevention (CDC).
 - b. Every public or private entity that is utilizing an FDA-approved test, including an emergency use authorization test, for human diagnostic purposes of COVID-19, shall submit to DSHS, as well as to the local health department, daily reports of all test results, both positive and negative. DSHS shall promptly share this information with the CDC.
2. To ensure that vaccines continue to be voluntary for all Texans and that Texans’ private COVID-19-related health information continues to enjoy protection against compelled disclosure, in addition to new laws enacted by the legislature against so-called “vaccine passports,” the following requirements apply:
 - a. No governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.082(f)(1) of the Texas Health and Safety Code to the extent necessary to ensure that no governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization.
 - b. State agencies and political subdivisions shall not adopt or enforce any order, ordinance, policy, regulation, rule, or similar measure that requires an individual to provide, as a condition of receiving any service or entering any place, documentation regarding the individual’s vaccination status for any COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.085(i) of the Texas Health and Safety Code to the extent necessary to enforce this prohibition. This paragraph does not apply to any documentation requirements necessary for the administration of a COVID-19 vaccine.
 - c. Any public or private entity that is receiving or will receive public funds through any means, including grants, contracts, loans, or other disbursements of taxpayer money, shall not require a consumer to provide, as a condition of receiving any service or entering any place, documentation regarding the consumer’s vaccination status for any COVID-19 vaccine administered under an emergency use authorization. No consumer may be denied entry to a facility financed

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:15 PM O'CLOCK

JUL 29 2021

- in whole or in part by public funds for failure to provide documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization.
- d. Nothing in this executive order shall be construed to limit the ability of a nursing home, state supported living center, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine.
 - e. This paragraph number 2 shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.
3. To ensure the ability of Texans to preserve livelihoods while protecting lives, the following requirements apply:
- a. There are no COVID-19-related operating limits for any business or other establishment.
 - b. In areas where the COVID-19 transmission rate is high, individuals are encouraged to follow the safe practices they have already mastered, such as wearing face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household, but no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering.
 - c. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus.
 - d. Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow guidance from the Texas Health and Human Services Commission (HHSC) regarding visitations, and should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible.
 - e. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency. Private schools and institutions of higher education are encouraged to establish similar standards.
 - f. County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations.
 - g. As stated above, business activities and legal proceedings are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials. This paragraph number 3 supersedes any conflicting local order in response to the COVID-19 disaster, and all relevant laws are suspended to the extent necessary to preclude any such inconsistent local orders. Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any conflicting or inconsistent limitation by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

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SECRETARY OF STATE
3:15pm O'CLOCK

JUL 29 2021

4. To further ensure that no governmental entity can mandate masks, the following requirements shall continue to apply:
- a. No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering; provided, however, that:
 - i. state supported living centers, government-owned hospitals, and government-operated hospitals may continue to use appropriate policies regarding the wearing of face coverings; and
 - ii. the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, and any county and municipal jails acting consistent with guidance by the Texas Commission on Jail Standards may continue to use appropriate policies regarding the wearing of face coverings.
 - b. This paragraph number 4 shall supersede any face-covering requirement imposed by any local governmental entity or official, except as explicitly provided in subparagraph number 4.a. To the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements, I hereby suspend the following:
 - i. Sections 418.1015(b) and 418.108 of the Texas Government Code;
 - ii. Chapter 81, Subchapter E of the Texas Health and Safety Code;
 - iii. Chapters 121, 122, and 341 of the Texas Health and Safety Code;
 - iv. Chapter 54 of the Texas Local Government Code; and
 - v. Any other statute invoked by any local governmental entity or official in support of a face-covering requirement.

Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any such face-covering requirement by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

- c. Even though face coverings cannot be mandated by any governmental entity, that does not prevent individuals from wearing one if they choose.
5. To further ensure uniformity statewide:
- a. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order or allows gatherings restricted by this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the

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JUL 29 2021

- COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.
- b. Confinement in jail is not an available penalty for violating this executive order. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes all pre-existing COVID-19-related executive orders and rescinds them in their entirety, except that it does not supersede or rescind Executive Orders GA-13 or GA-37. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 29th
day of July, 2021.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

ATTESTED BY:

A handwritten signature in black ink that reads "Joe A. Esparza".

JOE A. ESPARZA
Deputy Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:15pm O'CLOCK

JUL 29 2021



GOVERNOR GREG ABBOTT

August 25, 2021

Mr. Joe A. Esparza
Deputy Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2 PM O'CLOCK

AUG 25 2021

Secretary of State

Dear Deputy Secretary Esparza:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-39 relating to prohibiting vaccine mandates and vaccine passports subject to legislative action.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
August 25, 2021

EXECUTIVE ORDER GA 39

*Relating to prohibiting vaccine mandates and vaccine passports
subject to legislative action.*

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all Texas counties; and

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, I have issued a series of executive orders aimed at protecting the health and safety of Texans, ensuring uniformity throughout Texas, and achieving the least restrictive means of combatting the evolving threat to public health; and

WHEREAS, COVID-19 vaccines are strongly encouraged for those eligible to receive one, but have always been voluntary for Texans; and

WHEREAS, I issued Executive Orders GA-35 and GA-38, addressing COVID-19 vaccines administered under an “emergency use authorization” by prohibiting vaccine mandates from governmental entities and by prohibiting “vaccine passports” from governmental entities and certain others; and

WHEREAS, subsequently, on August 23, 2021, while the legislature was already convened in a special session, the U.S. Food and Drug Administration (FDA) approved one of the COVID-19 vaccines for certain age groups, such that this vaccine is no longer administered under an emergency use authorization for those age groups; and

WHEREAS, while this COVID-19 vaccine is now FDA-approved for certain age groups, others are not yet approved and still are administered under an emergency use authorization; and

WHEREAS, through Chapter 161 of the Texas Health and Safety Code, as well as other laws including Chapters 38 and 51 of the Texas Education Code, the legislature has established its primary role over immunizations, and all immunization laws and regulations in Texas stem from the laws established by the legislature; and

WHEREAS, in other contexts where the legislature has imposed immunization requirements, it has also taken care to provide exemptions that allow people to opt out of being forced to take a vaccine; and

WHEREAS, given the legislature’s primacy and the need to avoid a patchwork of regulations with respect to vaccinations, it is appropriate to maintain the status quo of

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2pm O'CLOCK

AUG 25 2021

prohibiting vaccine mandates through executive order while allowing the legislature to consider this issue while in session; and

WHEREAS, in this instance, given the legislature's prior actions, maintaining the status quo of prohibiting vaccine mandates and ensuring uniformity pending the legislature's consideration means extending the voluntariness of COVID-19 vaccinations to all COVID-19 vaccinations, regardless of regulatory status; and

WHEREAS, I am also adding this issue to the agenda for the Second Called Session of the legislature that is currently convened so that the legislature has the opportunity to consider this issue through legislation; and

WHEREAS, I will rescind this executive order upon the effective date of such legislation;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

1. No governmental entity can compel any individual to receive a COVID-19 vaccine. I hereby suspend Section 81.082(f)(1) of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that no governmental entity can compel any individual to receive a COVID-19 vaccine.
2. State agencies and political subdivisions shall not adopt or enforce any order, ordinance, policy, regulation, rule, or similar measure that requires an individual to provide, as a condition of receiving any service or entering any place, documentation regarding the individual's vaccination status for any COVID-19 vaccine. I hereby suspend Section 81.085(i) of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to enforce this prohibition. This paragraph does not apply to any documentation requirements necessary for the administration of a COVID-19 vaccine.
3. Any public or private entity that is receiving or will receive public funds through any means, including grants, contracts, loans, or other disbursements of taxpayer money, shall not require a consumer to provide, as a condition of receiving any service or entering any place, documentation regarding the consumer's vaccination status for any COVID-19 vaccine. No consumer may be denied entry to a facility financed in whole or in part by public funds for failure to provide documentation regarding the consumer's vaccination status for any COVID-19 vaccine.
4. Nothing in this executive order shall be construed to limit the ability of a nursing home, state supported living center, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine.
5. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any

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SECRETARY OF STATE
2PM O'CLOCK

AUG 25 2021

other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.

This executive order supersedes only paragraph No. 2 of Executive Order GA-38, and does not supersede or otherwise affect the remaining paragraphs of Executive Order GA-38. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 25th
day of August, 2021.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

ATTESTED BY:

A handwritten signature in black ink that reads "Joe A. Esparza".
JOE A. ESPARZA
Deputy Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2PM O'CLOCK

AUG 25 2021



GOVERNOR GREG ABBOTT

January 22, 2022

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

10am O'CLOCK

JAN 22 2022


Secretary of State

The Honorable John B. Scott
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

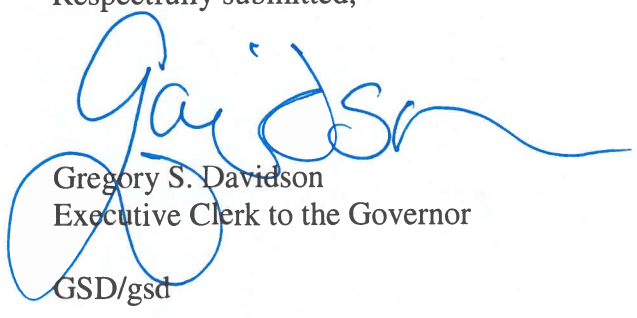
Dear Mr. Secretary:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation renewing the declaration stating the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in Texas.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have issued proclamations renewing the disaster declaration for all Texas counties; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, a state of disaster continues to exist in all counties due to COVID-19;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for all counties in Texas.

Pursuant to Section 418.017, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.



IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 22nd day of January, 2022.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
10 AM O'CLOCK

JAN 22 2022

ATTESTED BY:



JOHN B. SCOTT
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
10 *am* O'CLOCK
JAN 22 2022

Resolution:
**Modifying & Extending the
Local Disaster Declaration**



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 2/10/2022

TO: Robert Hanna, City Manager

FROM: Lesli Andrews, Director

SUBJECT: 7. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving the Contract with Child's Play, Inc. for the Purchase and Installation of a New Playground in Oscar Rose Park (Lesli Andrews)

GENERAL INFORMATION

The City would like to purchase, including installation, a playground from Child's Play, Inc. for the amount of \$434,128.00 from Buy Board Contract #592-19 for Oscar Rose Park. The current playground structure was installed in 1994 and is now in need of replacement due to age and condition. The new playground is a parallel playground environment where children of all abilities and their families can play together. The playground is designed to be used by all children having equal access to play regardless of abilities, age, and comfort level. The playground base will be artificial turf instead of the engineered wood fiber normally used.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

\$413,517.20 will come from the approved FY22 Budget for MIP funds and \$20,610.80 will come from Parks Bucks for a total of \$434,128.00.

STAFF RECOMMENDATION

Staff recommends approval of the contract with Child's Play, Inc. for the purchase and installation of a new playground in Oscar Rose Park.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 2_10_22 Resolution Oscar Rose Playground
2. 36-147569-1A_CW_OscarRosePark
3. Rose Playground Contract
4. Presentation Purchase and Installation Playground Oscar Rose

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS AUTHORIZING THE CITY MANAGER TO PURCHASE, INCLUDING INSTALLATION, A PLAYGROUND FROM CHILD’S PLAY, INC. FOR OSCAR ROSE PARK UNDER BUY BOARD CONTRACT #592-19.

WHEREAS, current playground structure was installed in 1994; and

WHEREAS, current playground is now in need of replacement due to age and condition;
and

WHEREAS, the playground was selected via the City's purchasing cooperative contract with Buy Board, and

WHEREAS, \$413,517.20 from minor improvement funds was approved in the 2022 budget, and

WHEREAS, \$20,610.80 is available from the Parks Bucks fund, and

WHEREAS, a total cost of \$434,128.00 for the playground;

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

Part 1: The City Manager is hereby authorized to purchase, including installation, a playground from Child’s Play, Inc. in the amount of \$434,128.00 from Buy Board Contract #592-19 for Oscar Rose Park.

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

ADOPTED this 10th day of February 2022.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

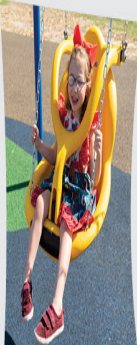
Stanley Smith, City Attorney



Child's Play, Inc.
Parks & Playgrounds



CRUISER™



FREEDOM SWING



BEE PANEL



BRAVA SWING



SERENITY SPOT



APEX NET CLIMBER



TREE BRANCH CLIMBER





CONTRACT

This contract, dated the _____ day of _____, 2022, is between the City of Abilene ("City"), a home rule municipal corporation of the State of Texas and Child's Play Inc. ("Contractor"), a Corporation organized under the laws of the State of Texas

I. TERMS

In consideration of \$434,128.00, the Contractor must provide the services described in Attachment A, which is incorporated by reference, according to all its provisions.

After the CONTRACTOR has fully performed the terms of this AGREEMENT and the CITY'S agent is satisfied that the work has been completed with the terms of this Agreement, the CITY'S agent shall pay the contractor in one lump sum the money specified.

The CITY reserves the right to prorate or to withhold payment from the CONTRACTOR if the CITY'S agent determines that the CONTRACTOR fails to fully perform the work in accordance with the terms of this Agreement, in which case the CONTRACTOR shall bear all costs, including the cost of hiring someone else, due to the CONTRACTOR'S neglect, delay, or refusal to fulfill the terms of this Agreement.

The CITY reserves the right to have its agent inspect the premises to determine whether or not the CONTRACTOR has fully complied with the terms of this Agreement.

II. PAYMENT

Payment shall be made under the terms of Attachment B, which is incorporated by reference, according to all its provisions.

III. DURATION

Contractor must complete all required work within 150 calendar days after the effective date of this Contract.

IV. ASSIGNMENT

Contractor may not assign any interest under this contract without the City's prior written consent. All of the terms and provisions of this Contract are binding on Contractors successors and assigns and may be enforced by the City against such successors and assigns.

V. STATUS OF CONTRACTOR

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

VI. AMENDMENT OR MODIFICATION

This contract, including any attachments, constitutes the parties' entire agreement. This agreement may not be modified or replaced except by another signed written agreement.

VII. 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.

VIII. INSURANCE

A. GENERAL REQUIREMENTS

The Contractor agrees to maintain the type and amounts of insurance required in this contract throughout the term of the agreement. The Contractor is solely responsible for providing the

required certificates of insurance. The City may terminate this agreement if the Contractor 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 Contractor 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 Contractor 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 for operations under this contract.
2. Provide for 30 days advance written notice of cancellation or material change.

C. TYPES AND AMOUNTS OF INSURANCE

The following insurance is required under this contract:

<u>Type</u>	<u>Amount</u>
<u>X</u> 1. Workers' Compensation	Statutory
Employer's Liability	\$100,000 per occurrence

- | | |
|--|---|
| <p><u> X </u> 2. Commercial (Public) Liability
including, but not limited to:</p> <ul style="list-style-type: none">• Premises/Operations• Independent Contractors• Products/Completed Operations• Contractual Liability <p>(insuring above indemnity)
and where the exposures exist</p> <ul style="list-style-type: none">• Explosion Collapse and Underground | <p>\$500,000 combined single
limit for bodily injury
and property damage
(per occurrence)</p> |
| <p><u> X </u> 3. Business Automobile Liability
to include coverage for:</p> <ul style="list-style-type: none">• Owned/Leased Autos• Non-Owned Autos• Hired Cars | <p>\$500,000 combined single
limit for bodily injury
and property damage
(per occurrence)</p> |
| <p><u> </u> 4. Professional Liability</p> | <p>\$500,000 combined single limit
(per occurrence)</p> |
| <p><u> </u> 5. See Addendum for Special
Coverages and/or revisions</p> | |
| <p><u> </u> 6. No Insurance Required</p> | |

IX. 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.

X. VERIFICATION OF EMPLOYMENT ELIGIBILITY

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

XI. 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 and interest. Contractor 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.

XII. EQUAL EMPLOYMENT OPPORTUNITY

It is the City's policy 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.

XIII. 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.

XIV. 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 Contractor. The Contractor 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 Contractor 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.

XV. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES

Contractor, 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. Contractor must obtain all necessary permits and licenses that are required in completing the work contracted for in this agreement.

XVI. PAYMENT AND PERFORMANCE BONDS

If the value of this Bid is below \$50,000, Performance and Payment Bonds are not required; however, the City will not pay the Contractor until the work is accepted and the Contractor furnishes an acceptable Release of Lien and Affidavit of Bills Paid to the City.

If the value of this Bid exceeds \$50,000, the Contractor must also furnish a payment bond. If the value of this Bid exceeds \$100,000, the Contractor must furnish a performance bond when the Contract is executed and delivered to the City. The Bonds, for the full amount of the contract, must be executed by a corporate surety company authorized to do business in the State of Texas and acceptable to the City. Bonds for projects using federal dollars must be underwritten by a surety name in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department.

The City may require additional security if the initial surety becomes insolvent, bankrupt, or otherwise financially unable to protect the City under the terms of the contract. The City's requiring new or additional security relieves neither the original surety nor the Contractor of their obligations under the contract. City may, without incurring any liability, stop work under the contract until Contractor furnishes additional security.

XVII. SEVERABILITY AND WAIVER

The partial or complete invalidity of one or more provisions of the Contract shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Contract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

XVIII. NOTICES

Any notices or other communications required or permitted under this agreement are sufficiently given if delivered personally or sent by registered or certified mail, postage prepaid, addressed to City at:

ATTN: Lesli Andrews, Director of Parks and Recreation
P.O. Box 60
Abilene, Texas 79604-0060

or to Contractor at:

ATTN: Kathy Robertson, Vice President
10661 Shady Trail
Dallas, TX 5220

or to such other address furnished in writing by any party to the others. Notice will be deemed given as of the date so delivered or on the date of deposit in the United States mail, as the case may be.

XVII. 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 and the same instrument.

XVIII. 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.

XIX. 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.

{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

CONTRACTOR

By:

By:



Name:

Name: Kathy M. Robertson

Title:

Title: VP

ATTEST:

City Secretary

Federal Tax ID#:

APPROVED:

By: _____

City Attorney

Corporate Seal if applicable

ATTACHMENT A

Scope of Work

Professional Turn-Key Installation of Playground Equipment

Artificial Turf System

Artificial Turf with Brown Thatch, Foam fall attenuation Pad, Tape & Glue, Infill Sand, Geo Textile Fabric, Gravel, Freight, & Installation

Site Work

Site Work- Demo and haul off existing equipment

See attachment of Buy Board Quote with details.

ATTACHMENT B

PAYMENT SCHEDULE

OPTION 1 Click or tap here to enter text.

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

Contractor 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 X

Payment is in a lump sum amount of \$434,128.00 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

Payment is a fixed fee amount of \$Click or tap here to enter text. payable per Click or tap here to enter text. 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 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 Contractor has been notified.

ATTACHMENT C

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 contractors'/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 contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, 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 Contractor 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 contractor providing services on the project, for the duration of the project.
- c. The Contractor must provide a certificate of coverage to the City prior to being awarded the contract.
- d. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor 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. Contractor 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 Contractor, 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 Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.

g. The Contractor shall notify the City in writing by certified mail or personal delivery, within ten (10) days after the Contractor 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 Contractor 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 Contractor 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 Contractor, 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 Contractor, 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 Contractor:

(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 Contractor is representing to the City that all employees of the Contractor 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 Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- k. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the City to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the City.

(End of Document)

Child's Play, Inc.

10661 Shady Trail
Dallas, TX 75220
(P) 972-484-0600 (F) 972-484-0333

ADDRESS

Jesus Coronado
Oscar Rose Park
2641 South 9th
Abilene, TX 79601

SHIP TO

Oscar Rose Park
2609 Oscar Rose Park
Abilene, TX 79601

QUOTE #	DATE	EXPIRATION DATE
21-4365	01/17/2022	02/17/2022

PROJECT
36-147569-1

SALES REP
CW

DESCRIPTION	QTY	PRICE EACH	AMOUNT
BCISynergy Custom Synergy Series Playground Structure Age 2-5	1	47,138.00	47,138.00
BCISNUIN Custom Nucleus/Intensity Series Playground Structure	1	109,217.00	109,217.00
BCISNucleus Burke Play Ensemble with Drums, Titan Chimes, Supine Chimes and Metallohone	1	20,756.00	20,756.00
BCI550-0100 Molded Rubber Infant Seat w/7' or 8' Chain - Pair	1	406.00	406.00
BCI550-0112 Molded Rubber Belt Seat w/8' Chain - Pair	3	223.00	669.00
BCI550-0158 3 1/2" Arch Swing	1	1,939.00	1,939.00
BCI550-0159 3 1/2" Arch Swing Add-A-Bay	1	1,227.00	1,227.00
BCI550-0175 Freedom ADA Swing Seat, 8' Beam - Std. Chain - Pair	1	2,192.00	2,192.00
BCI550-0186 Volito Multi-User Swing	1	7,207.00	7,207.00
BCI550-0201 5" Single Post Swing	1	1,435.00	1,435.00
BCI550-0202 5" Single Post Swing Add-On	2	1,195.00	2,390.00
BCI550-9118 Brava Universal Swing	1	7,984.00	7,984.00
BCI560-2579 Volta Inclusive Spinner	1	7,160.00	7,160.00
BCI580-0172 6' Traditional Series Bench - In-Ground	4	700.00	2,800.00
Installation	1	52,430.00	52,430.00

DESCRIPTION	QTY	PRICE EACH	AMOUNT
Professional Turn-Key Installation of Playground Equipment			
Artificial Turf System	1	178,106.00	178,106.00
Artificial Turf with Brown Thatch, Foam fall attenuation Pad, Tape & Glue, Infill Sand, Geo Textile Fabric, Gravel, Freight, & Installation			
Site Work	1	12,000.00	12,000.00
Site Work- Demo and haul off existing equipment			
City responsible for removing existing rubber and wood fiber			
Freight	1	11,200.00	11,200.00
Freight			
Bond	1	9,740.00	9,740.00
Payment & Performance Bond			
Buyboard	1	-41,868.00	-41,868.00
This is a Buyboard Purchasing Cooperative Quote. Pricing reflects Buyboard discounts as listed under Contract #592-19, Vendor #1501			
Install Terms	1	0.00	0.00
Installation charges, if quoted, are for a "standard" installation unless specifically noted otherwise. Installation charges are due upon completion. Standard installations generally require from 2-10 business days to complete, depending upon the amount and type of equipment, site conditions, weather, and schedule. Work may or may not be performed in consecutive days. The quote is based on the site being level and with no resilient surfacing (sand, gravel, bark, etc.) being in place. A charge will be assessed to level site or remove resilient surfacing based upon equipment/material costs and man hours required. Any and all permits and any fees associated with the permits are the responsibility of owner/contractor.			
An additional charge will be required if digging of footing cannot be performed by equipment or if rock conditions are encountered. Additional man hours/jack hammers required to dig footings will be added to the contract price at a minimum of \$250/per jack hammer per day.			
Installation is based upon unrestricted access to site for equipment, i.e., Bobcats, concrete trucks, dump trucks, and miscellaneous work vehicles. Installers are not responsible for damages to irrigation, landscape and utilities. Protection for these items is the responsibility of the owner.			
CPIWARR	1	0.00	0.00
SUPPLEMENTAL WARRANTY: In addition to BCI Burke's non-prorated warranty, Child's Play, Inc. offers the value added service of 100% free replacement costs on all warranted BCI Burke products throughout the duration of the warranty period. The warranted items are shipped directly to Child's Play and installed free of charge by our installation crew. The result is zero out-of-pocket costs to the customer on all warranted BCI Burke products. It is BCI Burke's commitment to a higher quality product, which makes this "Special Supplemental Warranty" possible.			
(2) FREE SITE VISITS: When Child's Play, Inc. installs the equipment, we will perform two FREE maintenance inspections per year. Customer to schedule in advance.			
BCIMAIN	1	0.00	0.00
BCI Burke Maintenance Kit - FREE			

TOTAL

\$434,128.00

Accepted By

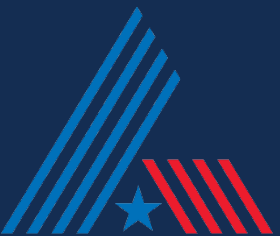
Accepted Date

Resolution: Purchase and Installation of Playground for Oscar Rose Park

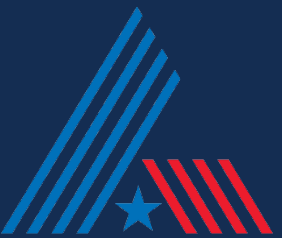


Request to Approve Purchase and Installation of Playground at Oscar Rose Park

- Current playground installed in 1994.
- Minor Improvement Funds approved in FY22 budget.
- \$413,517.20 approved from 2022 MIP budget
- \$20,610.80 available from Parks Bucks program
- Total cost of \$434,128.00



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 2/10/2022

TO: Robert Hanna, City Manager

FROM: Max Johnson, Assistant Director of Public Works

SUBJECT: 8. Resolution: Receive a Report, Hold a Discussion and Take Action on Awarding Bid No. 2221 to Bontke Brothers Co. Inc., for Street Resurfacing Project Work Zone N15A (*Max Johnson*)

GENERAL INFORMATION

This Project was advertised as a Public Notice on January 9, 2022, and on January 16, 2022 with a bid opening dated January 25, 2022. This contract includes the mill and overlay of streets located within work zone N15A.

SPECIAL CONSIDERATIONS

This project has a contract completion time of 40 working days (approx. 2 months, weather permitting)

FUNDING/FISCAL IMPACT

Funding for this project is allocated through Street Maintenance Fee funds.

STAFF RECOMMENDATION

Staff recommends bid award to Bontke Brothers Co., Inc. for \$1,417,937.00.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. N15A Resolution
2. n15a contract
3. CB2221 TABSHEET
4. Scope of Project
5. PROJECT MAP
6. N15A ppt

RESOLUTION NO. _____

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

WHEREAS, the City of Abilene duly advertised and gave such notice, as required by law, for bids for the mill and overlay of streets located within work zone N15A.; 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 25, 2022:

Bontke Brothers Construction, Inc., Abilene, Texas	\$ 1,417,937.00
Raydon, Inc., Abilene, Texas	\$ 1,522,655.90
Nobles Road Construction, Inc., Abilene, Texas	\$ 1,589,633.25
Blacksmith Ventures, LLC, Jacksboro, Texas	\$ 2,037,562.97
J.H. Strain & Sons, Inc., Tye, Texas	\$ 2,102,478.50

WHEREAS, Bontke Brothers Construction, Inc., Abilene, Texas submitted the best value bid in the amount of \$1,417,937.00 with the bid meeting specifications. Staff recommends awarding the bid to the best value bidder, Bontke Brothers Construction, 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 \$ 1,417,937.00.

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

ADOPTED this 10th day of February, 2022.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

CONSTRUCTION CONTRACT

BACKGROUND

THIS CONTRACT, made on the 10th day of February, 2022 is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and Bontke Brothers Construction Co., 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 --

STREET RESURFACING PROJECT WORK ZONE N15A

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 \$1,417,937.00 (One million four hundred seventeen thousand nine hundred thirty-seven 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.

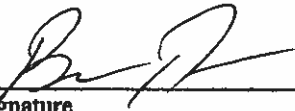
13. **Contract Copies.** Each of the two executed copies is an original.

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

CONTRACTOR

Name of Contractor:

Bontke Brothers Construction


Signature

Brent Parham
Name - Typed or Printed

Project Manager
Title - Typed or Printed

Business Address:

102 college Dr
Abilene, Tx 79601

325-677-6276
Business Phone No.

75-1331325
Federal Tax I.D.#

ATTEST: (If Corporation)


Corporate Secretary's Signature

Corporate Seal
(if none, write "None") |

"none"

CITY OF ABILENE

Authorized Signature

APPROVED:

City Attorney

ATTEST:

City Secretary

Seal: |

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

PAGE
1 OF 1

DEPARTMENT: ENGR
BID NO.: CB-2221
TIME OF OPENING: 11:00 A.M.
DATE OF OPENING: JANUARY 25, 2022

BONTKE BROTHERS
CONSTRUCTION
ABILENE, TX

RAYDON, INC.
ABILENE, TX

NOBLES ROAD
CONSTRUCTION, INC.
ABILENE, TX

BLACKSMITH VENTURES,
LLC
JACKSBORO, TX

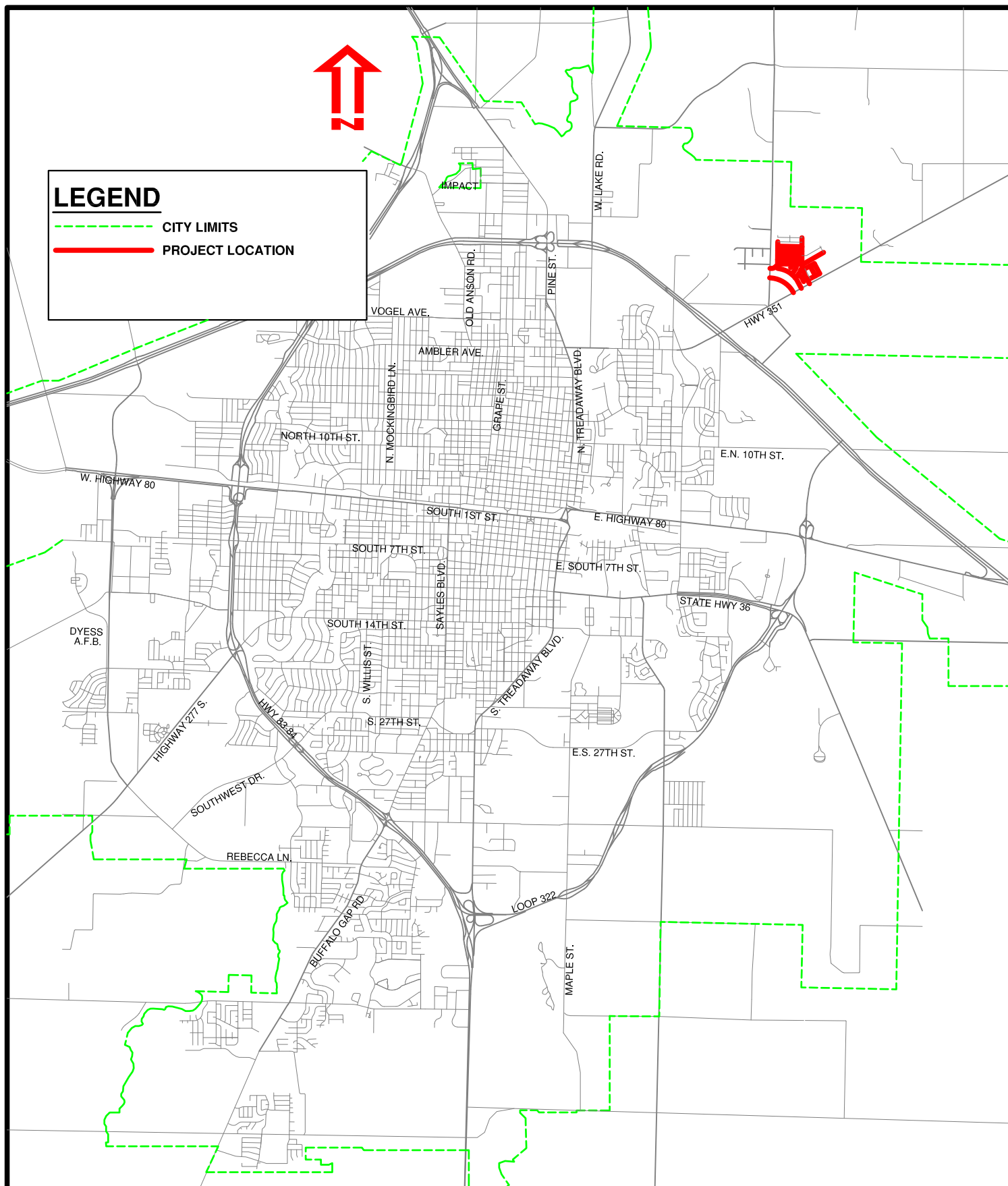
J.H. STRAIN & SONCS, INC.
TYE, TX

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION
1.	STREET RESURFACING PROJECT WORK ZONE N15A PROJECT				1,417,937.00		1,522,655.90		1,589,633.25		2,037,562.97		2,102,478.50		
BASE BID					1,417,937.00		1,522,655.90		1,589,633.25		2,037,562.97		2,102,478.50		
DISCOUNT															
TOTAL BID					1,417,937.00		1,522,655.90		1,589,633.25		2,037,562.97		2,102,478.50		

*NOTES: INDICATES RECOMMENDED AWARD

SCOPE OF PROJECT

This construction contract involves the mill and overlay of streets located within work zone N15A.



Agenda Item: Street Resurfacing Project Work Zone N15A

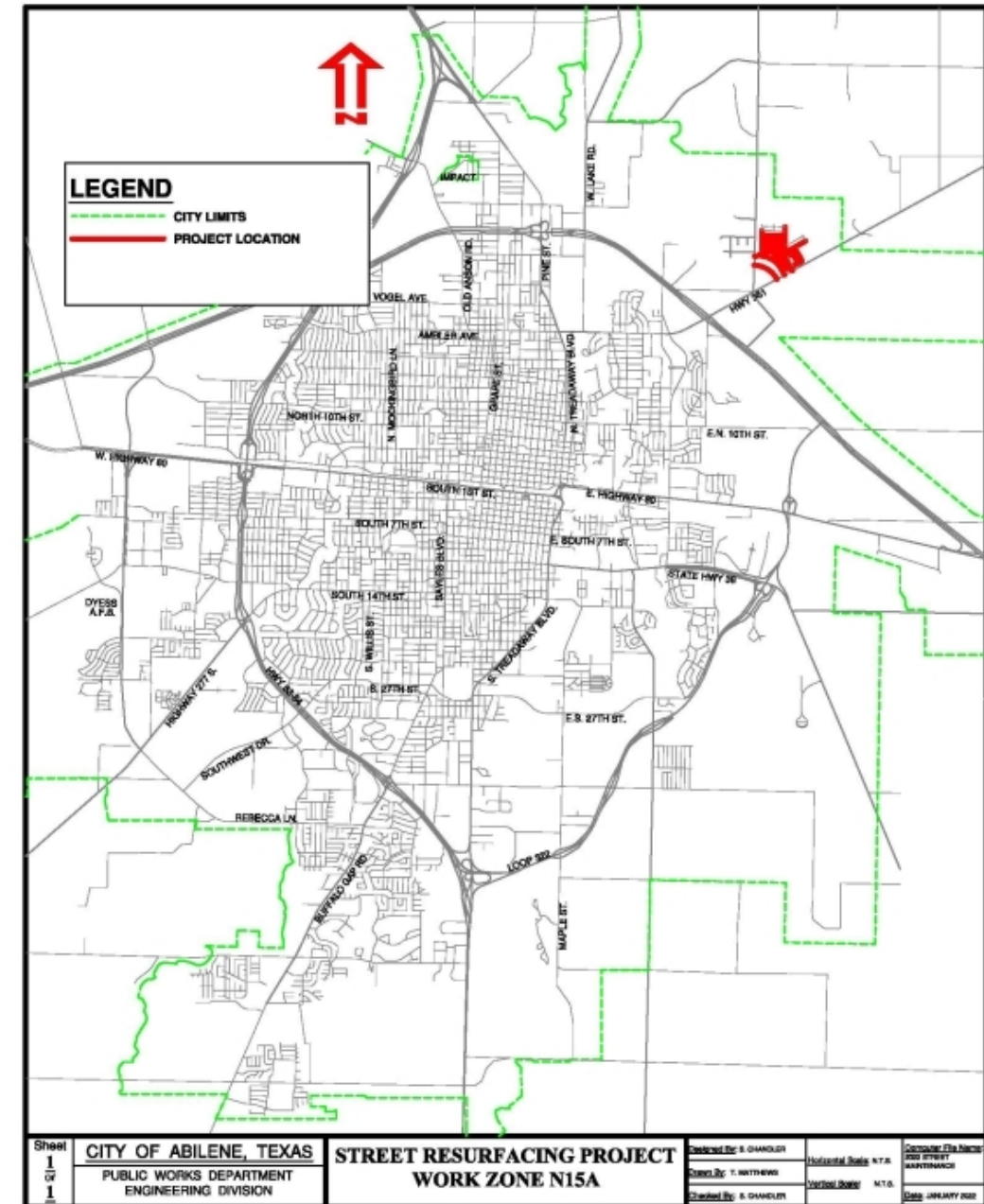
**Resolution: Bid Award #CB-2221 Street
Resurfacing Project Work Zone N15A**

(Johnson)



Street Resurfacing Project Work Zone N15A

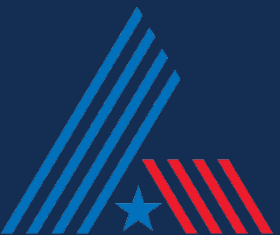
Streets	From	To
Liberty Blvd	Loop 351	Continental Ave
Valley Forge Rd	Independence Blvd	Continental Ave
Republic Ave	Valley Forge Rd	Liberty Blvd
Old Ironsides Rd	Valley Forge Rd	Liberty Blvd
Plymouth Rock Rd	Valley Forge Rd	Liberty Blvd
Boston Rd	Valley Forge Rd	Liberty Blvd
Independence Blvd	E Lake Rd	Saratoga Blvd
Revere Ct	Independence Blvd	Cul-de-sac
Beacon Hill Rd	Independence Blvd	Patriot Commons
Constitution Ave	Liberty Blvd	Patriot Commons
Township Ct	Constitution Ave	Cul-de-sac
Patriot Commons	Loop 351	Independence Bl
Union Ln	Loop 351	E Lake Rd
New Territory Dr	Liberty Blvd	Legacy Ln
Legends Tr	New Territory Dr	Homestead Pl
Founders Pl	New Territory Dr	Homestead Pl
Legacy Ln	New Territory Dr	Homestead Pl
Homestead Pl	Legends Tr	Legacy Ln



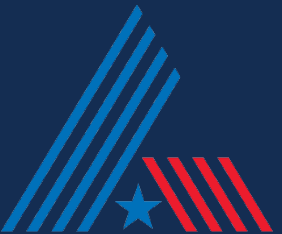
Agenda Item:

Street Resurfacing Project Work Zone N15A

- Construction Contract includes the mill and overlay of streets located within work zone N15A.
- Project Advertised January 9th 2022 & January 16th 2022, Bids Opened January 25th 2022.
- Five bids were received.
- Staff recommends award of bid to Bontke Brothers Construction, Inc., in the amount of \$1,417,937.00.



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 2/10/2022

TO: Robert Hanna, City Manager

FROM: Rodney Taylor, Director

SUBJECT: 9. Resolution: Receive a Report, Hold a Discussion and Take Action on Authorizing a Professional Services Contract for the Design of the Second Pressure Plane Pump Station - Phase 3 (*Rodney Taylor*)

GENERAL INFORMATION

Water Utilities staff is requesting that the Abilene City Council approve a Professional Services Contract with Jacob and Martin, LLC (JM) for the design of the Second Pressure Plane Pump Station - Phase 3 in the amount not to exceed \$300,000.00. This contract will provide for the preparation of Phase 3 plans and contract documents, bidding assistance, project general supervision (not RPR), and contract administration. Phase 3 is a new treated water pumping station to be constructed at the site of the existing Northwest Pump Station located in the Five Points Business Park.

In December 2019 the Abilene City Council authorized a professional services contract with JM for the Second Pressure Plane Water Supply Line - Phase 1 in the amount of \$425,000.00. Phase 1 Water Pipeline is now under construction. In June, 2021 the Abilene City Council authorized a professional services contract with JM for the Second Pressure Plane Water Supply Line - Phase 2 in the amount of \$275,000.00. Those projects provide for surveying and right of way acquisition for the entire multiphase pipeline and pump station construction project, and for the preparation of Phase I and Phase 2 plans and contract documents, bidding assistance, project general supervision, (not RPR), and contract administration. Phase 1 and 2 is a 30" pipeline beginning at the Buffalo Gap EST and extending west and north to the pending Phase 3 pump station to be constructed at the Five Point Business Park.

SPECIAL CONSIDERATIONS

The Second Pressure Plane Water Supply Line and pump station project was included in the 2010 Water Master Plan. The project was further justified and refined in the 2020 Water Master

Plan. This large scale plan is to be performed in multiple phases as described in the 2020 Five Year Capital Improvements Program. The greater project is for the construction of a new 30" treated water pipeline to extend from the Buffalo Gap Elevated Storage Tank west and north to the Five Points Business Park. Following are some key points for justifying the greater project:

- 1) Provide redundancy to aging Dyess 16" water pipeline and also allow for its eventual replacement or abandonment.
- 2) Improve the utilization of Northwest ground storage tank to reduce water age and improve water quality.
- 3) Allow for the eventual abandonment of the High Level Pump Station (The TCEQ has set a compliance deadline of September 2023 for the abandonment of the High Level Pump Station.)
- 4) Improve water capacity and pressure in the southwest portion of the City.
- 5) Accommodate a needed future new elevated storage tank in west Abilene.
- 6) Add system redundancy and greatly increase capacity to transfer large quantities of potable water north and south across the distribution system.

FUNDING/FISCAL IMPACT

Funding for the professional services contract are included in the Fiscal Year 2022 Annual Operating Budget of the Water Utilities Department.

STAFF RECOMMENDATION

Staff recommends that the Abilene City Council authorize the professional services contract with Jacob and Martin, LLC for the design of the Second Pressure Plane Pump Station - Phase 3 in the amount not to exceed \$300,000.00 as described above.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. WrittenResolution-WtrDpt-Authorize PS Contract with JM for 2nd PP Pump Station-Phase 3-2-10-2022
2. Contract-PS-Second PP Improvements-Phase III-Designof Northwest PS-Signed-2-10-2022
3. Presentation-Authorize PS Contract-JM-Second Pressure Plane Pump Station-Phase 3-2-10-2022

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AUTHORIZING A PROFESSIONAL SERVICES CONTRACT WITH JACOB AND
MARTIN, LLC FOR THE SECOND PRESSURE PLANE PUMP STATION - PHASE 3.**

WHEREAS, the City of Abilene (Abilene) owns and operates a Public Water Supply System for providing potable water to its retail and wholesale customers; and

WHEREAS, the 2010 and 2020 Water Master Plans have identified the need for the Second Pressure Plane Water Supply Line Improvements to include the construction of a 30" water supply pipeline and a new pump station in west Abilene; and

WHEREAS, the benefits of the greater project will provide for 1) the eventual replacement or abandonment of the aging Dyess 16" water pipeline, 2) Improved utilization of the Northwest ground storage tank to reduce water age and improve water quality, 3) the eventual abandonment of the High Level Pump Station, 4) improved water capacity and pressure in the southwest portion of the City, 5) accommodate a needed future new elevated storage tank in west Abilene, and 6) add redundancy and greatly increase capacity to transfer large quantities of potable water north and south across the distribution system; and

WHEREAS, the Texas Commission on Environmental Quality has set a compliance deadline of September 2023 for the abandonment of the High Level Pump Station; and

WHEREAS, the professional services contract with Jacob and Martin, LLC will provide for Phase 3 preparation of plans and contract documents, bidding assistance, general project supervision (not RPR) and contract administration in the amount not to exceed \$300,000.00; and

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

That the City Manager is authorized to execute the professional services contract with Jacob and Martin, LLC for the Second Pressure Plane Pump Station-Phase 3 in the amount not to exceed \$300,000.00.

ADOPTED this 10th day of February, 2022.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley E. Smith, City Attorney



PROFESSIONAL SERVICES CONTRACT Engineers & Architects

This contract, dated the _____ day of _____, 2022, is between the City of Abilene, a home rule municipal corporation of the State of Texas ("City"), and Jacob & Martin, LLC, a Limited Liability Corporation organized under the laws of the State of Texas ("Consultant").

The City is engaged in Second Pressure Plane Pump Station – Phase 3 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 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 City'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>
<u>X</u> _1. Workers' Compensation Employer's Liability	Statutory \$100,000 per occurrence
<u>X</u> _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)
<u>X</u> _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)
<u>X</u> _4. Professional Liability	\$500,000 combined single limit (per occurrence)
<u> </u> _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:

Rodney Taylor

P.O. Box 60

Abilene, TX 79604-0060

Consultant – ATTN:

Kirt Harle, P.E. – J&M

3465 Curry Lane

Abilene, TX 79606

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

PROFESSIONAL

By:

By: 

Name: Robert Hanna

Name: Kirt Harle, P.E.

Title: City Manager

Title: Vice President

Address: 3465 Curry Lane, Abilene, TX 79606

Phone Number: 325-695-1070

Federal Tax ID#: 75-1285782

ATTEST:

ATTEST: (if corporation)

City Secretary

Corporation's Secretary

APPROVED:

Corporate Seal (if available)

By: _____
City Attorney

ATTACHMENT A

Scope of Services

Second Pressure Plane Pump Station – Phase 3

The project scope includes engineering services for design and construction review of proposed Second Pressure Plane Pump Station which is identified as CIP project 1C in the City's 2019 Water Master Plan. Proposed pump station shall be located near the existing Northwest Pump Station and Five Points Business Park 5.5 MG Ground Storage. Design shall include an additive alternate item for backup power for the pump station with option for City to decide whether or not to have backup power installed after bids are submitted.

BASIC ENGINEERING SERVICES:

A – Design Phase (to be completed within 6 months of contract execution)

- A.1 Prepare detailed specifications, contract drawings and plans for bidding project.
- A.2 Prepare detailed cost estimates, which shall include summaries of bid items and quantities.
- A.3 Furnish Bidding Documents to City for legal review.
- A.4 Finalize Contract Documents incorporating City's comments.
- A.5 Perform required geotechnical investigations.

B – Bidding Phase (to be completed within 9 months of contract execution)

- B.1 Assist City in the advertisement for bids.
- B.2 Conduct pre-bid meeting.
- B.3 Answer bidder's questions and issue addenda (if necessary).
- B.4 Assist the City in the opening and tabulation of bids for construction of the project and make recommendations to the Owner for the proper action on all proposals received.
- B.5 Assist in the preparation of formal Contract Documents for the construction of the project.

C – Construction Phase (to be completed within 24 months of contract execution)

- C.1 Coordinate Pre-Construction Conference.
- C.2 Make periodic visits to the site to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents.
- C.3 Consult and advise the City, issue all instructions to the Contractor requested by the City, and prepare routine field orders and/or change orders as required.
- C.4 Review submittals, schedules, shop drawings, laboratory tests and other data which

the Contractor is required to submit, only for conformance with the design concept of the project and compliance with the information given by the Contract Documents.

C.5 Review and recommend Contractor's payment requests.

C.6 Conduct in company with the City a site visit following substantial completion notice and prepare punch list.

C.7 Conduct in company with the City a final inspection of the project for conformance with the design concept of the project and compliance with the Contract Documents and approve in writing final payment to the Contractors.

C.8 Review contract drawings with the assistance of the City's Utility Engineer and Contractor to show the work as actually constructed. Furnish two (2) sets of Record Drawings and a digital copy of the Record Drawings to the City.

C.9 Provide periodic inspection services for the architectural, mechanical, electrical and structural components of the project.

ADDITIONAL ENGINEERING SERVICES:

1. Topographic, legal and construction surveying.
2. Construction materials testing for site work, paving and concrete work.

ATTACHMENT B

PAYMENT SCHEDULE PARTIES TO INITIAL OPTION SELECTED

OPTION 1 X

Compensation is based on actual hours of work/time devoted to providing the described professional services and will be paid at a rate of \$(Time and Expense per the attached Fees for Professional Services included as "Exhibit A") per hour not to exceed \$25,000.00 for Additional Services included under "Exhibit B".

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 X

Payment is in a lump sum amount of \$275,000 to be paid per the attached Basic Engineering Services Payment Schedule included under "Exhibit B" and 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

Payment is a fixed fee amount of \$Click or tap here to enter text. payable per Click or tap here to enter text. 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.



EXHIBIT A

INTEGRITY
EXCELLENCE
TRUST

FEES FOR PROFESSIONAL SERVICES

Principal	\$ 220.00
Licensed Architect-1	175.00
Licensed Architect-2	140.00
Licensed Interior Designer	110.00
Architectural Associate	100.00
Registered Professional Engineer-1	185.00
Registered Professional Engineer-2	150.00
Engineer-in-Training (E.I.T.)	120.00
Engineering Technician-1	110.00
Engineering Technician-2	100.00
Engineering / Architectural Intern	60.00
Environmental Scientist	120.00
Environmental Technician	70.00
GIS Technician-1	110.00
GIS Technician-2	80.00
CAD Draftsman-1	100.00
CAD Draftsman-2	85.00
Senior Land Man	90.00
Registered Professional Land Surveyor	160.00
Surveyor-in-Training (S.I.T.)	110.00
Resident Project Representative-1	95.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	115.00
Resident Project Representative-2	80.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	100.00
Licensed Water/Wastewater Operator	90.00
Clerical-1	75.00
Clerical-2	60.00

FIELD WORK

1-Man Crew or Technician	\$ 100.00
2-Man Crew	150.00
3-Man Crew	175.00
GPS Equipment	70.00
Robotic Total Station	55.00
Vehicle Charge (per day) plus IRS rate per mile	50.00

A FACTOR OF 1.1 SHALL BE APPLIED TO THE FOLLOWING

1. Actual cost of subsistence and lodging
2. Actual cost of postage and shipping fees
3. Actual cost of materials required for the project used in surveying, drafting and associated activities
4. Actual cost of special tests and services of special consultants, if required

Effective 1/1/2022



info@jacobmartin.com
www.jacobmartin.com



3465 Curry Lane
Abilene, TX 79606
325.695.1070

1508 Santa Fe, Suite 203
Weatherford, TX 76086
817.594.9880

4920 S. Loop 289, Suite 104
Lubbock, TX 79414
806.368.6375

TBPE Firm #: 2448

TBPELS Firm #: 10194493 - Abilene

TBPELS Firm #: 10194590 - Weatherford

TBAE Firm #: BR 2261



INTEGRITY
EXCELLENCE
TRUST

CONSTRUCTION MATERIALS ENGINEERING AND TESTING FEES

SERVICE TIME

Registered Professional Engineer	\$	185.00
Materials Technician Service Time		68.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)		95.00
Pier Observation, Hot Mix, Reinforcing Steel		85.00
Overtime (Weekends, Holidays or before 8 am or after 5 pm)		100.00

CONCRETE

Concrete Cylinder Compressive Strength Tests	30.00
Client Made Cylinder	37.00
Entrained Air Content Test	35.00
Slump Tests, when cylinders are not made	25.00
Concrete Mix Design	850.00
Concrete Design Confirmation Cylinder	35.00

SOILS

Atterberg Limits (Liquid Limit, Plastic Limit & P.I.)	82.00
Field Compaction Test	32.00
Moisture-Density Curve (Proctor)	295.00
Washed Sieve Analysis (Soil)	72.00
Washed Sieve Analysis (Base Material)	77.00
Unit Weight	47.00
Absorption	47.00
Decantation	47.00
Moisture Content	47.00

ASPHALT

Rice Theoretical Specific Gravity	\$	90.00
Field Density, Hot Mix (Nuclear Method)		37.00

Local Vehicle Charge (within 20 miles of Abilene) - \$30.00 per trip to the project
Travel from and return to office at IRS rate per mile, plus service time at above rates
Travel Charges (outside 20 miles of Abilene) – Round trip mileage at IRS current rate, plus

A FACTOR OF 1.1 SHALL BE APPLIED TO THE FOLLOWING

1. Actual cost of subsistence and lodging
2. Actual cost of postage and shipping fees
3. Actual cost of materials required for the project used in surveying, drafting and associated activities
4. Actual cost of special tests and services of special consultants, if required

Effective 01/01/2022



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TBPE Firm #: 2448 | TBPELS Firm #: 10194493 - Abilene | TBPELS Firm #: 10194590 - Weatherford | TBAE Firm #: BR 2261

EXHIBIT B

Compensation Payment Schedule

Compensation for Basic Engineering Services as described in the Scope of Services shall be at a lump sum fee of \$275,000.00. Basic Engineering Services fee shall be paid to consultant according to the following payment schedule and following completion of each task listed:

- Design Phase - Preliminary Design Development: 10% (\$27,500.00)
- Design Phase - 90% Construction Documents: 50% (\$137,500.00)
- Design Phase - 100% Construction Documents: 10% (\$27,500.00)
- Bidding and Award Phase: 5% (\$13,750.00)
- Construction Phase: 25% (\$68,750.00)*

*To be paid monthly based on a percentage of the construction contract completed.

Compensation for Additional Engineering Services (Surveying and Materials Testing) as described in the Scope of Work shall be at a time and expense basis per the attached rate schedule included as Exhibit A with not to exceeds as follows:

- Surveying: Not to Exceed of \$10,000
- Materials Testing: Not to Exceed of \$15,000

ATTACHMENT C

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 D
NOTICE TO PROCEED

Click or tap here to enter text.

ATTACHMENT E
CHANGE IN SCOPE OF SERVICES

Click or tap here to enter text.

Authorizing a professional services contract with
Jacob and Martin, LLC for the
Second Pressure Plane Pump Station-Phase 3



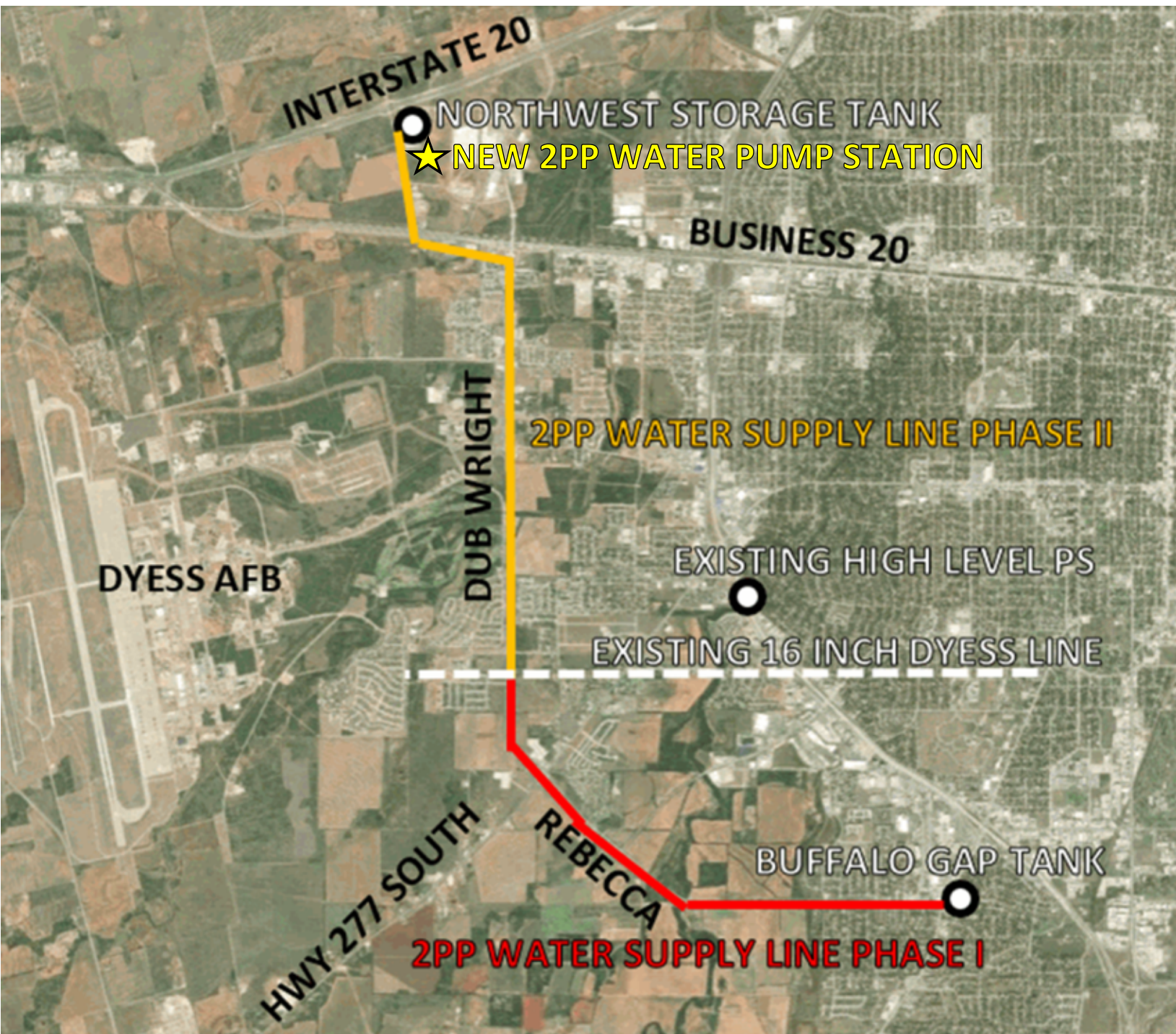
- Professional Services Contract with Jacob and Martin, LLC.
- Contract price not to exceed \$300,000.00.
- Preparation of plans and contract documents, bidding assistance, general project supervision (not RPR) and contract administration for the construction of the Phase 3 Pump Station.
- The Second Pressure Plane water supply line and pump station project was included in the 2010 and the 2020 Water Master Plans.
- The multi-phased project is for the construction of new 30" treated water pipeline between the Buffalo Gap EST and the Five Points Business Park and the construction of new pump station at Five Points.
- The project will allow for the decommissioning of the High Level Pump Station by September 2023 in accordance with a TCEQ compliance deadline.



Project will provide for:

- redundancy for the aging Dyess 16" water pipeline, and allow for its eventual replacement or abandonment
- improved utilization of Northwest ground storage tank to reduce water age and improve water quality
- the eventual abandonment of the High Level Pump Station
- improved water capacity and pressure in the southwest portion of the City
- accommodating a needed future new elevated storage tank in west Abilene
- system redundancy and increased capacity to transfer large quantities of potable water north and south across the distribution system





Authorizing a professional services contract with
Jacob and Martin, LLC for the
Second Pressure Plane Pump Station-Phase 3

Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 2/10/2022

TO: Robert Hanna, City Manager

FROM: Rodney Taylor, Director

SUBJECT: 10. Resolution: Receive a Report, Hold a Discussion and Take Action on Awarding the Bid for the Ivie Booster Pump Station Ground Storage Tank Silt Removal and Butterfly Valve Installation Project (Rodney Taylor)

GENERAL INFORMATION

Water Utilities staff is recommending that the Abilene City Council award the bid to Rangeline Utility Services, LLC (Rangeline) of Haslet, Texas in the amount of \$169,189.00 for the Ivie Booster Pump Station Ground Storage Tank Silt Removal and Butterfly Valve Installation project CB-2222 (Project). The bid was advertised in the Abilene Reporter News on January 9th and 16th, 2022. A total of three bids were received on January 25th, 2022. The bids were evaluated using the "best value" competitive bidding method. City staff and the Project Engineer evaluated the bids and determined that the bid by Rangeline provides the best value for the City of Abilene.

The Base Bid includes a line item for "Owner's Allowance" as provided for in Administrative Directive No. AD-025. The value of the owners allowance item is \$25,000.00. The allowance bid item is for work not required within the Plans and Specifications and may be used in the event additional (or less) work from that shown on the Plans and Specifications is required.

SPECIAL CONSIDERATIONS

The Ivie Pipeline System and Hargesheimer Water Treatment Plant were placed in service in September 2003. The Ivie Pipeline System consists of the Intake Pump Station, the Booster Pump Station and 6MG Ground Storage Tank, the Ovalo 10MG Ground Storage Tank, about 52 miles of 36 inch diameter pipeline, and about 22 miles of high voltage electrical transmission line. The Booster Ground Storage Tank is a buffering tank supplying the Booster Pump Station. The large tank volume and intermittent flows through the tank result in the slow buildup of silt on the tank bottom. It is necessary to remove that silt occasionally to restore tank volume, and to

minimize the negative impacts of the sediments on water quality and pumping operations. The project provides for the removal and on-site disposal of the silt.

There is a need for an isolation butterfly valve to be installed in the piping section between the Ground Storage Tank and the Pump Station. This will greatly improve the ability to perform pump and equipment maintenance activities within the pump station while maintaining the full volume within the Booster Tank.

The Base Bid provides for the removal of up to 300,000 gallons of silt from the Ground Storage Tank, and the installation of an isolation valve in a section of piping. The Bid also includes the Additive Alternate Bid establishing the unit price for removal of silt in excess of 300,000 gallons at \$5.58 per gallon. The total cost of the project is \$169,189.00.

FUNDING/FISCAL IMPACT

Funding for the Project is included in the FY22 Annual Operating Budget of the Water Utilities Department.

STAFF RECOMMENDATION

Staff recommends that the Abilene City Council award the bid to Rangeline Utility Services, LLC for the Ivie Booster Pump Station Ground Storage Tank Silt Removal and Butterfly Valve Installation for the amount of \$169,189.00.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. WrittenResolution-WtrDpt-Award Bid-Ivie Booster PS GST Silt Removal and Butterfly Valve Installation-2-10-2022
2. Letter of Recommendation-Bid Tab-Ivie Booster Pump Station GST Silt Removal Butterfly Valve Install-2-10-2022
3. Contract-Ivie Booster PS GST Silt Removal and Butterfly Valve Installation-Rangeline Utility Services LLC2-10-2022
4. Presentation-Resolution Award Bid for Ivie Booster PS GST Silt Removal and Butterfly Valve Installation-2-10-2022

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AWARDING THE BID TO RANGELINE UTILITY SERVICES, LLC FOR THE IVIE
BOOSTER PUMP STATION GROUND STORAGE TANK SILT REMOVAL AND
BUTTERFLY VALVE INSTALLATION PROJECT.**

WHEREAS, The City of Abilene (City) owns and operates the Ivie Pipeline System and the Hargesheimer Water Treatment Plant for the production of potable water; and

WHEREAS, the Ivie Pipeline System includes the Intake Pump Station, Booster Pump Station and 6 MG Ground Storage Tank, and the Ovalo 10 MG Ground Storage Tank; and

WHEREAS, the Booster Ground Storage Tank has a large buildup of silt on the tank bottom that must be removed; and

WHEREAS, there is a need to install a new butterfly valve between the Booster Ground Storage Tank and the Pump Building in order to improve serviceability of the pump station; and

WHEREAS, Jacob and Martin, LLC (JM) was hired to provide plans and contract documents, bidding assistance, general project supervision (not RPR services), and contract administration for the silt removal and butterfly valve installation; and

WHEREAS, Rangeline Utility Services, LLC (Rangeline) submitted the lowest priced qualifying bid in the amount of \$169,189.00, and JM has evaluated the bids for best value criteria and for conformity with the advertisement for bids and does recommend awarding the Base Bid and Additive Alternate Bid item to Rangeline in the total amount of \$169,189.00; and

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

That the City Manager is authorized to execute a construction contract with Rangeline Utility Services, LLC for the Ivie Booster Pump Station Ground Storage Tank Silt Removal and Butterfly Valve Installation project in the amount of \$169,189.00.

ADOPTED this 10th day of February, 2022.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley E. Smith, City Attorney



INTEGRITY
EXCELLENCE
TRUST

January 28, 2022

Mr. Rodney Taylor
Director of Water Utilities
City of Abilene
P.O. Box 60
Abilene, Texas 79604

Sent: Via Email

Re: Ivie Booster Pump Station Ground Storage Tank Silt Removal and Butterfly Valve
Installation
Letter of Recommendation for Award

Dear Mr. Taylor:

On January 25, 2022 the City of Abilene received bids for the Ivie Booster Pump Station Ground Storage Tank Silt Removal and Butterfly Valve Installation Project. Three bids were received for this project. A bid tabulation sheet summarizing the bids is included as an attachment to this letter. The low base bid was \$169,189.00 submitted by Rangeline Utility Services, Inc. of Haslet, Texas. Jacob and Martin has evaluated the low bid for conformity with the advertisement for bids and checked the references of the apparent low bidder. Based on our evaluation of the bids, it is recommended that the contract be awarded to Rangeline Utility Services, Inc. for the base bid amount of \$169,189.00. If the Water Department and City Council agrees with the recommendation for award, Jacob and Martin will prepare contract documents for execution by the Contractor and the City. Feel free to contact me if you have any questions.

Sincerely,
Kirt Harle, P.E.

JACOB | MARTIN



325.695.1070
817.594.9880



info@jacobmartin.com
www.jacobmartin.com



3465 Curry Lane
Abilene, TX 76906

1508 Santa Fe, Suite 203
Weatherford, TX 76086

TBPE Firm #: 2448

TBAE Firm #: BR 2261

TBPLS Firm #: 10024300 – Abilene

TBPLS Firm #: 10193992 - Weatherford



Bid Tabulation

Engineer: Jacob & Martin, LLC
Abilene, Texas

For all Labor, Materials, Equipment, and Incidentals to Furnish and Install the Following:				Rangeline Utility Services, LLC			Dowtech Specialty Contractors		TTE, LLC	
				1150 Blue Mound Rd W., Ste 821			4703 CR 527		270 N. Ridge Rd	
				Haslet, TX 76052			Baird, TX 79504		Marble Falls, TX 78654	
Item #	Item Description	Quantity	Unit	Unit Price	Total		Unit Price	Total	Unit Price	Total
1	Mobilization, Bonds, and Insurance	1	LS	\$ 16,131.00	\$ 16,131.00		\$ 7,194.00	\$ 7,194.00	\$ 35,000.00	\$ 35,000.00
2	Removal and Disposal of sediment in the Ivie Booster Pump Station Ground Storage Tank (estimated volume of 300,000 Gallons or 1,500 CY)	1	LS	\$ 81,875.00	\$ 81,875.00		\$ 75,000.00	\$ 75,000.00	\$ 145,000.00	\$ 145,000.00
3	Installation of 36" Butterfly Valve	1	LS	\$ 46,183.00	\$ 46,183.00		\$ 81,250.00	\$ 81,250.00	\$ 76,000.00	\$ 76,000.00
4	Allowance for work directed and in writing by the City for legitimate Project related issues	1	LS	\$ 25,000.00	\$ 25,000.00		\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00
TOTAL BASE BID (Items 1 - 3)					\$ 169,189.00	*		\$ 188,444.00		\$ 281,000.00

ADDITIVE ALTERNATE BID

Bid Item	Description	Est. Qty.	Unit	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
A1	A contingency bid item for removal and disposal of additional sludge above the quantity estimated	per	Gal	\$ 5.58	\$ 5.58	\$ 0.21	\$ 0.21	\$ 0.55	\$ 0.55
TOTAL ADDITIVE ALTERNATE BID (ITEM A1)					\$ 5.58		\$ 0.21		\$ 0.55

(*) - Extension Error

CONSTRUCTION CONTRACT

BACKGROUND

THIS CONTRACT, made on the ____ day of _____, 20____, is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and Rangeline Utility Services, LLC of the City of Haslet, 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. The Contractor hereby agrees to commence and complete the construction of Work required in the Contract Documents – incorporated herein by reference – Ivie Booster Pump Station - Ground Storage Tank Silt Removal and Butterfly Valve Installation

All work to be performed will be completed in conformance with (1) Part I 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 \$ 169,189.00

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) attorney’s 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:

Rangeline Utility Services, LLC


Signature

Business Address: 1150 Blue Mound Road, Suite 821
Haslet, TX 76052

Business Phone No. 682-250-2153

Federal Tax I.D. # 87-389495

Name – Typed or Printed

Chris Campbell

Title – Typed or Printed

Operations Manager

ATTEST: (If Corporation)

Corporate Seal
(If none, write "None")

CITY OF ABILENE

Authorized Signature

APPROVED:

City Attorney

ATTEST:

City Secretary

Seal

Awarding the Bid for the Ivie Booster Pump Station Ground Storage Tank Silt Removal and Butterfly Valve Installation Project.



- Award of bid to Rangeline Utility Services, LLC for the Ivie Booster Pump Station Ground Storage Tank Silt Removal and Butterfly Valve Installation Project.
- The recommended base bid price is \$169,189.00 and includes the Additive Alternate Bid establishing the unit price for removal of silt in excess of 300,000 gallons at \$5.58 per gallon.
- The Base Bid includes a line item for "Owner's Allowance" as provided for in Administrative Directive No. AD-025. The value of the owners allowance item is \$25,000.00. The allowance bid item is for work not required within the Plans and Specifications and may be used in the event additional (or less) work from that shown on the Plans and Specifications is required.



- The Ivie Pipeline System consists of the Intake Pump Station, the Booster Pump Station and 6MG Ground Storage Tank, the Ovalo 10MG Ground Storage Tank, about 52 miles of 36 inch diameter pipeline, and about 22 miles of high voltage electrical transmission line.
- The 6 million gallon tank volume and intermittent flows through the tank result in the slow buildup of silt on the tank bottom.
- It is necessary to remove silt occasionally to restore tank volume, and to minimize the negative impacts of the sediments on water quality and pumping operations.
- There is a need for an isolation butterfly valve to be installed in the piping section between the Ground Storage Tank and the Pump Station to improve serviceability of the pump station.





RUNNELS COUNTY ROAD 164

6MG GROUND STORAGE TANK

PUMP STATION

IVIE BOOSTER PUMP STATION



Awarding the Bid for the Ivie Booster Pump Station Ground Storage Tank Silt Removal and Butterfly Valve Installation Project.

QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 2/10/2022

TO: Robert Hanna, City Manager

FROM: Rodney Taylor, Director

SUBJECT: 11. Resolution: Receive a Report, Hold a Discussion and Take Action on Authorizing the First Amendment to Services Contract Between the City of Abilene and Smith Pump Company, Inc. for the Repair of the Raw Water Intake Pump #1 (*Rodney Taylor*)

GENERAL INFORMATION

Water Utilities staff is recommending that the Abilene City Council authorize First Amendment to Services Contract Between City of Abilene and Smith Pump Company for the repair of Ivie Intake Pump #1. The First Amendment provides for additional repairs not included in the original scope of work, and which can only be identified after the removal and disassembly of the pump. The additional repairs include replacement of eleven pump shaft segments with couplings for \$55,400.00 and repairs to the column pipe to correct misalignments for \$26,250.00. The total increase in the price paid to Contractor pursuant to this Amendment is \$81,650.00. The revised contract price for the total repair is now \$196,450.00.

SPECIAL CONSIDERATIONS

The Ivie Intake Pump Station is located on Lake O.H. Ivie approximately 50 miles south of Abilene. The pump station includes three vertical turbine pumps used to pump raw lake water into the Ivie Pipeline System for delivery to the Hargesheimer Water Treatment Plant. Pump #1 has a capacity of 5,200 gallons per minute. Pump #1 is currently disassembled in the repair shop of Smith Pump Company. The pump repair is necessary due to excessive vibration and noise due to wear and or failure of internal parts. The original contract provides for Pump #1 to be pulled, repaired, reinstalled, and tested to verify performance. The original price includes repair or replacement of normal wear parts, machining, labor, and transportation. The First Amendment additional work is for the repair and replacement of parts that are not considered

normal wear parts.

FUNDING/FISCAL IMPACT

Funding for the repair of Ivie Intake Pump #1 will come from fund 575 designated for capital improvement projects and/or existing CO fund residuals.

STAFF RECOMMENDATION

Staff recommends that the Abilene City Council authorize the First Amendment to Services Contract between City of Abilene and Smith Pump Company for the additional replacement parts and repair of Ivie Raw Water Intake Pump #1 in the amount of \$81,650.00 for a revised contract price of \$196,450.00 as described herein.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Written Resolution-WtrDpt-Smith Pump Company-Amendment 1 to Contract-Ivie Intake P1 Repair-2-10-2022
2. First Amendment to Services Contract-Smith Pump Co-Ivie P1 Line Shafts-2-10-2022
3. Presentation-Authorize Amendment 1 to Contract-Smith Pump Company-Repair of Ivie Intake P1-2-10-2022

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AUTHORIZING FIRST AMENDMENT TO SERVICES CONTRACT BETWEEN CITY OF ABILENE AND SMITH PUMP COMPANY FOR THE REPAIR OF IVIE INTAKE PUMP #1.

WHEREAS, the City of Abilene (City) owns and operates the Ivie Pipeline System which includes the Intake Pump Station, Booster Pump Station, the Ovalo Terminal Storage Tank, the transmission pipeline, and an electrical transmission system; and

WHEREAS, the Ivie Intake Pump Station includes three vertical turbine pumps to transfer raw lake water through the pipeline system to the Hargesheimer Water Treatment Plant; and

WHEREAS, Ivie Intake Pump #1 was inoperable and in need of repairs and City staff was able to secure its repair through a contract with Smith Pump Company, Inc.; and

WHEREAS, the removal and disassembly of Pump #1 by the Contractor revealed worn and slightly bent shafts and misaligned column pipe that must be replaced and repaired, respectively, and for which repairs are not included in the original contract scope of work

WHEREAS, staff recommends authorizing First Amendment to Service Contract with Smith Pump Company for additional work including the replacement of eleven shaft segments and repair of column pipe in the amount of \$81,650.00, resulting in the revised contract price of \$196,450.00; and

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

That the City Manager is authorized to execute First Amendment to Services Contract Between City of Abilene and Smith Pump Company for the additional repairs to Ivie Intake Pump #1 in the amount of \$81,650.00, resulting in the revised contract price of \$196,450.00.

ADOPTED this 10th day of February, 2022.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley E. Smith, City Attorney

**FIRST AMENDMENT TO SERVICES CONTRACT BETWEEN THE CITY OF
ABILENE AND SMITH PUMP COMPANY**

This is the First Amendment (“Amendment”) to that certain Services Agreement dated November 18, 2021 by and between the City of Abilene, Texas (“City”) and Smith Pump Company (“Contractor”). The Agreement was for the repair of the raw water intake pump #1.

WHEREAS, the City and Contractor are parties to the Agreement and desire to amend the Agreement to address the terms set forth herein; and

WHEREAS, on December 13, 2021, pursuant to the terms of the Agreement, Pump Unit P1-1 was removed and transported to the Contractor’s facility for teardown and inspection; and

WHEREAS, upon inspection, the pump unit was found to have significant wear on all of the internal components of the pump, and with many components severely out of the manufacturer’s tolerances; and

WHEREAS, it has been determined by the City and Contractor that the pump shaft, column shafts, and top shaft need to be replaced due to the excessive wear and begin extremely out of the manufacturer’s tolerances; and

WHEREAS, due to excessive wear of the internal pump components, the column pipes need to be repaired in order to restore alignment; and

WHEREAS, the above described repairs were not anticipated nor included in the terms of the Agreement, and the Agreement needs to be amended to include these discovered repairs to the pump unit; and

WHEREAS, this Amendment is procured through buyboard contract number 589-19.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Agreement is hereby amended to include the following additional repairs:
 - A. SHAFT REPLACEMENT, to include:
 - i) One new Bowl Shaft, 3-3/16” Dia x 170-1/2” Long x R&K Coupling;
 - ii) Two new Intermediate Shaft, 2-11/16” Dia x 60” Long x R&K Coupling;
 - iii) Seven new Intermediate Shaft, 2-11/16’ Dia x 120” Long x R&K Coupling;
 - iv) One New Top Shaft, 2-11/16” Dia x 95” Long x R&K Coupling.

B. COLUMN PIPE REPAIR, to include:

- i) Pad Weld Female Register;
- ii) CNC Horizontal Boring Mill Machining of Registers;
- iii) Mill Flange Faces;
- iv) Prep for blasting;
- v) Blast to SSPC-SP10 near white metal;
- vi) Coat with epoxy paint.

2. The cost for the Shaft Replacement is \$55,400.00. The cost for the Column Pipe Repair is \$26,250.00. The total increase in the price paid to Contractor pursuant to this Amendment is \$81,650.00. The original contract price is \$114,800.00. Therefore, the revised contract price is \$196,450.00.

3. **General Provisions.**

- a. Except as specifically set forth in this Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect.
- b. The Parties agree that in the event of any conflict between the terms of the Agreement and this Amendment, the provisions of this Amendment shall control.
- c. This Amendment 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 WITNESS THEREOF, the Parties through their duly authorized representatives have executed this Amendment as of the date set forth below.

AGREED and APPROVED:

CITY OF ABILENE, TEXAS

SMITH PUMP COMPANY

By: Robert Hanna

Its: City Manager

Date: _____



By: Trent Brown

Its: President

Date: 1/31/22

Authorize First Amendment to Services Contract Between
City of Abilene and Smith Pump Company for the
Repair of Ivie Intake Pump #1.



- The Ivie Intake Pump Station has three vertical turbine pumps that transfer raw lake water into the Ivie Pipeline System for delivery to the Hargesheimer Water Treatment Plant.
- Ivie Intake Pump #1 was inoperable and in need of repairs.
- Smith Pump Company Inc. contracted for the repair of Ivie Pump #1 including the removal, disassembly, machining, repair and/or replacement of normal wear parts, and reinstallation and testing.



- Removal and disassembly revealed worn and bent shafts and misaligned column pipe that are not considered normal wear parts.
- First Amendment to Services Contract provides for additional work including the replacement of eleven shaft segments for \$55,400 and repair of column pipe for \$26,250.
- The price of the additional work is \$81,650.00.
- The revised contract price is \$196,450.00.



**LAKE O.H. IVIE INTAKE PUMP STATION
17 MILES SOUTHEAST OF BALLINGER, TX**



Authorize First Amendment to Services Contract Between
City of Abilene and Smith Pump Company for the
Repair of Ivie Intake Pump #1.

Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 2/10/2022

TO: Honorable Mayor and City Council Members

FROM: Robert Hanna, City Manager

SUBJECT: 12. Resolution: Receive a Report, Hold a Discussion and Take Action on the Approval of the Use of the DEAAG grant funds for the Dyess Air Force Base Security Gate Project (Michael Rice)

GENERAL INFORMATION

On March 12, 2021, the City of Abilene was awarded a Defense Economic Adjustment Assistance Grant (DEAAG) from the Office of the Governor, Texas Military Preparedness Commission. The purpose of the DEAAG is to provide state funds to defense communities that have been or may be affected by a base realignment and closure action for the purchase of property, sharing the costs of infrastructure or redevelopment projects, and the purchase or lease of equipment.

This DEAAG is in the amount of \$1,888,700.00, and is for the project described as a security gate leading to the flight line at Dyess Air Force Base. The DEAAG will reimburse the City of Abilene for actual and allowable allocable costs paid.

Dyess Air Force Base is procuring and contracting directly for the construction of the security gate. The City of Abilene is not expending any city funds for the project. It is the intent that the City of Abilene will share in the cost of the construction of the security gate by providing reimbursement to Dyess Air Force Base of their actual and allowable allocable costs paid in an amount not to exceed the grant amount.

Staff requests approval of a Resolution by City Council approving the reimbursement to Dyess Air Force Base of actual and allowable allocable costs paid for construction of the security gate in an amount not to exceed the grant amount, and to authorize the City Manager to execute any necessary documents or agreements with Dyess Air Force Base for the purposes of the DEAAG and the secure gate project.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 2022_Resolution_DEAAG DAFB secure gate
2. 03-12-2021 - Texas Military Preparedness Commission - Defense Economic Adjustment Assistance Grant
3. DEAAG grant

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
APPROVING THE REIMBURSEMENT TO DYESS AIR FORCE BASE OF COSTS PAID
FOR CONSTRUCTION OF A SECURITY GATE IN AN AMOUNT NOT TO EXCEED
THE MARCH 12, 2021 DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT
(DEAAG) FROM THE OFFICE OF THE GOVERNOR, AND AUTHORIZING THE CITY
MANAGER TO EXECUTE ANY DOCUMENTS OR AGREEMENTS NECESSARY**

WHEREAS, on March 12, 2021, the City of Abilene was awarded a Defense Economic Adjustment Assistance Grant (DEAAG) from the Office of the Governor, Texas Military Preparedness Commission; and

WHEREAS, the purpose of the DEAAG is to provide state funds to defense communities that have been or may be affected by a base realignment and closure action for the purchase of property, sharing the costs of infrastructure or redevelopment projects, and the purchase or lease of equipment; and

WHEREAS, this DEAAG is in the amount of \$1,888,700.00, and is for the project described as a security gate leading to the flight line at Dyess Air Force Base; and

WHEREAS, the DEAAG will reimburse the City of Abilene for actual and allowable allocable costs paid; and

WHEREAS, Dyess Air Force Base is procuring and contracting directly for the construction of the security gate, and it is the intent that the City of Abilene will share in the cost of the construction of the security gate by providing reimbursement to Dyess Air Force Base of their actual and allowable allocable costs paid in an amount not to exceed the grant amount; and

WHEREAS, Staff requests approval of a Resolution by City Council approving the reimbursement to Dyess Air Force Base of actual and allowable allocable costs paid for construction of the security gate in an amount not to exceed the grant amount, and to authorize the City Manager to execute any necessary documents or agreements with Dyess Air Force Base for the purposes of the DEAAG and the security gate project.

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

Part 1: That the City Council of the City of Abilene approves the reimbursement to Dyess Air Force Base of actual and allowable allocable costs paid for the construction of the security gate in an amount not to exceed \$1,888,700.00 and in accordance to the terms and conditions of the March 12, 2021 Defense Economic Adjustment Assistance Grant from the Office of the Governor, Texas Military Preparedness Commission.

Part 2: That the City Manager is authorized to execute any necessary documents or agreements for the purposes of the approved reimbursement to Dyess Air Force Base.

Part 3: That the City Council finds that the use of the DEAAG funds for the reimbursement to Dyess Air Force Base of actual and allowable allocable costs paid for the construction of the security gate will serve a predominately public purpose, and the city will retain sufficient control to ensure the public purpose is carried out, and the city will receive a benefit.

Part 4. That this Resolution takes effect immediately upon its adoption.

ADOPTED this 10th day of February, 2022.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

**AGREEMENT FOR THE
DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT
BETWEEN THE
OFFICE OF THE GOVERNOR,
TEXAS MILITARY PREPAREDNESS COMMISSION
AND
THE CITY OF ABILENE**

**STATE OF TEXAS
COUNTY OF TRAVIS**

THIS AGREEMENT is between the Office of the Governor, Texas Military Preparedness Commission, P.O. Box 12428, Austin, Texas 78711 (“OOG” or “Grantor”), and The City of Abilene (“Grantee”). The OOG and Grantee are referred to collectively as the “parties.” The parties hereto have severally and collectively agreed and by the execution of this Agreement are bound to the mutual obligations and to the performance and accomplishment of the tasks described herein.

SECTION 1. PURPOSE. This Grant is awarded pursuant to Chapter 436 of the Texas Government Code, which authorizes the OOG to administer the Defense Economic Adjustment Assistance Grant (“DEAAG”) program. The DEAAG program provides state funds to defense communities that have been or may be affected by a base realignment and closure action for the purposes of purchasing property, sharing the costs of infrastructure or redevelopment projects, and the purchase or lease of equipment, including equipment for the training of defense workers.

SECTION 2. TERM OF AGREEMENT. The term of this Agreement shall begin on the date of last signature below (“Effective Date”), and shall terminate on February 4, 2023, or upon the completion of the grant project as described herein, whichever occurs first, unless terminated earlier pursuant to Section 16 of this Agreement.

SECTION 3. PROJECT REQUIREMENTS. Consistent with Sections 436.202 and 436.203 of the Texas Government Code, grant proceeds may be used for the purchase of property, new construction, rehabilitation or renovation of facilities or infrastructure, or purchase of capital equipment or facilities insurance, and if applicable, to purchase or lease equipment to train certain defense workers. Subject to the requirements of applicable law and this Agreement, Grantee may use grant proceeds as cost reimbursement for certain actual, reasonable, and allowable costs that are directly allocable to the project described in Exhibit A (Grant Budget), Exhibit B (Grant Narrative) of this Agreement, and Grantee’s DEAAG Grant Application (collectively, the “Grant Project”).

SECTION 4. OBLIGATIONS OF THE OOG.

4.1. The OOG shall reimburse Grantee for the actual, reasonable, and allowable costs incurred by Grantee during the term of this Agreement, subject to the requirements and limitations set forth

in this Agreement. The OOG shall reimburse Grantee only for costs that are directly allocable to the Grant Project as determined by the OOG, in its sole discretion, in accordance with Chapter 436 of the Texas Government Code, the DEAAG Administrative Rules (Title 1, Part 1, Chapter 4, Subchapter B, Texas Administrative Code), this Agreement, and the Grant Budget, and in conformity with the Uniform Grant Management Standards (the "UGMS").

4.2. The OOG shall not be liable to Grantee for any costs incurred by Grantee that are not strictly in accordance with the terms of this Agreement.

SECTION 5. MAXIMUM AMOUNT OF GRANT. Notwithstanding any other provision of this Agreement, the total of all grant reimbursement payments and other obligations incurred by the OOG under the terms of this Agreement shall not exceed **ONE MILLION, EIGHT HUNDRED EIGHTY EIGHT THOUSAND, SEVEN HUNDRED DOLLARS AND NO CENTS, (\$1,888,700.00)**. The parties stipulate and agree that any act, action or representation by either party, their agents or employees that purport to increase the liability of the OOG is voidable by the OOG, unless this Agreement is amended to increase the liability of the OOG.

SECTION 6. GENERAL REQUIREMENTS APPLICABLE TO THE GRANT.

6.1. Grant funds may be used only for the actual, reasonable, and allowable costs incurred during the term of this Agreement and that are directly allocable to the Grant Project. Grant funds may not be used for the payment of taxes, overhead, debt repayment, indirect expenses, or administrative expenses.

6.2. All grant funds shall be disbursed on a cost reimbursement basis, subject to the terms of this Agreement. Only costs that have been incurred and paid by Grantee are eligible for reimbursement. Grant funds are not eligible for use to provide an advance payment to a Grantee or sub-grantee.

6.3. In no case shall the payments made to a Grantee exceed the actual, reasonable, and allowable costs that are directly allocable to the Grant Project costs as identified in the Grant Budget, or the Maximum Amount of Grant as set forth in Section 5 of this Agreement.

6.4. Pre-term costs incurred prior to the Effective Date of the Agreement are allowable only with the written approval of the OOG and only to the extent that they would have been allowable if they had been incurred after the date of the term of this Agreement.

6.5. All costs must be allowable in accordance with the purposes authorized by Chapter 436 of the Texas Government Code, the DEAAG Administrative Rules (Title 1, Part 1, Chapter 4, Subchapter B, Texas Administrative Code), this Agreement, the Grant Budget, and other applicable law.

6.6. Grantee agrees to comply with all applicable state and federal laws, rules and regulations, directives, guidelines, or any other authorities relevant to the performance of Grantee under this Agreement as they currently exist and as amended throughout the term of this Agreement. Grantee agrees to comply with applicable laws, executive orders, regulations, and policies, as well as

Chapter 783 of the Texas Government Code and the UGMS or the successor to the UGMS. The OOG reserves the right, in its sole discretion, to unilaterally amend this Agreement throughout the term of this Agreement to incorporate any modifications necessary for the OOG's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements, and guidelines.

6.7. Grantee agrees to comply with the Uniform State Grant Assurances as set forth in Exhibit C.

SECTION 7. CONDITIONS PRECEDENT TO REIMBURSEMENT. All of the following conditions precedent must be met to the satisfaction of the OOG prior to any reimbursement payments:

7.1. All costs incurred by Grantee for which Grantee seeks reimbursement must be for the actual, reasonable, and allowable costs that are directly allocable to the Grant Project costs described in the Grant Budget.

7.2. Before the OOG will make a reimbursement payment, Grantee must submit, and the OOG must approve, a reimbursement request as set forth in Section 8 of this Agreement.

7.3. The OOG will not consider requests for the reimbursement of expenditures incurred by Grantee after February 4, 2023. The total amount already disbursed plus the amount requested shall not exceed the Maximum Amount of Grant set forth in Section 5 of this Agreement.

7.4. Grantee must be in compliance with all terms of this Agreement.

7.5. Grantee must have supplied to the OOG all reports, documentation, or other items that the OOG requires or has requested.

SECTION 8. STRUCTURE FOR REIMBURSEMENT PAYMENTS.

8.1. Requests for Reimbursement. Grantee's reimbursement requests shall be submitted to the OOG in the form and manner approved by the OOG, and shall specify the detailed and total expenses for the reimbursement request ("Request for Reimbursement"). All Requests for Reimbursement must be timely submitted to the OOG in accordance with the schedule and requirements set forth in Section 8.5 of this Agreement.

Grantee's Requests for Reimbursement and required documentation shall be submitted directly to:

tmpc@gov.texas.gov

Or by mail to:

Office of the Governor
Texas Military Preparedness Commission
P.O. Box 12428
Austin, TX 78711

8.2. Required Documentation. Each Request for Reimbursement Grantee submits to the OOG must include:

- (1) the identification of the specific OOG Agreement;
- (2) the Grantee's federal tax identification number;
- (3) the name and division of the OOG contact;
- (4) a description of the services, costs, and/or expenses, and the dollar amount attributable to each;
- (5) the name of the entity or person providing the service and the cost(s) charged by such entity or person;
- (6) an itemization of charges with sufficient detail to permit the OOG to determine if the costs are allowable; and
- (7) documentation of proof of payment, as specified in Section 8.3.

Each item of expenditure shall be specifically attributed to the eligible Grant Project cost category as identified in the Grant Budget. By submission of a Request for Reimbursement, Grantee is warranting that (1) all invoices have been carefully reviewed to ensure that all invoiced services or goods have been performed or delivered; (2) the services or goods have been performed or delivered in compliance with all terms of this Agreement; (3) the amount of each new invoice added together with all previous invoices does not exceed the Maximum Amount of Grant as stated in Section 5 of this Agreement; and (4) the charges and expenses shown on the invoice are reasonable, necessary, and supported by included documentation.

8.3. Documentation of Proof of Payment. Requests for Reimbursement must include documentation of proof of payment as evidence of actual expenditures. Acceptable proof of payment includes, but is not necessarily limited to, a receipt or other documentation of a paid invoice showing zero balance due, a monthly bank statement evidencing payment of the specific expenditure, copies of endorsed/processed check, or a printed copy of an electronic payment confirmation evidencing payment of the specific expenditure(s) to which the reimbursement relates.

8.4. Right to Request Additional Documentation. Upon the request of the OOG, Grantee must submit to the OOG any additional documentation or explanation the OOG may require to support or document any requested payment under the Agreement.

8.5. Timing of Submission of Request for Reimbursement to the OOG; Close-Out Request for Reimbursement. Grantee must submit Requests for Reimbursement and all supporting documentation to the OOG in an accurate and timely manner. Unless the OOG provides written authorization providing additional time as set forth below, Grantee must submit quarterly Requests

for Reimbursement to the OOG that cover the previous quarter's expenses on or before the twentieth (20th) day after the end of each quarter. Quarterly Requests for Reimbursement are due:

- (1) First quarter – December 20;
- (2) Second Quarter – March 20;
- (3) Third Quarter – June 20; and
- (4) Fourth Quarter – September 20.

The OOG may, in its sole discretion, provide written authorization to Grantee that provides Grantee additional time to submit a specified quarterly Request for Reimbursement upon a finding by the OOG that extraordinary circumstances support the additional time. The amount of additional time provided to Grantee shall be specified in the OOG's written authorization.

Grantee must submit a final Request for Reimbursement on or before the forty-fifth (45th) calendar day after termination of this Agreement.

The OOG will make all reasonable efforts to promptly process and make payments on properly-completed Requests for Reimbursement.

8.6. Final Deadline for Reimbursement Requests. All Requests for Reimbursement must be received by the OOG no later than forty-five (45) calendar days after termination of this Agreement. An Agreement amendment must be executed by the OOG and Grantee in order to extend this deadline. Any extension of the deadline is within the sole discretion of the OOG and subject to the availability of appropriated funds.

SECTION 9. BUDGET ADJUSTMENT. Prior written approval from the OOG is required if Grantee anticipates altering the scope of the Grant Project, adding funds to previously un-awarded budget items or categories, changing funds in any awarded budget items or category by more than 10% of the annual budget, or adding new line items to any awarded budget category.

SECTION 10. PURCHASE OF EQUIPMENT; MAINTENANCE AND REPAIR; TITLE UPON TERMINATION. Grantee shall not give any security interest or lien or otherwise encumber any item of equipment purchased with grant funds. Grantee shall identify all equipment purchased under this Agreement by appropriate tags or labels affixed to the equipment. Grantee shall maintain a current inventory of all equipment, which shall be available to the OOG at all times upon request. The equipment inventory must include the following: a description of the equipment; a serial number or other identification number; the acquisition date, cost, location, use, and condition of the equipment; and any ultimate disposition data. Title for equipment shall remain with Grantee, and Grantee shall maintain, repair, and protect all equipment purchased in whole or in part with grant funds so as to ensure the full availability and usefulness of such equipment. In the event Grantee is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the equipment purchased under this Agreement, Grantee shall use the proceeds to repair or replace said equipment. Upon termination of this Agreement, title, use, and disposal of equipment shall be in conformity with the UGMS.

SECTION 11. REPORTING REQUIREMENTS.

11.1. Until Grantee has submitted a Project Completion Report to the OOG, Grantee shall submit a Quarterly Project Status Report to the OOG, using the form attached hereto as Exhibit D, no later than twenty (20) calendar days after the end of each quarter. Quarterly reports are due:

- (1) First quarter – December 20;
- (2) Second Quarter – March 20;
- (3) Third Quarter – June 20; and
- (4) Fourth Quarter – September 20.

The OOG may, at its sole discretion and upon a finding by OOG that extraordinary circumstances support the additional time, provide written authorization to Grantee that provides Grantee a specified amount of additional time to submit a specified Quarterly Project Status report.

11.2. After Grantee has completed the Grant Project as set forth in this Agreement, but in no case more than one hundred twenty (120) calendar days after termination of this Agreement, Grantee shall submit to the OOG a Project Completion Report, using the form attached hereto as Exhibit E, describing all activities performed under this Agreement. Grantee shall provide to the OOG a Certification of Delivery, certifying that Grantee has received delivery of all equipment purchased pursuant to this Agreement.

11.3. No later than sixty (60) calendar days after the date on which Grantee submits Grantee's Project Completion Report to the OOG, Grantee shall provide to the OOG a DEAAG Project Impact Report, using the form attached hereto as Exhibit F. A DEAAG Project Impact Report must contain information concerning jobs generated and retained, and individuals trained as a result of the Grant Project. For purposes of this Agreement, job creation, retention, and training rates may be evidenced by satisfactory documentation, such as copies of payroll documents, human resource documents, or training enrollment records.

11.4. Grantee shall provide to the OOG additional information regarding the status of the Grant Project at any time upon request from the OOG.

11.5. Grantee shall cooperate with OOG and provide all requested assistance to the OOG in connection with the preparation of any reports required to be made by the OOG to the Texas Legislature or any relevant governmental entity regarding Grantee, the Grant, the Grant Project, or the Grant Application.

11.6. All reports provided to the OOG must be signed by the duly authorized representative of Grantee.

11.7. If after a written request by the OOG, Grantee fails to provide required reports, information, documentation, or other information as required by this Agreement, then the OOG may require corrective action or consider this act a possible default under this Agreement.

SECTION 12. CORRECTIVE ACTION.

12.1. Corrective Action. If the OOG finds deficiencies in Grantee's performance under this Agreement, the OOG, in its sole discretion, may impose one or more of the following corrective actions: increase monitoring visits; require the submission of additional or more detailed financial or programmatic reports; require prior approval for expenditures; require additional technical or management assistance or make modifications in business practices; reduce the grant award amount; or terminate this Agreement. The foregoing are not exclusive remedies, and the OOG may impose other requirements that the OOG determines will be in the best interest of the State of Texas.

12.2. Financial Hold. Failure to comply with submission deadlines for required reports, invoices, or other requested information without prior written authorization from the OOG may result in the OOG, in its sole discretion, placing Grantee on immediate financial hold without further notice to Grantee and without first requiring a corrective action plan. The OOG shall only provide written authorization for delay upon finding that extraordinary circumstances exist that support the delay. No reimbursements will be processed until the requested information is submitted. If Grantee is placed on financial hold, the OOG, in its sole discretion, may deny reimbursement requests associated with expenses incurred during the time Grantee was placed on financial hold.

12.3. Sanctions. In addition to a financial hold, the OOG, in its sole discretion, may impose other sanctions including, but not limited to, withholding or suspending funding, requiring return or offset of previous reimbursements, requiring repayment, disallowing claims for reimbursement, reducing funding, terminating this Agreement, or any other appropriate sanction.

12.4. Notice of Possible Default. The parties agree to make a good faith effort to identify, communicate, and resolve problems found by either the OOG or Grantee. The OOG, in its sole discretion, will determine whether Grantee has acted or failed to act in such a manner that gives rise to an act of possible default under this Agreement. If the OOG determines Grantee has possibly defaulted on this Agreement, the OOG shall, within ten (10) business days after making that determination, give written notice of possible default to Grantee that also sets out the circumstances that support the OOG's determination.

12.5. Opportunity to Cure. Unless the OOG provides written authorization providing additional time as set forth below, Grantee must cure the possible default and provide the OOG with sufficient information that supports a finding of cure by the OOG within thirty (30) calendar days after the OOG gives Grantee notice under Section 12.4 of this Agreement. The OOG may, in its sole discretion and upon a finding by OOG that extraordinary circumstances support the additional time, provide written authorization to Grantee that provides Grantee a specified amount of additional time cure the possible default and provide required information to the OOG.

12.6. Cure. If the OOG determines, in its sole discretion, that Grantee has cured the possible default event, the OOG shall give written notice to Grantee within ten (10) business days after making that determination. The OOG shall be guided by good faith and reasonableness in determining whether Grantee has cured the possible default.

12.7. Default. If the OOG determines Grantee has not cured the possible default, Grantee shall be in default hereunder, and the OOG shall give written notice to Grantee informing Grantee of such default within ten (10) business days after the OOG reaches its determination. Any default may result in termination of this Agreement in accordance with Section 16 of this Agreement.

12.8. No Waiver. Notwithstanding the imposition of corrective actions, financial hold, or sanctions, Grantee remains responsible for complying with the Agreement terms and conditions. Corrective actions, financial hold, or sanctions do not excuse or operate as a waiver of prior failure to comply with this Agreement.

SECTION 13. NOTICES. Any notice required or permitted to be given under this Agreement by either party shall be in writing and shall be deemed to have been given immediately if sent to the e-mail address specified in this section. Any notice required or permitted to be given under this Agreement may be given by regular first class mail and shall be deemed to have been given on the date of attempted or actual delivery to the recipient if addressed to the receiving party at the address specified in this section:

To Grantor:

Office of the Governor
Texas Military Preparedness Commission
P.O. Box 12428
Austin, TX 78711
tmpe@gov.texas.gov

To Grantee:

Robert Hanna
City of Abilene
P.O. Box 60
Abilene, TX 79604
Robert.Hanna@abilenetx.gov

SECTION 14. GRANTEE CERTIFICATIONS. By agreeing to and signing this Agreement, Grantee represents that Grantee has obtained all necessary authority to enter into this Agreement and hereby makes the following certifications, representations, and warranties:

14.1. Delinquent Child Support Obligations. Under Section 231.006(d) of the Texas Family Code, regarding child support, Grantee certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

14.2. Prohibited Bids and Agreements. Under Section 2155.004 of the Texas Government Code, Grantee certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

14.3. Gift to Public Servant. Grantee warrants that Grantee has not given, nor does Grantee intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the award of this Agreement.

14.4. Former Executive Head and Employees of the Agency. Grantee certifies that this Agreement is compliant, and will remain in compliance during the Agreement term, with the

following sections of the Texas Government Code: Section 669.003 (Contracting with Executive Head of State Agency); Section 572.069 (Prohibiting employment of state officers and employees who participated in the procurement of services); and Section 2252.901 (Contracts with Former or Retired Agency Employees).

14.5. Conflicts of Interest. Grantee certifies that neither Grantee nor the personnel or entities employed in rendering services under this Agreement have, nor shall they knowingly acquire, any interest that would be adverse to or conflict in any manner with the performance of Grantee's obligations under this Agreement. Grantee has a continual and ongoing obligation to immediately notify the OOG in writing, upon discovery of any actual or potential conflict.

14.6. Corporate Franchise Tax. Grantee certifies that, if applicable, Grantee's Texas franchise tax payments are current, or that Grantee is exempt from, or not subject to, such tax.

14.7. No Claims. Grantee certifies that Grantee does not have any potential or existing claims against or unresolved audit exceptions with the State of Texas or any agency of the State of Texas.

14.8. Debt to State. Grantee acknowledges and agrees that, to the extent Grantee owes any debt or delinquent taxes to the State of Texas, any payments Grantee is owed under this Agreement may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Grantee owes the State of Texas until the debt or delinquent taxes are paid in full.

14.9. Compliance with Licensing, Permitting, and Regulatory Bodies. Grantee certifies that Grantee has or will obtain all licenses, certifications, permits, and authorizations necessary to perform Grantee's obligations under this Agreement, without costs to the OOG. Grantee shall comply with any applicable federal, state, county, local and municipal laws, ordinances, resolutions, codes, decisions, orders, rules, and regulations, in connection with Grantee's obligations under this Agreement. Grantee shall comply with all applicable federal health and safety standards, including but not limited to, OSHA, and all Texas health and safety standards.

Grantee certifies that Grantee is currently is in good standing with all licensing, permitting, or regulatory bodies that regulate any or all aspects of Grantee's business or operations. Grantee agrees to comply and remain compliant with all applicable licenses, legal certifications, inspections, and any other applicable local ordinance or state or federal laws.

14.10. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion. Grantee certifies that Grantee and Grantee's principals are not listed on the federal government's terrorism watch list as described in Executive Order 13224 and will remain compliant with this certification during the term of this Agreement. Grantee certifies that Grantee and Grantee's principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

14.11. Deceptive Trade Practices/Unfair Business Practices. Grantee represents and warrants that Grantee has not been the subject of allegations of Deceptive Trade Practices violations under

Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that the Respondent has not been found to be liable for such practices in such proceedings. Grantee certifies that Grantee has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.

14.12. False Statements. By signature to this Agreement, Grantee makes all the representations, warranties, guarantees, certifications and affirmations included in this Agreement. If Grantee signs this Agreement with a false statement or it is subsequently determined that Grantee has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Agreement, Grantee shall be in default under this Agreement and the OOG may terminate or void this Agreement for cause and pursue other remedies available to the OOG under this Agreement and applicable law.

14.13. Felony Criminal Convictions. Grantee represents and warrants that Grantee and Grantee's employees who will perform services under this Agreement have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Grantee has fully advised the OOG as to the facts and circumstances related to the conviction.

14.14. Immigration. Grantee represents and warrants that Grantee shall comply with all applicable U.S. immigration laws with respect to the employment of any individual who will perform labor or services in the U.S. under this Agreement.

14.15. U.S. Department of Homeland Security's E-Verify System. Grantee certifies and ensures that Grantee utilizes and will continue to utilize, for the term of this Agreement, the U.S. Department of Homeland Security's E-Verify system as required by Chapter 673 of the Texas Government Code, to determine the eligibility of:

- a. all persons employed to perform duties within Texas, during the term of the Agreement; and
- b. all persons, including subcontractors, employed or assigned by Grantee to perform work pursuant to the Agreement, within the United States of America.

If this certification is falsely made, the Agreement may be terminated.

14.16. Certification Concerning Prior Disaster Relief Contract Violation. The OOG is prohibited from awarding a grant to any with any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Grantee certifies that Grantee is not ineligible from entering into this Agreement and will remain compliant with this certification during the term of this Agreement. Grantee acknowledges that this Agreement may be terminated and payment withheld or return of grant funds required if this certification is inaccurate or false.

14.17. Technology Access Clause. If applicable, Grantee will comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in I TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Likewise, if applicable, Grantee shall provide the Department of Information Resources with the URL to Grantee's Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). A company not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

14.18. Buy Texas. With respect to all services, if any, purchased pursuant to this Agreement, Grantee represents and warrants that Grantee will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials.

14.19. Liability for Taxes. Grantee represents and warrants that Grantee shall pay all taxes or similar amounts resulting from this Agreement, including, but not limited to, any federal, state, or local income, sales or excise taxes of Grantee or Grantee's employees. The OOG shall not be liable for any taxes resulting from this Agreement.

14.20. Israel. If Grantee is required to make a certification pursuant to Section 2271.002 of the Texas Government Code, Grantee certifies that Grantee does not boycott Israel and will not boycott Israel during the term of the Agreement. If Grantee does not make that certification, Grantee must notify the OOG and state why the certification is not required. The term "boycott Israel" as used in the paragraph has the meaning assigned by Section 808.001 of the Texas Government Code.

14.21. Iran, Sudan, or Foreign Terrorist Organization. Grantee represents that neither Grantee, nor any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Grantee, (i) is an entity listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code; (ii) constitutes a "scrutinized company" as defined by Section 2270.0001(9) of the Texas Government Code; or (iii) has contracts with, provides supplies or services to, or is otherwise engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code. The terms "foreign terrorist organization" and "designated foreign terrorist organization" have the meanings assigned to them in Sections 2252.151 and 2270.0001 of the Texas Government Code, respectively.

14.22. Cybersecurity Training Program. To the extent Grantee has access to any state computer system or database and is subject to the provisions of Section 2054.5192 of the Texas

Government Code, the OOG will require Grantee to complete a cybersecurity training program certified under Section 2054.519 of the Texas Government Code, as selected by the OOG. The cybersecurity training program must be completed by Grantee during the term of the Agreement and during any subsequent extension period. Grantee shall verify completion of the program to the OOG in writing upon completion of the program.

14.23. Human Trafficking. Under Section 2155.0061 of the Texas Government Code, Grantee certifies that Grantee is not ineligible to receive this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

SECTION 15. GENERAL TERMS AND CONDITIONS.

15.1. Independent Contractor. Grantee expressly agrees that Grantee is an independent contractor and under no circumstances shall any owner, incorporator, officer, director, employee, or volunteer of Grantee or any subcontractor of Grantee be considered an employee, agent, servant, joint venturer, joint enterpriser, or partner of the OOG, by virtue of this Agreement. Grantee agrees to take such steps as may be necessary to ensure that each contractor of Grantee will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, joint enterpriser, or partner of the OOG.

All persons furnished, used, retained, or hired by or on behalf of Grantee or any of Grantee's subcontractors shall be considered to be solely the employees or agents of Grantee or Grantee's subcontractors. Grantee or Grantee's subcontractors shall be responsible for ensuring that any and all appropriate payments are made, such as unemployment, workers' compensation, social security, any benefit available to a state employee as a state employee, and other payroll taxes for such persons, including any related assessments or contributions required by law.

The OOG is not responsible for any types of claims whatsoever due to actions or performance, taken by the owners, incorporators, officers, directors, employees, volunteers of Grantee or any third parties under this Agreement, including but not limited to, the use of automobiles or other transportation, taken by its owners, incorporators, officers, directors, employees, volunteers or any third parties.

15.2. Subcontracting. In the event that Grantee should determine that it is necessary or expedient to subcontract for any of the performances herein, Grantee understands and agrees that Grantee will be responsible to the OOG for any subcontractor's performance under this Agreement. In no event shall this section or any other provision of this Agreement be construed as relieving Grantee of the responsibility for ensuring that performance under this Agreement, and any subcontracts thereto, is rendered in compliance with all of the terms of this Agreement. If Grantee uses a subcontractor for any or all of the work required, the following conditions will apply: (1) Grantee, in subcontracting for any performances specified herein, expressly understands and agrees that subcontracting will be solely at Grantee's expense and the OOG shall not be liable in any manner to Grantee's subcontractor(s); (2) Grantee will be the sole contact for the OOG; and (3) Pursuant to Chapter 2251 of the Texas Government Code, Grantee will make any payments owed to subcontractors within ten (10) calendar days of Grantee's receipt of funds from the OOG.

15.3. No Assignment. This Agreement is not assignable by Grantee. Notwithstanding any attempt to assign the Agreement, Grantee shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants, and conditions herein. Grantee shall be held responsible for all funds received under this Agreement.

15.4. Records Retention. Records shall be maintained and made available to the OOG or its authorized representatives upon request during the entire performance period of this Agreement and until three (3) years from date of final payment by the OOG for the services provided under this Agreement. In addition, those records relating to any dispute, litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available to the OOG or its designee until completion of such action and resolution of all issues which arise from it, or until the end of the aforementioned three (3) year period, whichever is later. Failure to provide reasonable access to authorized OOG representatives shall give the OOG the right to terminate this Agreement pursuant to Section 16 of this Agreement for reason of default.

15.5. Right to Audit. Grantee will cooperate fully in any review conducted by the OOG or its authorized representatives related to services provided under this Agreement. The OOG has the authority to monitor, inspect, assess, and review the fiscal and contractual performance of Grantee with respect to the Agreement, including all information related to any services provided under this Agreement or billed to the OOG. Grantee will remedy in a timely manner, any weaknesses, deficiencies, Agreement noncompliance, or audit exceptions found as a result of a review by the OOG or its authorized representatives. Such remedy can include a refund or offset of Agreement payments or any other appropriate actions deemed necessary by the OOG. Acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor's Office to audit or investigate the expenditure of funds under this Agreement or any subcontract. Grantee will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Grantee and the requirement to cooperate is included in any subcontract Grantee awards.

15.6. State Auditor. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.154 of the Texas Government Code, the State Auditor's Office or successor agency may conduct an audit or investigation of Grantee or any other entity or person receiving funds from the State of Texas directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by Grantee or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the State Auditor's Office, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. Under the direction of the Legislative Audit Committee, Grantee or another entity that is the subject of an audit or investigation by the State Auditor's Office shall provide the State Auditor's Office with prompt access to any information the State Auditor's Office considers relevant to the investigation or audit. Grantee further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested.

Grantee shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through Grantee and the requirement to cooperate is included in any subcontract Grantee awards. The State Auditor's Office shall at any time have access to and the right to

examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Grantee related to this Agreement. This Agreement may be amended unilaterally by the OOG to comply with any rules and procedures of the State Auditor's Office in the implementation and enforcement Section 2262.154 of the Texas Government Code.

15.7. Texas Public Information Act. Notwithstanding any provisions of this Agreement to the contrary, Grantee acknowledges that the State of Texas, the OOG, and this Agreement are subject to the Texas Public Information Act, Texas Government Code Chapter 552, and (the "PIA"). Grantee acknowledges that the OOG will comply with the PIA.

Grantee acknowledges that information created or exchanged in connection with this Agreement is subject to the PIA, and Grantee agrees that information not otherwise excepted from disclosure under the PIA, will be available in a format that is accessible by the public at no additional charge to the OOG or State of Texas. Grantee will cooperate with the OOG in the production of documents or information responsive to a request for information.

Information provided by or on behalf of Grantee under, pursuant to, or in connection with this Agreement that Grantee considers proprietary, financial, or trade secret information (collectively "Confidential Information") shall be designated as such when it is provided to the OOG or State of Texas or any other entity in accordance with this Agreement. Merely making a blanket claim that all documents are protected from disclosure will not render the whole of the information confidential. Any information not clearly identified as proprietary or confidential is subject to release in accordance with the PIA.

The OOG agrees to notify Grantee in writing within a reasonable time from receipt of a request for information covering Grantee's Confidential Information. The OOG will make a determination whether to submit a Public Information Act request to the Attorney General.

Grantee agrees to maintain the confidentiality of confidential information received from the OOG or State of Texas during the performance of this Agreement, including information that discloses confidential personal information particularly, but not limited to, personally identifying information, personal financial information, and social security numbers.

Grantee agrees that if any of Grantee's agents receives any third-party request for the disclosure of information relating to this Agreement, Grantee shall notify the OOG of any such request within three (3) business days of receipt of the request.

15.8. Media Releases or Pronouncements. Grantee understands that the OOG does not endorse any vendor, commodity good, or service. Grantee, Grantee's employees, representatives, subcontractors, or other agents may not issue any media release, advertisement, publication, or public pronouncement which pertains to this Agreement or the services or Grant Project to which this Agreement relates, or which mentions the OOG, without the prior written approval of the OOG.

15.9. Indemnification. TO THE EXTENT ALLOWED BY LAW, GRANTEE SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, THE OOG,

AND/OR THEIR EMPLOYEES, AGENTS, OFFICERS, REPRESENTATIVES, CONTRACTORS, AND/OR DESIGNEES FROM ANY CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING, WITHOUT LIMITATION, ALL RELATED COSTS, ATTORNEY'S FEES AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF GRANTEE OR ANY OF GRANTEE'S AGENTS, EMPLOYEES, SUBCONTRACTORS, OR SUPPLIERS IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. GRANTEE SHALL COORDINATE GRANTEE'S DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY THE OOG. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE GRANTEE TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE OOG FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE OOG OR ITS EMPLOYEES.

15.10. Intellectual Property. TO THE EXTENT ALLOWED BY LAW, GRANTEE SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, THE OOG, AND/OR THEIR EMPLOYEES, AGENTS, OFFICERS, REPRESENTATIVES, CONTRACTORS, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY, OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF GRANTEE PURSUANT TO THIS GRANT AGREEMENT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE, OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) THE OOG'S AND/OR GRANTEE'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THE OOG BY GRANTEE OR OTHERWISE TO WHICH THE OOG HAS ACCESS AS A RESULT OF GRANTEE'S PERFORMANCE UNDER THE GRANT AGREEMENT. GRANTEE AND THE OOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. GRANTEE SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY GRANTEE WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL ("OAG") WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT, AND GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OAG. IN ADDITION, GRANTEE WILL REIMBURSE THE OOG AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES, OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS ARISING FROM ANY SUCH CLAIM. IF THE OOG DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF GRANTEE, OR IF THE OOG IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, THE OOG WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND GRANTEE WILL PAY ALL REASONABLE COSTS OF THE OOG'S COUNSEL.

15.11. Taxes/Workers' Compensation/Unemployment Insurance. GRANTEE IS FULLY

RESPONSIBLE FOR GRANTEE'S OWN FEDERAL, STATE, AND LOCAL TAXES. GRANTEE AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, GRANTEE SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF GRANTEE'S AND GRANTEE'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. GRANTEE AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE OOG AND/OR THE STATE OF TEXAS SHALL NOT BE LIABLE TO GRANTEE, GRANTEE'S EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF THE OOG.

15.12. Tax Identification Information Required. As a prerequisite to the OOG's ability to process any payments to Grantee under this Agreement, Grantee shall provide the OOG with required tax and payee identification information in the form of a completed "Application for Texas Identification Number" (available on the Comptroller of Public Accounts' website at <http://www.window.state.tx.us/taxinfo/taxforms/ap-152.pdf>). If Grantee has previously completed the required documentation to obtain a Texas Identification Number (TIN) prior to the Effective Date of this Agreement, Grantee may satisfy this requirement by providing the OOG with Grantee's current TIN, name, and address to permit the OOG to verify registration in TINS with the Texas Comptroller of Public Accounts.

15.13. Insurance. Unless otherwise noted in this Agreement, and to the extent that Grantee does not have or maintain insurance or does not have or maintain sufficient insurance, Grantee acknowledges and agrees that Grantee will be solely responsible for any losses or damages related to or caused by Grantee's performing Grantee's duties and obligations under this Agreement. The OOG will have no obligation to reimburse or otherwise pay Grantee for any costs incurred related to any such losses or damages.

15.14. Fraud, Waste and Abuse. Grantee understands that the OOG does not tolerate any type of fraud, waste, or misuse of funds received from the OOG. The OOG's policy is to promote consistent, legal, and ethical organizational behavior, by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, OOG policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. In the event Grantee becomes aware of any allegation or a finding of fraud, waste, or misuse of funds received from the OOG that is made against Grantee, Grantee is required to immediately notify the OOG of said allegation or finding. Grantee is also obliged to inform the OOG of the status of any on-going investigations regarding allegations of fraud, waste, or abuse. Grantee is expected to report any possible fraudulent or dishonest acts, waste, or abuse to the OOG's Fraud Coordinator or Ethics Advisor at (512) 463-1788 or in writing to: Ethics Advisor, Office of the Governor, P.O. Box 12428, Austin, Texas 78711.

15.15. Saturdays, Sundays, Holidays. If the last or appointed day for the taking of any action or the expiration of any right required or granted in this Agreement is a Saturday or a Sunday or a

scheduled State of Texas or national holiday, then such action may be taken or such right may be exercised on the next succeeding business day that is not a Saturday, Sunday, or holiday. A schedule of State of Texas holidays is located at: <http://www.hr.sao.texas.gov/Holidays/>.

15.16. Applicable Law and Venue. This Agreement is made and entered into in the State of Texas. This Agreement and all disputes arising out of or relating thereto shall be governed by the laws of the State of Texas, without regard to any otherwise applicable conflict of law rules or requirements.

Venue for any Grantee-initiated action, suit, or litigation arising out of or in any way relating to this Agreement shall be commenced exclusively in the Travis County District Court or the United States District Court for the Western District of Texas, Austin Division. Venue for any OOG-initiated action, suit, or litigation arising out of or in any way relating to this Agreement may be commenced in a Texas state district court or a United States District Court selected by the OOG in its sole discretion.

Grantee hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the courts referenced above for the purpose of prosecuting and/or defending such litigation. Grantee hereby waives and agrees not to assert as a defense, or otherwise, in any suit, action or proceeding, any claim that Grantee is not subject to the jurisdiction of the above-named courts; the suit, action or litigation is brought in an inconvenient forum; or the venue is otherwise improper.

15.17. No Waiver of Sovereign Immunity. The OOG is immune from suit and from liability. No part of this Agreement, nor the conduct or statement any person, will be construed as a waiver of the doctrines of sovereign immunity and official immunity, or of any of the privileges, rights, defenses, remedies, or immunities available to the OOG or the State of Texas, and their officers, employees, or agents as provided by law.

SECTION 16. TERMINATION.

16.1. Convenience. The OOG may, at its sole discretion, terminate this Agreement without recourse, liability, or penalty, against the OOG, upon thirty (30) calendar days' notice to Grantee.

16.2. Cause/Default. In the event that Grantee fails to provide the agreed upon services according to the provisions of this Agreement, or fails to comply with any of the terms or conditions of this Agreement, the OOG may, upon written notice of default to Grantee, immediately terminate all or any part of this Agreement. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law, or under this Agreement.

16.3. Rights upon Termination or Expiration. In the event that the Agreement is terminated for any reason, or upon its expiration, the OOG shall be obligated to pay Grantee only for actual, reasonable, and allowable costs incurred up to the Effective Date of termination. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under the Agreement. The OOG will not be liable to Grantee or to Grantee's

creditors for any costs incurred subsequent to receipt of a Notice to Terminate or any unacceptable or disallowed costs as determined by the OOG.

16.4. Liability after Termination. Notwithstanding any exercise by the OOG of its right of early termination pursuant to this section, Grantee shall not be relieved of any liability to OOG for damages due to the OOG by virtue of any breach of this Agreement by Grantee. The OOG may withhold payments to Grantee until such time as the exact amount of damages due to the OOG from Grantee is agreed upon or is otherwise determined.

16.5. Refunds of Overpayment. Grantee shall refund to the OOG any sum of money paid to Grantee by the OOG, which the OOG determines is an overpayment to Grantee, or in the event the OOG determines funds spent by Grantee were not an allowable cost of this Grant Project. No refund payment(s) may be made from local, state, or federal grant funds unless statute or regulation specifically permits repayment with grant funds. Such refund shall be made by Grantee to the OOG within thirty (30) calendar days after such refund is requested in writing by the OOG, or within thirty (30) calendar days of a notice from the OOG indicating the request is the result of a final determination that the refund is owed.

16.6. Failure to Comply with Agreement. In the event Grantee fails to comply with any provision as specified in this Agreement, Grantee may be liable for damages under this Agreement and barred from applying for or receiving additional funding under the DEAAG program until repayment is made and any other compliance or audit findings are resolved or any issue of non-compliance is cured to the satisfaction of the OOG.

SECTION 17. AVAILABILITY OF FUNDS. This Agreement is subject to the availability and receipt of funds appropriated by the Texas Legislature that the OOG has allocated to this Agreement. If funds for this Agreement become unavailable during any budget period, the OOG may terminate this Agreement, without penalty, or reduce the amount of this Agreement at the discretion of the OOG. Grantee will have no right of action against the OOG if the OOG cannot perform its obligations under this Agreement as a result of lack of legislative appropriations in amounts sufficient to fund any activities or functions contained within the scope of this Agreement.

SECTION 18. MONITORING. The OOG or its designee may perform periodic on-site monitoring of Grantee's compliance with the terms and conditions of this Agreement and of the adequacy and timeliness of Grantee's performance. After each monitoring visit, the OOG will provide Grantee with a written report of the monitor's findings. If the monitoring report notes deficiencies in Grantee's performances under the terms of this Agreement, the monitoring report shall include requirements for the timely correction of such deficiencies by Grantee. Failure by Grantee to take action specified in the monitoring report may be cause for termination of this Agreement in accordance with Section 16 of this Agreement.

SECTION 19. CONFLICT OF INTEREST.

19.1. No Conflicts of Interest. Grantee shall ensure that no employee, officer, or agent of Grantee shall participate in the selection, award, or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict

of interest would arise when: (1) the employee, officer, or agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. Grantee shall comply with Chapter 171 of the Texas Local Government Code.

19.2. No Inside Information. No employee, agent, consultant, officer, or elected or appointed official, of either Grantee or of a subcontractor, who exercises or has exercised any functions or responsibilities or is in a position to participate in decision-making or gain inside information in regard to the activities involved in the Grant Project, shall be permitted to have or obtain a financial interest in or benefit from the Grant Project or any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties.

SECTION 20. REGULATORY AND LEGAL ACTIONS AND CLAIMS.

20.1. No Pending or Threatened Actions Impairing Performance. Grantee represents and warrants that Grantee is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., (collectively "actions"), pending or threatened against Grantee within the five (5) calendar years immediately preceding the Effective Date of this Agreement that would or could impair Grantee's performance under this Agreement. In addition, Grantee shall notify the OOG in writing within five (5) business days of any changes to the representations or warranties in this clause or of any actions that Grantee may become aware of and receives notice of on or after the Effective Date of this Agreement. Grantee agrees that failure to so timely update the OOG of actions shall constitute breach of this Agreement and may result in immediate termination of this Agreement.

20.2. Notice of Actions Arising Out of Performance of Agreement. Grantee shall give the OOG immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Grantee arising out the performance of this Agreement. Except as otherwise directed by the OOG, Grantee shall immediately furnish to the OOG copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify the OOG of any legal action filed against Grantee or any subcontractor, or of any proceeding filed under the federal bankruptcy code. Grantee shall submit a copy of such notice to the OOG within thirty (30) calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred as the result of any claims, judgments, fines, or settlements.

20.3. Governmental Units of the State of Texas. The OOG and Grantee acknowledge that they are governmental units of the State of Texas and are subject to, and shall comply with, the applicable provisions of the Texas Tort Claims Act, as set out in Chapter 101 of the Texas Civil Practice and Remedies Code.

20.4. No Liability. Grantee acknowledges that the OOG, the State of Texas, and their employees and officials shall not be held liable for any claims or causes of action whatsoever which may occur in the course of performing the services described in this Agreement, or from the award, cancellation, or withdrawal of this Grant.

SECTION 21. NOTICE OF MATERIAL EVENTS. Grantee shall furnish to the OOG prompt written notice upon becoming aware or having knowledge of the occurrence of any event or development that has, or would reasonably be expected to have, a material adverse effect on the completion of the Grant Project. Grantee shall inform the OOG in writing within ten (10) business days after Grantee learns of the existence of such material event.

SECTION 22. FORCE MAJEURE. Neither party shall be liable to the other for any delay in, or failure of performance of, any requirement included in this Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, which by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within ten (10) business days after the existence of such force majeure, or otherwise waive this right as a defense.

SECTION 23. DISPUTE RESOLUTION.

23.1. Informal Meetings. The parties' representatives shall meet as needed to implement the terms of this Agreement and shall make a good faith attempt to informally resolve any disputes. The Parties agree to make a good faith effort to identify, communicate, and resolve problems found by either the OOG or Grantee.

23.2. Grantee's Continued Performance. Grantee shall not be excused from performance during any pending dispute, unless approved in writing by the OOG.

SECTION 24. CHANGES AND AMENDMENTS.

24.1. Alterations, Additions, Deletions. Any alterations, additions, or deletions to the terms of this Agreement shall be by a written amendment executed by both parties.

24.2. Policy Directives. During the term of this Agreement, the OOG may issue policy directives to establish, interpret, or clarify requirements under this Agreement. Policy directives from the OOG shall be binding upon Grantee.

SECTION 25. SEVERABILITY. In case any one or more of the parts or provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other parts or provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable parts or provisions had never been contained herein.

SECTION 26. ENTIRE AGREEMENT. This Agreement is intended as a full and complete expression of and constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and all prior and contemporaneous understandings, agreements, promises,

representations, terms and conditions, both oral and written, are superseded and replaced by this Agreement.

SECTION 27. CONSTRUCTION. The language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning. The parties acknowledge that each party and its counsel have reviewed this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. Any vague, ambiguous, or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of the Agreement.

SECTION 28. HEADINGS. The headings of the sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

SECTION 29. SURVIVAL OF CERTAIN PROVISIONS. Notwithstanding any expiration, termination, or cancellation of this Agreement, the rights and obligations pertaining to repayment of grant funds or damages, limitation of liability, indemnification, public information, reporting requirements, retention and accessibility of records, audit rights, rights upon termination, and any other provision implying survivability shall remain in effect after this Agreement ends.

SECTION 30. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

IN TESTIMONY HEREOF, Grantee and the OOG have executed this Defense Economic Adjustment Assistance Grant Agreement, effective as of the date of the last signature below.

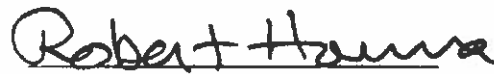
OFFICE OF THE GOVERNOR

GRANTEE



Chief of Staff or Designee

3/12/21
Date



Robert Hanna, City Manager

march 12, 2021
Date

**GRANT AGREEMENT BETWEEN
THE OFFICE OF THE GOVERNOR
AND
THE CITY OF ABILENE**

**EXHIBIT A
GRANT BUDGET**

\$1,888,700.00

Budget. Subject to the limitations within this Agreement, the OOG will reimburse Grantee for actual and allowable allocable costs paid according to the following amounts and budget categories:

Budget Category	
Infrastructure – Purchase of property	
Infrastructure - Professional & Consultant Services	
Infrastructure – New Construction	
Infrastructure - Rehabilitation and Renovation	\$1,057,672.00
Infrastructure – Capital Equipment ¹	\$831,028.00
Infrastructure – Capital Supplies ³	
Infrastructure – Facilities Insurance	
Training Equipment ²	
Training Supplies ³	
Total	\$1,888,700.00

¹ Per the UGMS, "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and a per-unit acquisition cost of \$5,000 or more.

² *Id.*

³ Per the UGMS, items of equipment with a per unit acquisition cost of less than \$5,000 are considered to be supplies.

**GRANT AGREEMENT BETWEEN
THE OFFICE OF THE GOVERNOR
AND
THE CITY OF ABILENE**

EXHIBIT B

GRANT NARRATIVE

UNLESS OTHERWISE LIMITED, DEEMED INAPPROPRIATE BY SPECIAL CONDITIONS OR ALTERED BY APPROVED BUDGET ADJUSTMENTS/BUDGET MODIFICATIONS, the following narrative provided by Grantee in Grantee's October 30, 2020 grant application applies to this Agreement:

This project will address the deficiencies and vulnerabilities in vehicular gates leading to the flight line at Dyess Air Force Base as determined by an Anti-Terrorism/Force Protection (AT/FP) examination by Global Strike Command (USAF). The project removes the gates, purchases and installs 10 K-4 rated cantilever drop arm type gates on entryways to the flight line.

EXHIBIT C

UNIFORM STATE GRANT ASSURANCES

Grantee must assure and certify compliance with any and all applicable federal and state statutes, regulations, policies, guidelines and requirements, including, but not limited to, the Uniform Grant Management Standards (UGMS); and Title 1, Part 1, Chapter 4 of the Texas Administrative Code, that govern the application, acceptance and use of federal and state funds for this project. In instances where multiple requirements apply to a Grantee, the more restrictive requirement applies. By accepting the grant award, Grantee certifies and assures that Grantee complies and will continue to comply with the following:

1. Grantee possesses legal authority to apply for the grant. A resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative, or their designee of the organization to act in connection with the application and to provide such additional information as may be required. State agencies are not required to adopt a resolution.
2. A grantee must comply with Chapter 573 of the Texas Government Code by ensuring that no officer, employee, or member of the applicant's governing body or of the applicant's contractor shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.
3. A grantee must insure that all information collected, assembled or maintained by the applicant relative to a project will be available to the public during normal business hours in compliance with Chapter 552 of the Texas Government Code, unless otherwise expressly prohibited by law.
4. A grantee must comply with Chapter 551 of the Texas Government Code, which requires all regular, special or called meeting of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.
5. A grantee must comply with Section 231.006 of the Texas Family Code, which prohibits payments to a person who is in arrears on child support payments.
6. No health and human services agency or public safety or law enforcement agency may contract with or issue a license, certificate or permit to the owner, operator or administrator of a facility if the license, permit or certificate has been revoked by another health and human services agency or public safety or law enforcement agency.
7. A grantee that is a law enforcement agency regulated by Chapter 1701 of the Texas Occupations Code must be in compliance with all rules adopted by the Texas Commission on Law Enforcement ("TCOLE"), unless TCOLE certifies that Grantee is in the process of achieving compliance with such rules.
8. When incorporated into a grant award or contract, standard assurances contained in the application package become terms or conditions for receipt of grant funds. Administering state agencies and local grantees shall maintain an appropriate contract administration system to insure that all terms, conditions, and specifications are met.
9. A grantee must comply with Section 261.101 of the Texas Family Code, which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. Grantees shall also ensure that all program personnel are properly trained and aware of this requirement.
10. Grantees will comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans With Disabilities Act of 1990; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public

Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Grantees will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. § § 276a to 276a-7), the Copeland Act (40 U.S.C. § § 276c and 18 U.S.C. § § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. § § 327-333), regarding labor standards for federally assisted construction sub-agreements.
12. Grantees will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P. L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
13. Grantees will comply with the provisions of the Hatch Political Activity Act (5 U.S.C. § 7321-29) which limit the political activity of employees whose principal employment activities are funded in whole or in part with Federal funds.
14. Grantees will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable.
15. Grantees will insure that the facilities under Grantee's ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that Grantee will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA. (EO 11738).
16. Grantees will comply with the flood insurance purchase requirements of 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition proposed for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.
17. Grantees will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
18. Grantees will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
19. Grantees will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
20. Grantees will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
21. Grantees will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.
22. Grantees must adopt and implement applicable provisions of the model HIV/AIDS work place guidelines of the Texas Department of State Health Services as required by the Texas Health and Safety Code, Ann., Sec. 85.001, et seq.
23. Grantees will comply with Public Law 103-277, also known as the Pro-Children Act of 1994, which prohibits smoking within any portion of any indoor facility used for the provision of services for children as defined by the Pro-Children Act of 1994.
24. Grantees will comply with all federal tax laws and are solely responsible for filing all required state and federal tax forms.

25. Grantees will comply with all applicable requirements of all other federal and state laws, executive orders, regulations and policies governing this program.
26. Grantee must certify that they are not debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs.

EXHIBIT D

QUARTERLY PROJECT STATUS REPORT

The City of Abilene

TMPC GRANT NUMBER: 2020-02-10

Expenditures for Quarter Ending [DATE]:

<u>Expenditures</u>	<u>Description</u>
---------------------	--------------------

Percentage of Grant Project Completed:

Summary of Expenditures to Date:

<u>Quarter Ending</u>	<u>Expenditures</u>
-----------------------	---------------------

Brief Narrative Explaining Expenditures:

Grant Project Status:

Grantee's Duly Authorized Representative: _____ Date: _____

EXHIBIT E

PROJECT COMPLETION REPORT

The City of Abilene

TMPC GRANT NUMBER: 2020-02-10

Percent Completed:

GRANTEE has successfully completed, and in a satisfactory manner, the **GRANT PROJECT**.
The purpose of the grant was to **[GRANT PURPOSE]**.

The total cost for the Grant Project is as follows:

• Grant Project Total	\$
• Total	\$

The following is a brief Grant Project scope summary:

This is to certify that an inspection of 100% of the completed Grant Project described below was conducted on the ____ day of _____, 20__.

Contracts were entered into for **GRANT PROJECT** between **GRANTEE** and the following subcontractors: **[SUBCONTRACTORS.]**

This is to further certify that any and all Equipment included as part of the grant budget has been purchased with the specified grant purpose, timeline, budget, and all addenda, change orders, and supplemental agreements thereto.

NAME OF GRANTEE:

Signature of Grantee's Duly Authorized Representative

Print Name

Title

Date

Exhibit F

DEAAG PROJECT IMPACT REPORT

The City of Abilene

TMPC GRANT NUMBER: 2020-02-10

Project Name:

Grantee Name:

Address:

Telephone:

Fax:

Contact Person:

E-mail:

Time Period Covered by Report: ____ to ____

Grant Project Performance Measures:

- Create, retain, or train ____ Jobs by the completion of the Grant Project
- Grant Project Description:
- Grant Project Address:

Jobs Created

Time Period	Active Full Time Jobs Created, Retained or Students Trained
EX. 01/12 – 03/12	
Total	

Breakdown of Jobs Created

Job Type	Jobs Created or Retained This Reporting Period	Total Jobs Created to Date
Direct Permanent Jobs		
Indirect Permanent Jobs		
Individuals Trained		
Total		

Businesses assisted or created this period: _____

Businesses assisted or created to date: _____

Grant Project Financial Impact

- Narrative summary of Impact:
- Update on current Grant Project Status (include curriculum updates):

THE SIGNATURE BELOW CERTIFIES THAT THE INFORMATION SUBMITTED IN THIS REPORT IS TRUE AND CORRECT TO THE BEST KNOWLEDGE OF GRANTEE.

FOR GRANTEE:

Signature

Print Name

Title

Date

APPROVAL OF USE OF DEAAG GRANT FOR DYESS AIR FORCE BASE SECURITY GATE PROJECT





**City Council
Agenda Memo**

City Council Meeting Date: 2/10/2022

TO: Honorable Mayor and City Council Members

FROM: Misty Mayo

SUBJECT: 13. Presentation: Receive a Report, Hold a Discussion and Public Hearing on the Development Corporation of Abilene FY 2021 Annual Report (*Misty Mayo*)

GENERAL INFORMATION

2021 Annual Report include in backup documentation.

SPECIAL CONSIDERATIONS

N/A

FUNDING/FISCAL IMPACT

N/A

STAFF RECOMMENDATION

No action needed

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Fiscal_Year_2021_DCOA_Annual_Report_Final



Develop**Abilene**
DEVELOPMENT CORPORATION OF ABILENE



ANNUAL REPORT





MISSION

To use sales tax revenue to effectively stimulate Abilene's economic growth. This is done by assessing the community's economic development needs, developing a plan to meet those needs, coordinating community economic development efforts, and supporting targeted activities that enhance the quality of life in the community and maximize the public's return on invested dollars.

VISION

Abilene has a growing, dynamic economy that elevates the creativity, skills, and ambitions of its businesses and residents.

WHO WE ARE

Dear Stakeholders,

2021 was one of the very best in the history of the DCOA, and as Chair of the DCOA Board of Directors, I am proud to recognize the efforts of the DCOA and its DevelopAbilene Partners. The past two years have taught us that strong teams, strong leadership, and strong partnerships are critical components of a strong community.

The DevelopAbilene partnerships and TeamAbilene approach to creating sustainable and prosperous economic development for the Abilene Region reached new heights in 2021. It will pave the way for the future growth of Abilene.

The DCOA Board of Directors is committed to supporting the DCOA's economic development initiatives for Abilene to ensure the viability of our community for generations.

Thank you for your continual support,



Jack Rich
Chairman,
Development Corporation of Abilene



Dear Community Members,

The Development Corporation of Abilene is charged with becoming the driver of economic development for the Abilene Region. We work every day to attract and retain companies that will create and sustain quality opportunities for the families of Abilene and bring new investment into the community. It takes all of us to achieve this goal; the DCOA Team, including the DCOA Board of Directors, DevelopAbilene Partners, community leaders, and most importantly, you. By investing your sales tax dollars in opportunities that will generate a positive return on investment for our community.

2021 proved to be a historic year for the DCOA, including the attraction of the largest project in terms of capital investment in our 32-year history! The Texas Economic Development Council awarded the DCOA the Community Economic Development Award for Community Commitment and Leverage and the Economic Excellence Award. Both awards are a tremendous honor and testament to the strong organizational leadership and expertise. The DCOA continues to ensure the viability for the Abilene community for years to come.

The monumental work the Board and Team made in 2021 is highlighted in the following pages of this annual report. The DCOA will continue to leverage this momentum built over the past twelve months to expand our impact on the community; leveraging the success of 2021 as a catalyst for growth in Abilene. We are committed to the building the future of Abilene.

Advancing Abilene,



Misty Mayo

President & CEO,
Development Corporation of Abilene



**MESSAGE TO
OUR COMMUNITY**



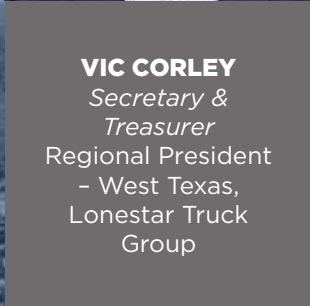
BOARD OF DIRECTORS



JACK RICH
Chairman
President & Chief
Investment Officer,
Abilene Christian
University Investment
Management Company



SAM VINSON
Vice Chair
President, Pine
Street Capital



VIC CORLEY
*Secretary &
Treasurer*
Regional President
- West Texas,
Lonestar Truck
Group



SHEA HALL
Board Member
Retired West Texas
Outreach Director,
US Senator Ted Cruz,
and Abilene
Business Owner



FLOYD MILLER
Board Member
Financial Advisor,
FSC Securities
Corporation





MISTY MAYO
President &
Chief Executive
Officer



JULIE JOHNCOX
Executive Vice
President & Chief
Operating Officer

**REGI
MCCABE-GOSSETT**
Controller



BROCK NEW
Business
Development
Director



AMY WHITMER
Business
Development
Manager



AKANE THAXTON
Finance
Manager

MARISSA RANSTEAD
Workforce
Development
Director



ASHLEY WHITMER
Economic
Development
Specialist



RICK JONES
Facilities
Manager

DCOA TEAM

DEVELOP ABILENE CORE GOALS



BUSINESS ATTRACTION

Aggressively market & promote Abilene as a destination for new investment.



BUSINESS RETENTION & EXPANSION

Spur and facilitate the growth and prosperity of existing businesses.



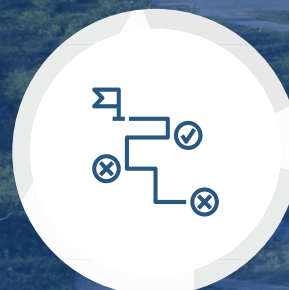
ENTREPRENEURIAL/ SMALL BUSINESS

Spawn and support innovative businesses.



WORKFORCE & TALENT DEVELOPMENT

Elevate initiatives and partnerships to create and retain a viable workforce that can support current and future industry.



MARKETING & BRAND AWARENESS

Activate strategies to promote Abilene as the premier location for business.

"The efforts of Team Abilene are a tremendous win for Abilene. Our community will not only benefit from stronger healthcare, research and development, and manufacturing facilities, but there are now additional well-paying, sustainable jobs available for the citizens of Abilene."

ANTHONY WILLIAMS
Mayor of Abilene

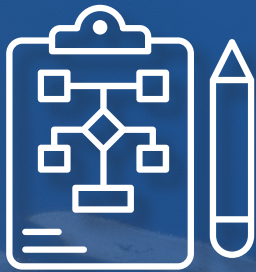


2021

Accomplishments

HISTORY IN THE MAKING

The Development Corporation of Abilene achieves our mission through the attraction, retention, expansion, and management of current and prospective Type A businesses in Abilene. The following pages highlight the success we enjoyed in 2021 stemming from the hard work of dedicated professionals across the entire Abilene region.



6
PROJECTS



\$263.8 Million
CAPITAL INVESTMENT



\$5.7 Billion
ECONOMIC IMPACT



773
JOBS CREATED



464
JOBS RETAINED

\$1 = \$31

\$1 Invested
by DCOA in Company =
\$31 invested by Company
in Community*

*Average investment of 5 incentivized projects



GREAT LAKES CHEESE

\$184,500,000

CAPITAL INVESTMENT

\$3.48 BILLION

ESTIMATED ECONOMIC IMPACT
FOR ABILENE AND TEXAS OVER
NEXT 10 YEARS; \$1.3 BILLION AT THE
STATE LEVEL

286,500 SQ FT

STATE-OF-THE-ART PACKAGING
AND DISTRIBUTION PLANT

510

JOBS CREATED

The Great Lakes Cheese Groundbreaking at Access Business Park.



“Great Lakes Cheese makes decisions with a long-term perspective, one that spans generations. We are honored to be welcomed by Texas and invited to bring our ownership culture to the Abilene community. We look forward to meeting our newest employee-owners and being another great place to work in the region.”

DAN ZAGZEBSKI,
CEO of Great Lakes Cheese

Rendering of the future Great Lakes Cheese Abilene Facility.







“It continues to be an honor partnering with the Abilene community to expand Primal Pet Group’s operations by almost 60,000 square feet. This \$30 million investment is critical to the Primal Pack’s fast paced growth strategy and mission to provide more dogs and cats wholesome, healthy, minimally processed foods.”

TRAVIS MOORE
COO of Primal Pet Group



\$31,600,000
CAPITAL INVESTMENT

139
JOBS
CREATED

119
JOBS
RETAINED

60,000 SQ FT
FLAGSHIP MANUFACTURING FACILITY



Misty Mayo speaks at Primal Pet Group Groundbreaking.



Primal Pet Group, DCOA and community leaders break ground together.

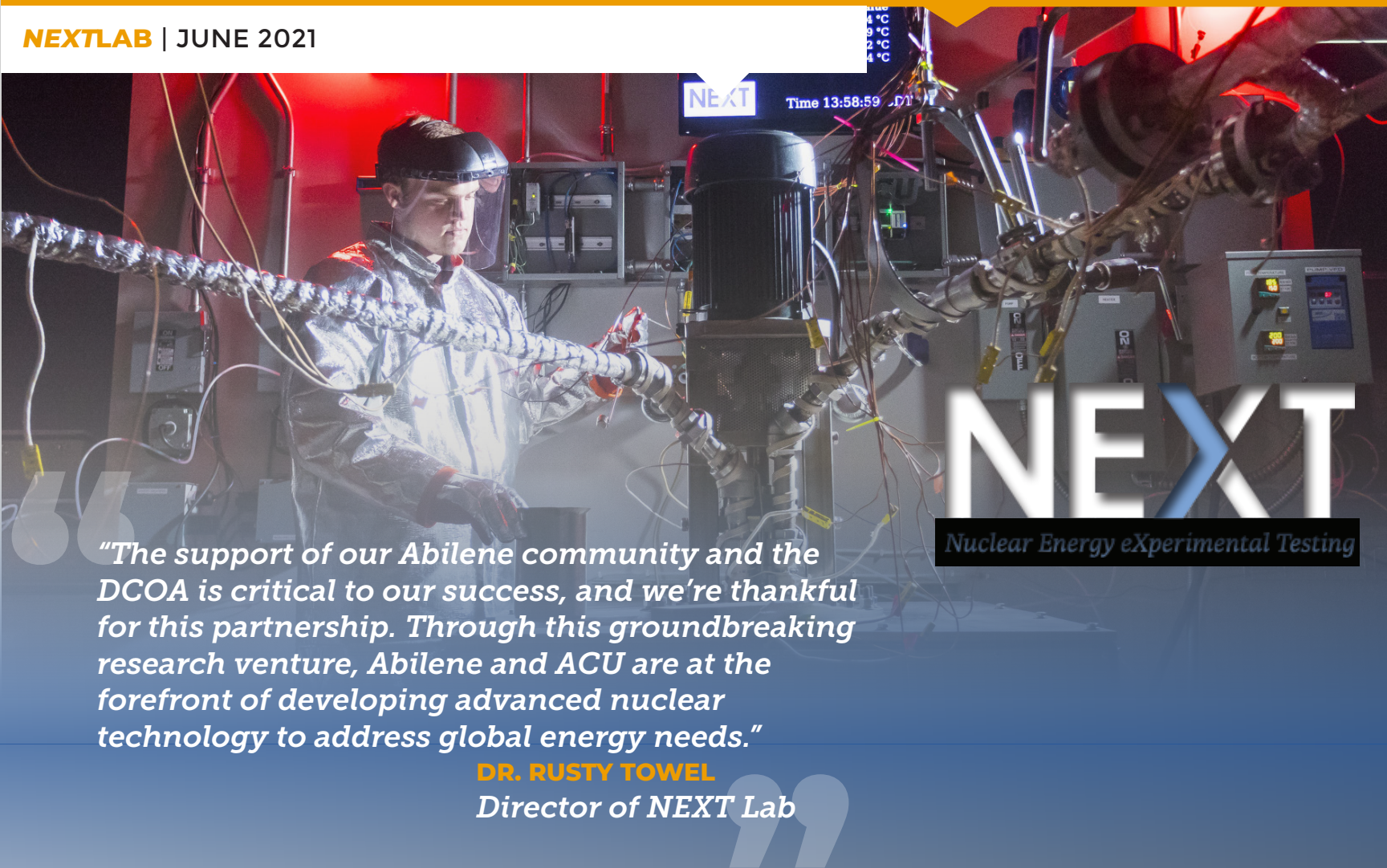
\$29,300,000
CAPITAL INVESTMENT

37
JOBS CREATED

28
JOBS RETAINED

25,895 SQ FT
RESEARCH AND
DEVELOPMENT FACILITY

NEXTLAB | JUNE 2021



\$360,000
MATCHING GRANT

The DCOA committed a matching grant for Defense Communities Infrastructure Program grant to upgrade Dyess Air Force Base's substation.

DYESS AIR FORCE BASE | JUNE 2021





“Amazon may be a large global business, but it’s made up of small businesses and communities. From the local jobs we bring, to the local people we employ, train, and upskill—our business is made up of people from the communities like Abilene. There are now over 70,000 Texans working at Amazon, and we’re excited to be growing our workforce in Abilene.”

JESSICA BREAUX

Manager of Economic Development at Amazon

AMAZON | SEPTEMBER 2021

\$3,000,000
CAPITAL INVESTMENT

13
JOBS CREATED

71,000 SQ FT
LOGISTICS & DISTRIBUTION CENTER



\$15,400,000
CAPITAL INVESTMENT

74
JOBS CREATED

317
JOBS RETAINED

153,000 SQ FT
BACK OFFICE AND
WAREHOUSING FACILITY

HENDRICK HEALTH | JUNE 2021

“This new service center is another way Hendrick is expanding access to our services and extending our mission while reducing inefficiency and fragmentation. By relocating existing administrative services currently housed in and around our campuses, we can reallocate valuable space to expand clinical services for patients.”

BRAD HOLLAND

President & CEO of Hendrick Health



STRENGTHENING OUR WORKFORCE

The DCOA ensures programs are in place to increase the availability and quality of Abilene's workforce for local businesses

NEXT UNIVERSITY PROGRAM

- 5 pathways added to FY 2021 Program
- 22 dual-enrollment students
- 17 students graduated
- 13 student signees at Graduation & Signing Day

\$26,308.12

NEXT University
Scholarship Dollars Utilized

\$75,000

WORKFORCE STUDY COMMISSIONED

Commissioned through \$37,500 DCOA matching grant and \$37,500 Texas Industry Partnership Grant

TEXAS INDUSTRY PARTNERSHIP GRANT



"The competition for skilled workers is high which is why Texas Industry Partnership and High Demand Job Training grants are so important to local workers. Thanks to collaborations between local Workforce Solutions offices, economic development corporations and education partners, our labor force will get the experience and training necessary to pursue long-term careers in the region."

JULIAN ALVAREZ
Texas Workforce Commissioner Representing Labor

CAPITAL IMPROVEMENT PROJECTS

The DCOA owns and manages property to leverage business expansion in Abilene.

\$2.17 MILLION

CAPITAL IMPROVEMENT
PROJECTS COMPLETED

\$1.1 million Expansion
Project with Eagle Aviation
Services, Inc. Completed

\$1.83 MILLION

ECONOMIC DEVELOPMENT
ADMINISTRATION GRANT

Utilized in Fulwiler Road
and Marigold Street
Extension Project

\$2 MILLION

FUNDED BY DCOA FOR
STREET PROJECT

2022 City of Abilene Street
Expenditures Project



EAGLE AVIATION SERVICES, INC.



ORGANIZATIONAL AWARDS

The DCOA received two of the top economic awards in the State of Texas from the Texas Economic Development Council. The **Economic Excellence Award** recognizes our outstanding performance within the areas of production, focus, and accomplishments. The **Community Economic Development Award** was awarded for our community commitment and leverage in our project with Hartmann’s, Inc.



FIVE POINTS BUSINESS PARK

The DCOA’s Five Points Business Park has become the preeminent home for business like Hartmann’s, Inc.





OFFICE OF THE GOVERNOR

Strategic Discussion with Office of the Governor's Economic Development & Tourism Division

ABILENE REPRESENTATION FY 2021

The DCOA team is proud to represent the Abilene Region across the country. In 2021, we completed more than 20 marketing missions targeting key industries and audiences to show Abilene is open for business. We attended more than 10 conferences across all levels to represent our region and grow our business. Our team added more than 20 certifications and credentials to their expertise to strengthen our leadership.

21 

CREDENTIALS AND CERTIFICATIONS ADDED

Continued development of industry expertise to lead economic development for the Abilene community.

12 

INTERNATIONAL, NATIONAL, STATE, AND REGIONAL CONFERENCES

Represented Abilene, Texas at annual meetings, legislative conferences, and board meetings.

23 

MARKETING MISSIONS COMPLETED

Conducted targeted site consultant and key industry trade show missions to market Abilene as the premier location for business.

MID-SIZED, AND MIGHTY

The DCOA is telling the Abilene Region's story at home and around the world. We are proud to be members of the Economic Development community and serve in leadership and advisory roles across the state.



ORGANIZATIONAL MEMBERSHIPS AND LEADERSHIP

THE HIGH GROUND OF TEXAS

Board Members

WEST CENTRAL TEXAS COUNCIL OF GOVERNMENTS

Chair, Economic Development Advisory Board

TEAM TEXAS

Advisory Board Member

TEXAS MIDWEST COMMUNITIES NETWORK

Board Member

TEXAS ECONOMIC DEVELOPMENT CORPORATION

INTERNATIONAL ECONOMIC DEVELOPMENT COUNCIL

INDUSTRIAL ASSET MANAGEMENT COUNCIL

YTEXAS

SOUTHERN ECONOMIC DEVELOPMENT COUNCIL

BUSINESS RETENTION EXPANSION INTERNATIONAL

TEXAS FOOD PROCESSORS ASSOCIATION

TEXAS ECONOMIC DEVELOPMENT COUNCIL

Mentor in Mentorship Program

Future Leaders Training Program

*Nominating Committee **

Forward Planning Committee

Communications Committee

Conference Committee

Economic Development Sales Tax Committee

Education Committee

Membership Committee

Political Action Committee

Workforce Development Committee

** Appointed by the President of Texas
Economic Development Council*



SELECT MEDIA PLACEMENTS

Multiple Targeted Industry Publications

Site Selection Magazine is the premier internationally circulated business publication highlighting economic development.

Site Selection Magazine, 2021



Our marketing reach is beyond the United States. 2021 provided an avenue to showcase Abilene to international audiences.

Japan Times, 2021

Worldwide Communication Efforts

Community Awareness

Our marketing efforts stay local, too. With circulation in Taylor and surrounding counties, we can reach our audience at home.

Abilene Reporter News, 2021

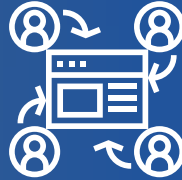


SOCIAL MEDIA **BY THE NUMBERS**



851

NEW FOLLOWERS



582K

IMPRESSIONS



FOLLOW US ON SOCIAL:
@DevelopAbilene

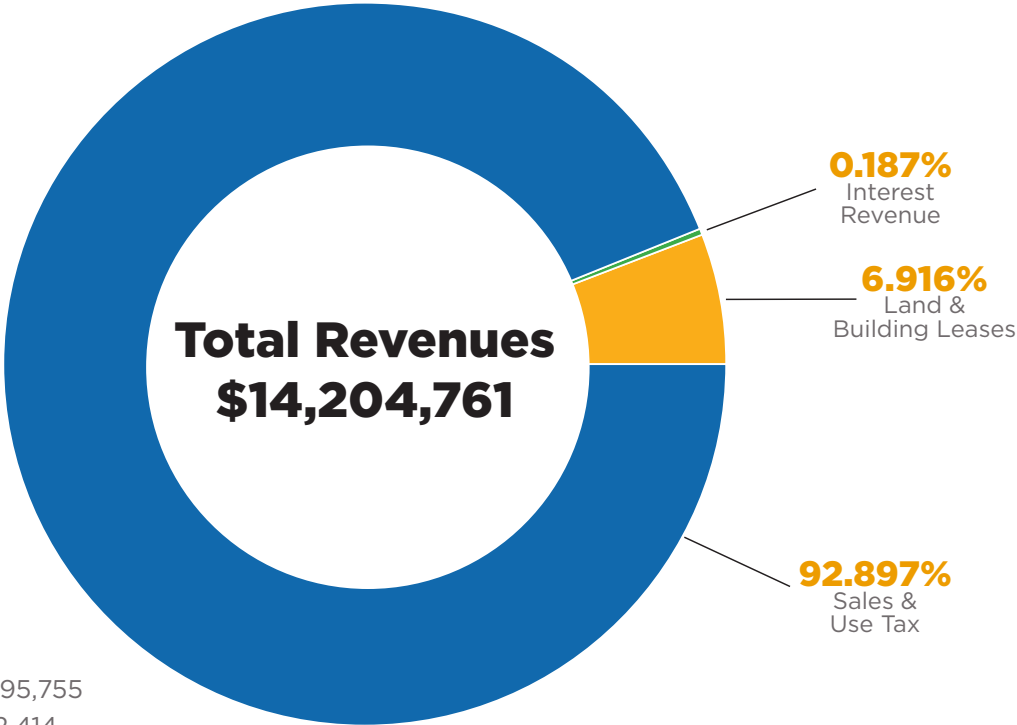
Social media has paved the way to reach audiences quickly and effectively. The DCOA revamped its social media presence in late 2021 to reflect the high performance of its business development efforts. We invite you to follow us on the above social media platforms to stay up to date on our efforts in real time.

MARKETING & BRAND AWARENESS



FINANCIALS

Fiscal Year 2021

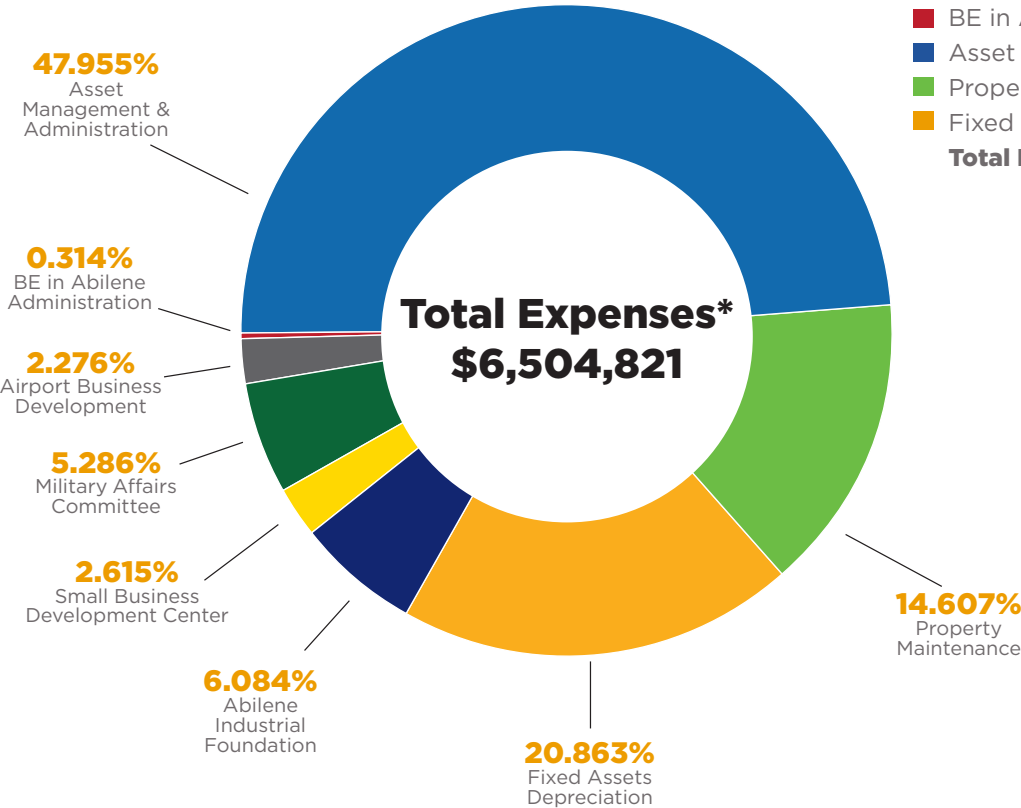


Revenues

Sales and Use Tax	\$ 13,195,755
Land & Building Leases	\$ 982,414
Interest Revenue	\$ 26,591
Total Revenues	\$ 14,204,761

Expenses*

Abilene Industrial Foundation	\$ 395,727
Small Business Development Center	\$ 170,076
Military Affairs Committee	\$ 343,823
Airport Business Development	\$ 148,058
BE in Abilene Administration	\$ 20,445
Asset Management and Administration	\$ 3,119,450
Property Maintenance	\$ 950,161
Fixed Assets Depreciation	\$ 1,357,080
Total Expenses*	\$ 6,504,821



Economic Development Projects and Programs Multi-Year Contracts	FY 2021 Expense
Texas Tech University Health Science Center - School of Pharmacy Research Expansion	\$ 385,000
Dyess Air Force Base - Defense Economic Adjustment Assist. Grant	\$ 489,213
Coca Cola Refreshments	\$ 616,356
Primal Pet Food	\$ 391,387
Texas Tech University Health Science Center School of Public Health	\$ 278,776
GLC Land & Development	\$ 2,431,551
Broadwind Towers	\$ 114,126
AbiMar Foods	\$ 966,667
Hardin-Simmons University Physical Therapy Building	\$ 250,000
NEXT University Program	\$ 43,733
Economic Relief Grants 2020	\$ 1,466,798
BE in Abilene Entrepreneur Competition	\$ 175,000
Workforce - Abilene Market Assessment	\$ 37,500
Eagle Aviation	\$ 23,400
City of Abilene Street Maintenance	\$ 3,703,090
5 Points Business Park - Fulwiler & Marigold Roads	\$ 16,284
Total	\$ 11,388,879

Revenue and Expense - Budget vs. Actual Comparison

Revenue	YTD Actual	Annual Budget	Difference
Sales and Use Tax	\$ 13,195,755	\$ 12,490,165	\$ 705,590
Land & Building Leases	\$ 982,414	\$ 973,407	\$ 9,007
Interest Revenue	\$ 26,591	\$ 51,922	\$ (25,331)
Revenue	\$ 14,204,761	\$ 13,515,494	\$ 689,267

Expenses*	YTD Actual	Annual Budget	Difference
Abilene Industrial Foundation	\$ 395,727	\$ 505,000	\$ (109,273)
Small Business Development Center	\$ 170,076	\$ 253,000	\$ (82,924)
Military Affairs Committee	\$ 343,823	\$ 437,000	\$ (93,177)
Airport Business Development	\$ 148,058	\$ 220,913	\$ (72,855)
BE in Abilene Administration	\$ 20,445	\$ 24,500	\$ (4,055)
Asset Management & Administration	\$ 3,119,450	\$ 3,861,190	\$ (749,403)
Property Maintenance	\$ 950,161	\$ 1,207,913	\$ (257,752)
Fixed Assets Depreciation	\$ 1,357,080	\$ -	\$ 1,243,160
Expenses*	\$ 6,504,821	\$ 6,509,516	\$ (4,695)

32 YEARS

of Positive Impact

FY 1989-PRESENT



163
PROJECTS



\$875.1 Million
CAPITAL INVESTMENT



8,336
JOBS CREATED



9,028
JOBS RETAINED

FY 1990 — FY 2000



33 PROJECTS



\$129,792,333
CAPITAL INVESTMENT



3,762 JOBS
CREATED



1,260 JOBS
RETAINED

FY 2001 — FY 2010



54 PROJECTS



\$139,386,688
CAPITAL INVESTMENT



2,202 JOBS
CREATED



4,705 JOBS
RETAINED

FY 2011 — FY 2018



43 PROJECTS



\$310,202,122
CAPITAL INVESTMENT



1,355 JOBS
CREATED



1,341 JOBS
RETAINED

FY 2019



5 PROJECTS

- Sockdolager Brewing Company
- Funeral Directors Life Insurance Company
- Texas Tech University Health Sciences Center
- Dyess Air Force Base



\$6,900,000
CAPITAL INVESTMENT



73 JOBS
CREATED



168 JOBS
RETAINED

FY 2020



22 PROJECTS

- Bavarian Polymers
- Chike Nutrition
- AbiMar Foods (f.k.a. Fehr Foods)
- Hartmann's, Inc.
- Sockdolager Brewing Company
- Lauren Engineers & Constructors, Inc.
- Prairie Dog Pet Products, LLC (Primal Pet Group)
- Tiger Manufacturing
- Dansco Manufacturing
- Lone Star Canvas & Sign Works
- Extreme Exteriors
- Owens Machine & Tool
- Petrosmith (f.k.a. Smith Pipe)
- 2 Profs Ice Cream
- Belt Buckle Distillery
- Moose Mountain Goods
- BWJ Metalworks
- Quality Implement
- Vista Flags
- Dyess Air Force Base



\$25,018,179
CAPITAL INVESTMENT



171 JOBS
CREATED



1,090 JOBS
RETAINED

FY 2021



6 PROJECTS

- Great Lakes Cheese
- Hendrick Health
- Primal Pet Group
(f.k.a. Prairie Dog Pet Products, LLC)
- Amazon
- ACU NEXT Lab
- Dyess Air Force Base



\$263,800,000
CAPITAL INVESTMENT



773 JOBS
CREATED



464 JOBS
RETAINED

COMMUNITY PROFILE

POPULATION

2021 TOTAL POPULATION

121,617

2026 TOTAL POPULATION

123,945

ANNUAL GROWTH RATE

0.38%

MEDIAN AGE

33.8

EDUCATION

HIGHER
EDUCATION
INSTITUTIONS

6

POPULATION AGE 25+
WITH HIGH SCHOOL
DEGREE OR HIGHER

88.40%

POPULATION AGE 25+
WITH BACHELORS
DEGREE OR HIGHER

25.10%

LABOR FORCE

ANNUAL AVERAGE WEEKLY WAGES

	2020	2019
Abilene, Texas	\$879	\$841
Texas	\$1,229	\$1,168
United States	\$1,236	\$1,138

ANNUAL WAGES PER EMPLOYEE

	2020	2019
Abilene, Texas	\$45,709	\$43,756
Texas	\$63,886	\$60,756
United States	\$64,247	\$59,202

HOUSING & INCOME

2021 AVG. HOME VALUE

\$188,879

2021 AVG. HOUSEHOLD INCOME

\$65,974

2021 HOUSEHOLDS BY INCOME

< \$25,000	22.0%
\$25,000-\$49,999	25.4%
\$50,000-\$99,999	34.3%
\$100,000+	18.6%

PROPERTY TAX RATE

Taylor County	0.6183%
City of Abilene	0.7877%
Abilene ISD	1.2914%

2021 AVAILABLE LABOR BY DRIVE TIME

20-MINUTE DRIVE

71,124

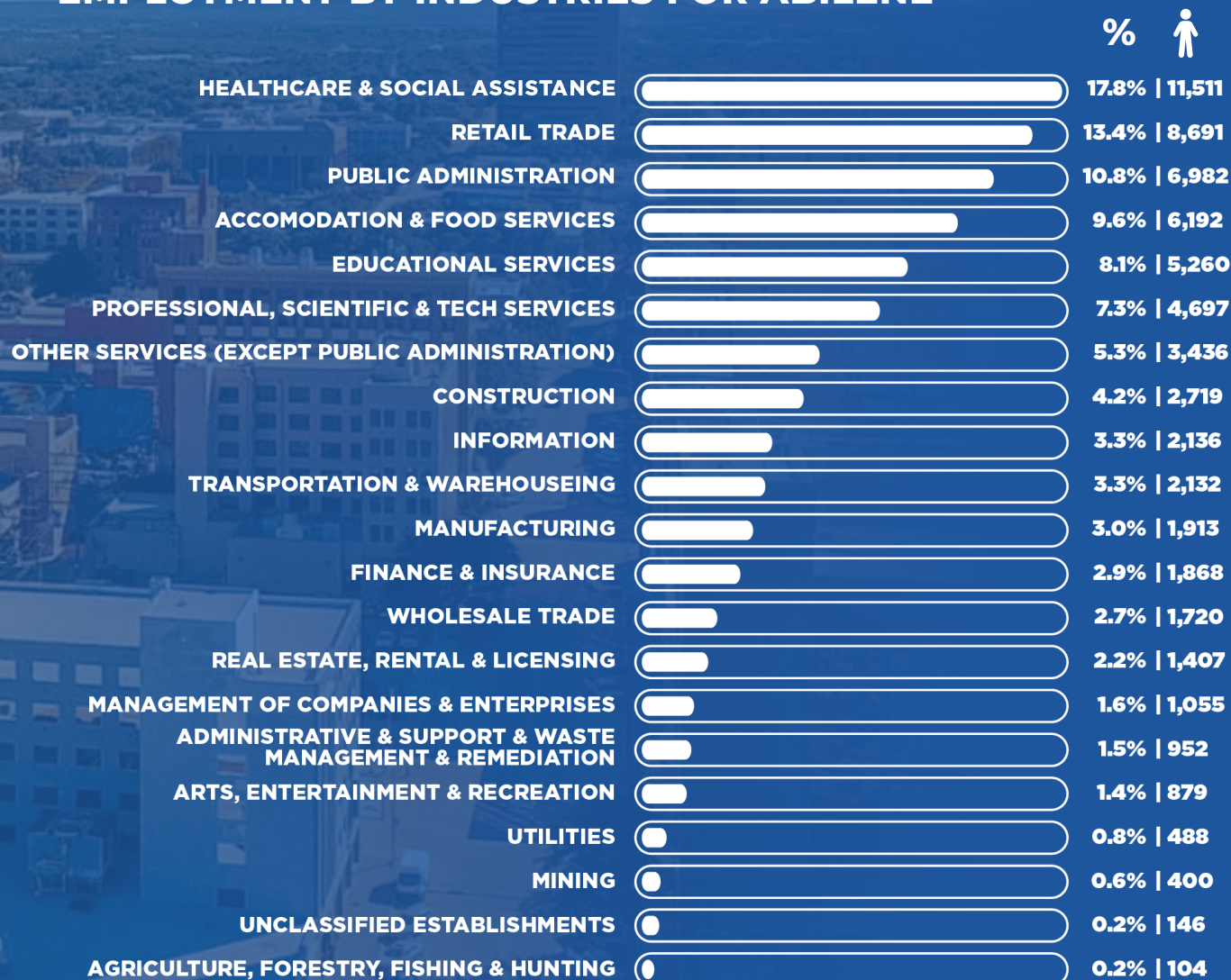
40-MINUTE DRIVE

91,679

60-MINUTE DRIVE

113,052

EMPLOYMENT BY INDUSTRIES FOR ABILENE



TOTAL **64,688**

Data Source: Esri, Bureau of Labor Statistics

DEVELOP ABILENE PARTNERS

The DCOA funds partnerships that align with the DCOA's mission and strategies which drive increased capital investment and primary job creation for the Abilene community. The DCOA leads the DevelopAbilene strategies and priorities by contract with their partners in economic development to build the best Abilene.

The City of Abilene serves as a catalyst for economic development and growth while reinforcing the importance of the City-DCOA-Chamber's Public/Private partnership.

The Chamber of Commerce is the heartbeat of the business community and helps the City and the DCOA better understand the needs and wants of the community, while contributing to the vision and direction of economic development.



DevelopAbilene
ABILENE REGIONAL AIRPORT

5

RADIO COMMERCIAL
SPOTS

2

MAGAZINE
PUBLICATIONS

6

DIGITAL
BANNERS

The City of Abilene administers the Airport Business Development Management Program that is designed to build activity within the Abilene Regional Airport's business segments.

50-60 AIRMEN
PARTICIPATE IN MONTHLY
DOWNTOWN TOUR FOR
JUMP START PROGRAM

JOINT LAND
USE STUDY
IMPLEMENTED

\$1.81 Million
COMMITTED BY DCOA TO SECURE
GRANTS FOR DYESS AIR FORCE BASE



MAC pursues additional missions and improvements for Dyess Air Force Base; and conducts promotional efforts designed to enhance the economic condition of the Abilene community.



DevelopAbilene
TEXAS TECH SMALL BUSINESS DEVELOPMENT CENTER

200

NEW CLIENTS
OBTAINED

17

NEW AREA
BUSINESSES STARTED

6

BOOTS TO BUSINESS
PRESENTATIONS

The SBDC provides counseling and contract procurement services to small business owners based within the City of Abilene and the City's Extra-Territorial Jurisdiction.

20

BUSINESS RETENTION
& EXPANSION VISITS

117

LOCAL ENTREPRENEURS
IDENTIFIED

43

DEVELOPERS
IDENTIFIED



DevelopAbilene
ABILENE INDUSTRIAL FOUNDATION

AIF serves as a partner in the Public/Private Partnership to engage private business leaders in economic development to support the growth and prosperity of existing businesses.



KEY INDUSTRIES



**ADVANCED
MANUFACTURING**



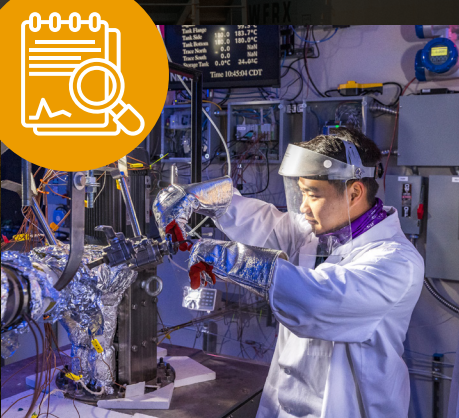
**MILITARY & GOVERNMENT
CONTRACTING**



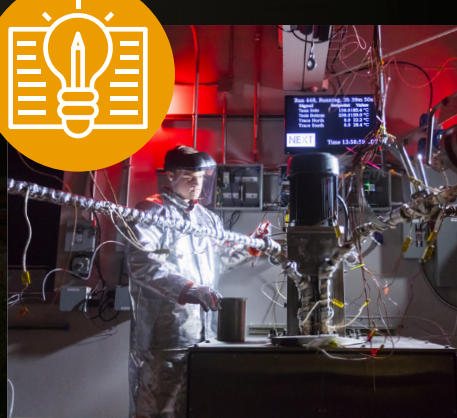
**BACK OFFICE &
PROFESSIONAL
SERVICES**



**HEALTHCARE &
LIFE SCIENCES**



**RESEARCH &
DEVELOPMENT**



**EDUCATION & HIGHER
INSTITUTIONS**



Develop**Abilene**
DEVELOPMENT CORPORATION OF ABILENE



developabilene.com

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**City Council
Agenda Memo**

City Council Meeting Date: 2/10/2022

TO: Robert Hanna, City Manager

FROM: Marcus Dudley, Chief of Police

SUBJECT: 14. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving Purchase Agreement with Motorola Solutions for the Body-Worn Camera/In-Car Video Project & Real-Time Intelligence Center Project (Marcus Dudley)

GENERAL INFORMATION

The Abilene Police Department is currently using Body-Worn Camera (BWC) and in-car camera systems from Motorola Solutions. We are outside of the warranty period for our existing BWCs and experiencing battery and functionality issues with their continual use in the field. This purchase will allow us to replace all existing BWCs along with additional needed upgrades to our in-car and interview room cameras.

With this purchase, we will have the ability to upload all evidentiary videos to virtual servers. This will also be able to occur from the patrol vehicles during the officer's shift, which will greatly increase the speed at which evidence videos are available for review and processing. This will reduce staff workload in criminal case filing preparations, as it will eliminate the need for exporting videos to physical media. It will reduce expenses related to the server storage needs previously required. Given that we are an existing customer, the integration will be much easier, as our existing in-car cameras are fully compatible with the newer technology. It is anticipated that live video streaming will be available in the 2nd quarter of 2022 with both the BWCs and in-car cameras that we are purchasing. Additionally, License Plate Reader (LPR) technology will be active on all of the new in-car cameras.

Additionally, this purchase will include a software package that will allow viewable access to existing traffic cameras owned by the City. This software will integrate with our Motorola (Spillman) Flex CAD system that will provide access to video footage should a pole camera be in the area of a call for service. Currently, there are well over 100 of these camera views throughout the City.

SPECIAL CONSIDERATIONS

Pricing in this agreement is from a cooperative purchase program through the Texas Department of

Information Resources (DIR).

FUNDING/FISCAL IMPACT

This purchase will be extended over a 5 year period. The funding from the Police Apparatus Fund will be utilized to cover the costs.

STAFF RECOMMENDATION

Staff recommends this item.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution Motorola Camera and RTIC Purchase Agreement 2.24.22
2. City of Abilene BWC RTIC Project Contract
3. ABILENE BWC-In-Car Video Proj-Real-Time Intell Ctr MAIN PROPOSAL 1.14.22
4. 2022 Body Worn camera and RTIC presentation

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO BODY-WORN/IN-CAR CAMERA AND REAL TIME INFORMATION CENTER CONTRACT WITH MOTOROLA SOLUTIONS.

WHEREAS, the current technology used by the Abilene Police Department has been in use for over 5 years; and

WHEREAS, the current technology includes body-worn cameras, in-car cameras, interview room cameras, physical servers, and a digital video management system (DVMS); and

WHEREAS, the current support for the body-worn camera equipment is beyond its life cycle and replacement parts are no longer available, and the current DVMS does not support cloud based transfers of video files, and no existing camera system allows for live streaming or in car uploading of video files; and

WHEREAS, the Abilene Police Department does not currently have access to camera views needed for real time information and has existing camera feeds within the City of Abilene available for use with specific software; and

WHEREAS, after review of several vendors who provide needed software and hardware technology, the product provided by Motorola Solutions offers significant improvements to our current systems and furthers the Abilene Police Department in the formation of a Real Time Information Center.

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

PART 1. That the City Manager is authorized to execute all necessary documents to enter into a Body-Worn/In-Car Camera and Real Time Information Center contract with Motorola Solutions.

PART 2. That this Resolution is effective upon adoption.

ADOPTED this 24th day of February 2022.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

City Attorney

Master Customer Agreement

This Master Customer Agreement (the “**MCA**”) is entered into between Motorola Solutions, Inc., with offices at 500 W. Monroe Street, Suite 4400, Chicago, IL 60661 (“**Motorola**”) and the entity set forth in the signature block below (“**Customer**”). Motorola and Customer will each be referred to herein as a “**Party**” and collectively as the “**Parties**”. This Agreement (as defined below) is effective as of the date of the last signature (the “**Effective Date**”).

1. Agreement.

1.1. Scope; Agreement Documents. This MCA governs Customer’s purchase of Products (as defined below) and Services (as defined below) from Motorola. Additional terms and conditions applicable to specific Products and Services are set forth in one or more addenda attached to this MCA (each an “**Addendum**”, and collectively the “**Addenda**”). In addition, the Parties may agree upon solution descriptions, equipment lists, statements of work, schedules, technical specifications, and other ordering documents setting forth the Products and Services to be purchased by Customer and provided by Motorola and additional rights and obligations of the Parties (the “**Ordering Documents**”). To the extent required by applicable procurement law, a proposal submitted by Motorola in response to a competitive procurement process will be included within the meaning of the term Ordering Documents. This MCA, the Addenda, and any Ordering Documents collectively form the Parties’ “**Agreement**”.

1.2. Order of Precedence. Each Addendum will control with respect to conflicting terms in the MCA, but only as applicable to the Products and Services described in such Addendum. Each Ordering Document will control with respect to conflicting terms in the MCA or any Addenda, but only as applicable to the Products and Services described on such Ordering Document.

2. Products and Services.

2.1. Products. Motorola will (a) sell hardware provided by Motorola (“**Equipment**”), (b) license software which is either preinstalled on Equipment or installed on Customer-Provided Equipment (as defined below) and licensed to Customer by Motorola for a perpetual or other defined license term (“**Licensed Software**”), and (c) license cloud-based software as a service products and other software which is either preinstalled on Equipment or installed on Customer-Provided Equipment, but licensed to Customer by Motorola on a subscription basis (“**Subscription Software**”) to Customer, to the extent each is set forth in an Ordering Document, for Customer’s own use in accordance with this Agreement. The Equipment, Licensed Software, and Subscription Software shall collectively be referred to herein as “**Products**”, or individually as a “**Product**”. At any time during the Term (as defined below), Motorola may substitute any Products at no cost to Customer, if the substitute is substantially similar to the Products set forth in the applicable Ordering Documents.

2.2. Services.

2.2.1. Motorola will provide services related to purchased Products (“**Services**”), to the extent set forth in an Ordering Document.

2.2.2. Integration Services; Maintenance and Support Services. If specified in an Ordering Document, Motorola will provide, for the term of such Ordering Document, (a) design, deployment, and integration Services in order to design, install, set up, configure, and/or integrate the applicable Products at the

applicable locations (“**Sites**”), agreed upon by the Parties (“**Integration Services**”), or (b) break/fix maintenance, technical support, or other Services (such as software integration Services) (“**Maintenance and Support Services**”), each as further described in the applicable statement of work. Maintenance and Support Services and Integration Services will each be considered “Services”, as defined above.

2.2.3. Service Ordering Documents. The Fees for Services will be set forth in an Ordering Document and any applicable project schedules. A Customer point of contact will be set forth in the applicable statement of work for the Services. For purposes of clarity, each statement of work will be incorporated into, and form an integral part of, the Agreement.

2.2.4. Service Completion. Unless otherwise specified in the applicable Ordering Document, Services described in an Ordering Document will be deemed complete upon Motorola’s performance of all Services listed in such Ordering Document (“**Service Completion Date**”); provided, however, that Maintenance and Support Services may be offered on an ongoing basis during a given Ordering Document term, in which case such Maintenance and Support Services will conclude upon the expiration or termination of such Ordering Document.

2.3. Non-Preclusion. If, in connection with the Products and Services provided under this Agreement, Motorola makes recommendations, including a recommendation to purchase other products or services, nothing in this Agreement precludes Motorola from participating in a future competitive bidding process or otherwise offering or selling the recommended products or other services to Customer. Customer represents that this paragraph does not violate its procurement standards or other laws, regulations, or policies.

2.4. Customer Obligations. Customer will ensure that information Customer provides to Motorola in connection with receipt of Products and Services are accurate and complete in all material respects. Customer will make timely decisions and obtain any required management approvals that are reasonably necessary for Motorola to provide the Products and Services and perform its other duties under this Agreement. Unless the applicable Ordering Document states otherwise, Motorola may rely upon and is not required to evaluate, confirm, reject, modify, or provide advice concerning any assumptions or Customer information, decisions, or approvals described in this Section. If any assumptions in the Ordering Documents or information provided by Customer prove to be incorrect, or if Customer fails to perform any of its obligations under this Agreement, Motorola’s ability to perform its obligations may be impacted and changes to the Agreement, including the scope, Fees, and performance schedule may be required.

2.5. Documentation. Products and Services may be delivered with documentation for the Equipment, software Products, or data that specifies technical and performance features, capabilities, users, or operation, including training manuals, and other deliverables, such as reports, specifications, designs, plans, drawings, analytics, or other information (collectively, “**Documentation**”). Documentation is and will be owned by Motorola, unless otherwise expressly agreed in an Addendum or Ordering Document that certain Documentation will be owned by Customer. Motorola hereby grants Customer a limited, royalty-free, worldwide, non-exclusive license to use the Documentation solely for its internal business purposes in connection with the Products and Services.

2.6. Motorola Tools and Equipment. As part of delivering the Products and Services, Motorola may provide certain tools, equipment, models, and other materials of its own. Such tools and equipment will remain the sole property of Motorola unless they are to be purchased by Customer as Products and are explicitly listed on an Ordering Document. The tools and equipment may be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction. Customer will safeguard all tools and equipment while in Customer's custody or control, and be liable for any loss or damage. Upon the expiration or earlier termination of this Agreement, Customer, at its expense, will return to Motorola all tools and equipment in its possession or control.

2.7. Authorized Users. Customer will ensure its employees and Authorized Users comply with the terms of this Agreement and will be liable for all acts and omissions of its employees and Authorized Users. Customer is responsible for the secure management of Authorized Users' names, passwords and login credentials for access to Products and Services. "**Authorized Users**" are Customer's employees, full-time contractors engaged for the purpose of supporting the Products and Services that are not competitors of Motorola, and the entities (if any) specified in an Ordering Document or otherwise approved by Motorola in writing (email from an authorized Motorola signatory accepted), which may include affiliates or other Customer agencies.

2.8. Export Control. Customer, its employees, and any other Authorized Users will not access or use the Products and Services in any jurisdiction in which the provision of such Products and Services is prohibited under applicable laws or regulations (a "**Prohibited Jurisdiction**"), and Customer will not provide access to the Products and Services to any government, entity, or individual located in a Prohibited Jurisdiction. Customer represents and warrants that (a) it and its Authorized Users are not named on any U.S. government list of persons prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) it and its Authorized Users are not a national of, or a company registered in, any Prohibited Jurisdiction; (c) Customer will not permit its Authorized Users to access or use the Products or Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions; and (d) Customer and its Authorized Users will comply with all applicable laws regarding the transmission of technical data exported from the U.S. and the country in which Customer, its employees, and the Authorized Users are located.

2.9. Change Orders. Unless a different change control process is agreed upon in writing by the Parties, a Party may request changes to an Addendum or an Ordering Document by submitting a change order to the other Party (each, a "**Change Order**"). If a requested change in a Change Order causes an increase or decrease in the Products or Services, the Parties by means of the Change Order will make appropriate adjustments to the Fees, project schedule, or other matters. Change Orders are effective and binding on the Parties only upon execution of the Change Order by an authorized representative of both Parties.

3. Term and Termination.

3.1. Term. The term of this MCA ("**Term**") will commence on the Effective Date and continue until six (6) months after the later of (a) the termination, expiration, or discontinuance of services under the last Ordering Document in effect, or (b) the expiration of all applicable warranty periods, unless the MCA is earlier terminated as set forth herein. The applicable Addendum or Ordering Document will set forth the term for the Products and Services governed thereby.

3.2. Termination. Either Party may terminate the Agreement or the applicable Addendum or Ordering Document if the other Party breaches a material obligation under the Agreement and does not cure such breach within thirty (30) days after receipt of notice of the breach or fails to produce a cure plan within such period of time. Each Addendum and Ordering Document may be separately terminable as set forth therein.

3.3. Suspension of Services. Motorola may terminate or suspend any Products or Services under an Ordering Document if Motorola determines: (a) the related Product license has expired or has terminated for any reason; (b) the applicable Product is being used on a hardware platform, operating system, or version not approved by Motorola; (c) Customer fails to make any payments when due; or (d) Customer fails to comply with any of its other obligations or otherwise delays Motorola's ability to perform.

3.4. Effect of Termination or Expiration. Upon termination for any reason or expiration of this Agreement, an Addendum, or an Ordering Document, Customer and the Authorized Users will return or destroy (at Motorola's option) all Motorola Materials and Motorola's Confidential Information in their possession or control and, as applicable, provide proof of such destruction, except that Equipment purchased by Customer should not be returned. If Customer has any outstanding payment obligations under this Agreement, Motorola may accelerate and declare all such obligations of Customer immediately due and payable by Customer. Notwithstanding the reason for termination or expiration, Customer must pay Motorola for Products and Services already delivered. Customer has a duty to mitigate any damages under this Agreement, including in the event of default by Motorola and Customer's termination of this Agreement.

4. Payment and Invoicing.

4.1. Fees. Fees and charges applicable to the Products and Services (the "**Fees**") will be as set forth in the applicable Addendum or Ordering Document, and such Fees may be changed by Motorola at any time, except that Motorola will not change the Fees for Products and Services purchased by Customer during the term of an active Ordering Document or during a Subscription Term (as defined and further described in the applicable Addendum). Changes in the scope of Services described in an Ordering Document may require an adjustment to the Fees due under such Ordering Document. If a specific invoicing or payment schedule is set forth in the applicable Addendum or Ordering Document, such schedule will apply solely with respect to such Addendum or Ordering Document. Unless otherwise specified in the applicable Ordering Document, the Fees for any Services exclude expenses associated with unusual and costly Site access requirements (e.g., if Site access requires a helicopter or other equipment), and Customer will reimburse Motorola for these or other expenses incurred by Motorola in connection with the Services.

4.2. Taxes. The Fees do not include any excise, sales, lease, use, property, or other taxes, assessments, duties, or regulatory charges or contribution requirements (collectively, "**Taxes**"), all of which will be paid by Customer, except as exempt by law, unless otherwise specified in an Ordering Document. If Motorola is required to pay any Taxes, Customer will reimburse Motorola for such Taxes (including any interest and penalties) within thirty (30) days after Customer's receipt of an invoice therefore. Customer will be solely responsible for reporting the Products for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income and net worth.

4.3. Invoicing. Motorola will invoice Customer at the frequency set forth in the applicable Addendum or Ordering Document, and Customer will pay all invoices within thirty (30) days of

the invoice date or as otherwise specified in the applicable Addendum or Ordering Document. Late payments will be subject to interest charges at the maximum rate permitted by law, commencing upon the due date. Motorola may invoice electronically via email, and Customer agrees to receive invoices via email at the email address set forth in an Ordering Document. Customer acknowledges and agrees that a purchase order or other notice to proceed is not required for payment for Products or Services.

5. Sites; Customer-Provided Equipment; Non-Motorola Content.

5.1. Access to Sites. Customer will be responsible for providing all necessary permits, licenses, and other approvals necessary for the installation and use of the Products and the performance of the Services at each applicable Site, including for Motorola to perform its obligations hereunder, and for facilitating Motorola's access to the Sites. No waivers of liability will be imposed on Motorola or its subcontractors by Customer or others at Customer facilities or other Sites, but if and to the extent any such waivers are imposed, the Parties agree such waivers are void.

5.2. Site Conditions. Customer will ensure that (a) all Sites are safe and secure, (b) Site conditions meet all applicable industry and legal standards (including standards promulgated by OSHA or other governmental or regulatory bodies), (c) to the extent applicable, Sites have adequate physical space, air conditioning, and other environmental conditions, electrical power outlets, distribution, equipment, connections, and telephone or other communication lines (including modem access and interfacing networking capabilities), and (d) Sites are suitable for the installation, use, and maintenance of the Products and Services. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

5.3. Site Issues. Motorola will have the right at any time to inspect the Sites and advise Customer of any deficiencies or non-conformities with the requirements of this **Section 5 – Sites; Customer-Provided Equipment; Non-Motorola Content**. If Motorola or Customer identifies any deficiencies or non-conformities, Customer will promptly remediate such issues or the Parties will select a replacement Site. If a Party determines that a Site identified in an Ordering Document is not acceptable or desired, the Parties will cooperate to investigate the conditions and select a replacement Site or otherwise adjust the installation plans and specifications as necessary. A change in Site or adjustment to the installation plans and specifications may cause a change in the Fees or performance schedule under the applicable Ordering Document.

5.4. Customer-Provided Equipment. Certain components, including equipment and software, not provided by Motorola may be required for use of the Products and Services ("**Customer-Provided Equipment**"). Customer will be responsible, at its sole cost and expense, for providing and maintaining the Customer-Provided Equipment in good working order. Customer represents and warrants that it has all rights in Customer-Provided Equipment to permit Motorola to access and use the applicable Customer-Provided Equipment to provide the Products and Services under this Agreement, and such access and use will not violate any laws or infringe any third-party rights (including intellectual property rights). Customer (and not Motorola) will be fully liable for Customer-Provided Equipment damage, loss, change, or theft that may impact Motorola's ability to provide the Products and Services under this Agreement, and Customer acknowledges that any such events may cause a change in the Fees or performance schedule under the applicable Ordering Document.

5.5. Non-Motorola Content. In certain instances, Customer may be permitted to access, use, or integrate Customer or third-party software, services, content, and data that is not provided by Motorola (collectively, “**Non-Motorola Content**”) with or through the Products and Services. If Customer accesses, uses, or integrates any Non-Motorola Content with the Products or Services, Customer will first obtain all necessary rights and licenses to permit Customer’s and its Authorized Users’ use of the Non-Motorola Content in connection with the Products and Services. Customer will also obtain the necessary rights for Motorola to use such Non-Motorola Content in connection with providing the Products and Services, including the right for Motorola to access, store, and process such Non-Motorola Content (e.g., in connection with Subscription Software), and to otherwise enable interoperation with the Products and Services. Customer represents and warrants that it will obtain the foregoing rights and licenses prior to accessing, using, or integrating the applicable Non-Motorola Content with the Products and Services, and that Customer and its Authorized Users will comply with any terms and conditions applicable to such Non-Motorola Content. If any Non-Motorola Content require access to Customer Data (as defined below), Customer hereby authorizes Motorola to allow the provider of such Non-Motorola Content to access Customer Data, in connection with the interoperation of such Non-Motorola Content with the Products and Services. Customer acknowledges and agrees that Motorola is not responsible for, and makes no representations or warranties with respect to, the Non-Motorola Content (including any disclosure, modification, or deletion of Customer Data resulting from use of Non-Motorola Content or failure to properly interoperate with the Products and Services). If Customer receives notice that any Non-Motorola Content must be removed, modified, or disabled within the Products or Services, Customer will promptly do so. Motorola will have the right to disable or remove Non-Motorola Content if Motorola believes a violation of law, third-party rights, or Motorola’s policies is likely to occur, or if such Non-Motorola Content poses or may pose a security or other risk or adverse impact to the Products or Services, Motorola, Motorola’s systems, or any third party (including other Motorola customers). Nothing in this Section will limit the exclusions set forth in **Section 7.2 – Intellectual Property Infringement**.

6. Representations and Warranties.

6.1. Mutual Representations and Warranties. Each Party represents and warrants to the other Party that (a) it has the right to enter into the Agreement and perform its obligations hereunder, and (b) the Agreement will be binding on such Party.

6.2. Motorola Warranties. Subject to the disclaimers and exclusions below, Motorola represents and warrants that (a) Services will be provided in a good and workmanlike manner and will conform in all material respects to the descriptions in the applicable Ordering Document; and (b) for a period of ninety (90) days commencing upon the Service Completion Date for one-time Services, the Services will be free of material defects in materials and workmanship. Other than as set forth in subsection (a) above, recurring Services are not warranted but rather will be subject to the requirements of the applicable Addendum or Ordering Document. Motorola provides other express warranties for Motorola-manufactured Equipment, Motorola-owned software Products, and certain Services. Such express warranties are included in the applicable Addendum or Ordering Document. Such representations and warranties will apply only to the applicable Product or Service that is the subject of such Addendum or Ordering Document.

6.3. Warranty Claims; Remedies. To assert a warranty claim, Customer must notify Motorola in writing of the claim prior to the expiration of any warranty period set forth in this MCA or the applicable Addendum or Ordering Document. Unless a different remedy is otherwise expressly

set forth for a particular warranty under an Addendum, upon receipt of such claim, Motorola will investigate the claim and use commercially reasonable efforts to repair or replace any confirmed materially non-conforming Product or re-perform any non-conforming Service, at its option. Such remedies are Customer's sole and exclusive remedies for Motorola's breach of a warranty. Motorola's warranties are extended by Motorola to Customer only, and are not assignable or transferrable.

6.4. Pass-Through Warranties. Notwithstanding any provision of this Agreement to the contrary, Motorola will have no liability for third-party software or hardware provided by Motorola; provided, however, that to the extent offered by third-party providers of software or hardware and to the extent permitted by law, Motorola will pass through express warranties provided by such third parties.

6.5. WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS AND PASS THROUGH WARRANTIES IN THIS AGREEMENT, PRODUCTS AND SERVICES PURCHASED HEREUNDER ARE PROVIDED "AS IS" AND WITH ALL FAULTS. WARRANTIES SET FORTH IN THE AGREEMENT ARE THE COMPLETE WARRANTIES FOR THE PRODUCTS AND SERVICES AND MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND QUALITY. MOTOROLA DOES NOT REPRESENT OR WARRANT THAT USE OF THE PRODUCTS AND SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF SECURITY VULNERABILITIES, OR THAT THEY WILL MEET CUSTOMER'S PARTICULAR REQUIREMENTS.

7. Indemnification.

7.1. General Indemnity. Motorola will defend, indemnify, and hold Customer harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual third-party claim, demand, action, or proceeding ("**Claim**") for personal injury, death, or direct damage to tangible property to the extent caused by Motorola's negligence, gross negligence or willful misconduct while performing its duties under an Ordering Document or an Addendum, except to the extent the claim arises from Customer's negligence or willful misconduct. Motorola's duties under this **Section 7.1 – General Indemnity** are conditioned upon: (a) Customer promptly notifying Motorola in writing of the Claim; (b) Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) Customer cooperating with Motorola and, if requested by Motorola, providing reasonable assistance in the defense of the Claim.

7.2. Intellectual Property Infringement. Motorola will defend Customer against any third-party claim alleging that a Motorola-developed or manufactured Product or Service (the "**Infringing Product**") directly infringes a United States patent or copyright ("**Infringement Claim**"), and Motorola will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim, or agreed to in writing by Motorola in settlement of an Infringement Claim. Motorola's duties under this **Section 7.2 – Intellectual Property Infringement** are conditioned upon: (a) Customer promptly notifying Motorola in writing of the Infringement Claim; (b) Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) Customer cooperating with Motorola and, if requested by Motorola, providing reasonable assistance in the defense of the Infringement Claim.

- 7.2.1. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Infringing Product; (b) replace or modify the Infringing Product so that it becomes non-infringing; or (c) grant Customer (i) a pro-rated refund of any amounts pre-paid for the Infringing Product (if the Infringing Product is a software Product, i.e., Licensed Software or Subscription Software) or (ii) a credit for the Infringing Product, less a reasonable charge for depreciation (if the Infringing Product is Equipment, including Equipment with embedded software).
- 7.2.2. In addition to the other damages disclaimed under this Agreement, Motorola will have no duty to defend or indemnify Customer for any Infringement Claim that arises from or is based upon: (a) Customer Data, Customer-Provided Equipment, Non-Motorola Content, or third-party equipment, hardware, software, data, or other third-party materials; (b) the combination of the Product or Service with any products or materials not provided by Motorola; (c) a Product or Service designed, modified, or manufactured in accordance with Customer's designs, specifications, guidelines or instructions; (d) a modification of the Product or Service by a party other than Motorola; (e) use of the Product or Service in a manner for which the Product or Service was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to use or install an update to the Product or Service that is intended to correct the claimed infringement. In no event will Motorola's liability resulting from an Infringement Claim extend in any way to any payments due on a royalty basis, other than a reasonable royalty based upon revenue derived by Motorola from Customer from sales or license of the Infringing Product.
- 7.2.3. This **Section 7.2 – Intellectual Property Infringement** provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. For clarity, the rights and remedies provided in this Section are subject to, and limited by, the restrictions set forth in **Section 8 – Limitation of Liability** below.

7.3. Customer Indemnity. To the fullest extent allowed by law, Customer will defend, indemnify, and hold Motorola and its subcontractors, subsidiaries and other affiliates harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual or threatened third-party claim, demand, action, or proceeding arising from or related to (a) Customer-Provided Equipment, Customer Data, or Non-Motorola Content, including any claim, demand, action, or proceeding alleging that any such equipment, data, or materials (or the integration or use thereof with the Products and Services) infringes or misappropriates a third-party intellectual property or other right, violates applicable law, or breaches the Agreement; (b) Customer-Provided Equipment's failure to meet the minimum requirements set forth in the applicable Documentation or match the applicable specifications provided to Motorola by Customer in connection with the Products or Services; (c) Customer's (or its service providers, agents, employees, or Authorized User's) negligence or willful misconduct; and (d) Customer's or its Authorized User's breach of this Agreement. This indemnity will not apply to the extent any such claim is caused by Motorola's use of Customer-Provided Equipment, Customer Data, or Non-Motorola Content in violation of the Agreement. Motorola will give Customer prompt, written notice of any claim subject to the foregoing indemnity. Motorola will, at its own expense, cooperate with Customer in its defense or settlement of the claim.

8. Limitation of Liability.

8.1. DISCLAIMER OF CONSEQUENTIAL DAMAGES. EXCEPT FOR PERSONAL INJURY OR DEATH, MOTOROLA, ITS AFFILIATES, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, AGENTS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE “**MOTOROLA PARTIES**”) WILL NOT BE LIABLE IN CONNECTION WITH THIS AGREEMENT (WHETHER UNDER MOTOROLA’S INDEMNITY OBLIGATIONS, A CAUSE OF ACTION FOR BREACH OF CONTRACT, UNDER TORT THEORY, OR OTHERWISE) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR REVENUES, EVEN IF MOTOROLA HAS BEEN ADVISED BY CUSTOMER OR ANY THIRD PARTY OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES AND WHETHER OR NOT SUCH DAMAGES OR LOSSES ARE FORESEEABLE.

8.2. DIRECT DAMAGES. EXCEPT FOR PERSONAL INJURY OR DEATH, THE TOTAL AGGREGATE LIABILITY OF THE MOTOROLA PARTIES, WHETHER BASED ON A CLAIM IN CONTRACT OR IN TORT, LAW OR EQUITY, RELATING TO OR ARISING OUT OF THE AGREEMENT WILL NOT EXCEED THE FEES SET FORTH IN THE ORDERING DOCUMENT UNDER WHICH THE CLAIM AROSE. NOTWITHSTANDING THE FOREGOING, FOR ANY SUBSCRIPTION SOFTWARE OR FOR ANY RECURRING SERVICES, THE MOTOROLA PARTIES’ TOTAL LIABILITY FOR ALL CLAIMS RELATED TO SUCH PRODUCT OR RECURRING SERVICES IN THE AGGREGATE WILL NOT EXCEED THE TOTAL FEES PAID FOR SUCH SUBSCRIPTION SOFTWARE OR RECURRING SERVICE, AS APPLICABLE, DURING THE CONSECUTIVE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT FROM WHICH THE FIRST CLAIM AROSE.

8.3. ADDITIONAL EXCLUSIONS. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, MOTOROLA WILL HAVE NO LIABILITY FOR DAMAGES ARISING OUT OF (A) CUSTOMER DATA, INCLUDING ITS TRANSMISSION TO MOTOROLA, OR ANY OTHER DATA AVAILABLE THROUGH THE PRODUCTS OR SERVICES; (B) CUSTOMER-PROVIDED EQUIPMENT, NON-MOTOROLA CONTENT, THE SITES, OR THIRD-PARTY EQUIPMENT, HARDWARE, SOFTWARE, DATA, OR OTHER THIRD-PARTY MATERIALS, OR THE COMBINATION OF PRODUCTS AND SERVICES WITH ANY OF THE FOREGOING; (C) LOSS OF DATA OR HACKING, RANSOMWARE, OR OTHER THIRD-PARTY ATTACKS OR DEMANDS; (D) MODIFICATION OF PRODUCTS OR SERVICES BY ANY PERSON OTHER THAN MOTOROLA; (E) RECOMMENDATIONS PROVIDED IN CONNECTION WITH OR BY THE PRODUCTS AND SERVICES; (F) DATA RECOVERY SERVICES OR DATABASE MODIFICATIONS; OR (G) CUSTOMER’S OR ANY AUTHORIZED USER’S BREACH OF THIS AGREEMENT OR MISUSE OF THE PRODUCTS AND SERVICES.

8.4. Voluntary Remedies. Motorola is not obligated to remedy, repair, replace, or refund the purchase price for the disclaimed issues in **Section 8.3 – Additional Exclusions** above, but if Motorola agrees to provide Services to help resolve such issues, Customer will reimburse Motorola for its reasonable time and expenses, including by paying Motorola any Fees set forth in an Ordering Document for such Services, if applicable.

8.5. Statute of Limitations. Customer may not bring any claims against a Motorola Party in connection with this Agreement or the Products and Services more than one (1) year after the date of accrual of the cause of action.

9. Confidentiality.

9.1. Confidential Information. “**Confidential Information**” means any and all non-public information provided by one Party (“**Discloser**”) to the other (“**Recipient**”) that is disclosed under this Agreement in oral, written, graphic, machine recognizable, or sample form, being clearly designated, labeled or marked as confidential or its equivalent or that a reasonable businessperson would consider non-public and confidential by its nature. With respect to Motorola, Confidential Information will also include Products and Services, and Documentation, as well as any other information relating to the Products and Services. The nature and existence of this Agreement are considered Confidential Information of the Parties. In order to be considered Confidential Information, information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by Discloser by submitting a written document to Recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.

9.2. Obligations of Confidentiality. During the Term and for a period of three (3) years from the expiration or termination of this Agreement, subject to the Texas Public Information Act, Recipient will (a) not disclose Confidential Information to any third party, except as expressly permitted in this **Section 9 - Confidentiality**; (b) restrict disclosure of Confidential Information to only those employees (including, employees of any wholly owned subsidiary, a parent company, any other wholly owned subsidiaries of the same parent company), agents or consultants who must access the Confidential Information for the purpose of, and who are bound by confidentiality terms substantially similar to those in, this Agreement; (c) not copy, reproduce, reverse engineer, de-compile or disassemble any Confidential Information; (d) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (e) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement; and (f) only use the Confidential Information as needed to fulfill its obligations and secure its rights under this Agreement.

9.3. Exceptions. Recipient is not obligated to maintain as confidential any information that Recipient can demonstrate by documentation (a) is publicly available at the time of disclosure or becomes available to the public without breach of this Agreement; (b) is lawfully obtained from a third party without a duty of confidentiality to Discloser; (c) is otherwise lawfully known to Recipient prior to such disclosure without a duty of confidentiality to Discloser; or (d) is independently developed by Recipient without the use of, or reference to, any of Discloser’s Confidential Information or any breach of this Agreement. Additionally, Recipient may disclose Confidential Information to the extent required by law, including a judicial or legislative order or proceeding.

9.4. Ownership of Confidential Information. All Confidential Information is and will remain the property of Discloser and will not be copied or reproduced without the express written permission of Discloser (including as permitted herein). Within ten (10) days of receipt of Discloser’s written request, Recipient will return or destroy all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain (a) one (1) archival copy of the Confidential Information for use only in case of a dispute concerning this Agreement and (b) Confidential Information that has been automatically stored in accordance with Recipient’s standard backup or recordkeeping procedures, provided, however that Recipient will remain subject to the obligations of this Agreement with respect to any Confidential Information retained subject to clauses (a) or (b). No license, express or implied, in the Confidential Information is

granted to the Recipient other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. Discloser represents and warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

10. Proprietary Rights; Data; Feedback.

10.1. Data Definitions. The following terms will have the stated meanings: “**Customer Contact Data**” means data Motorola collects from Customer, its Authorized Users, and their end users for business contact purposes, including marketing, advertising, licensing and sales purposes; “**Service Use Data**” means data generated by Customer’s use of the Products and Services or by Motorola’s support of the Products and Services, including personal information, product performance and error information, activity logs and date and time of use; “**Customer Data**” means data, information, and content, including images, text, videos, documents, audio, telemetry, location and structured data base records, provided by, through, or on behalf of Customer, its Authorized Users, and their end users through the use of the Products and Services. Customer Data does not include Customer Contact Data, Service Use Data, or information from publicly available sources or other Third-Party Data or Motorola Data; “**Third-Party Data**” means information obtained by Motorola from publicly available sources or its third party content providers and made available to Customer through the Products or Services; “**Motorola Data**” means data owned or licensed by Motorola; “**Feedback**” means comments or information, in oral or written form, given to Motorola by Customer or Authorized Users, including their end users, in connection with or relating to the Products or Services; and “**Process**” or “**Processing**” means any operation or set of operations which is performed on personal information or on sets of personal information, whether or not by automated means, such as collection, recording, copying, analyzing, caching, organization, structuring, storage, adaptation, or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

10.2. Motorola Materials. Customer acknowledges that Motorola may use or provide Customer with access to software, tools, data, and other materials, including designs, utilities, models, methodologies, systems, and specifications, which Motorola has developed or licensed from third parties (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, or derivative works of the foregoing, whether made by Motorola or another party) (collectively, “**Motorola Materials**”). The Products and Services, Motorola Data, Third-Party Data, and Documentation, are considered Motorola Materials. Except when Motorola has expressly transferred title or other interest to Customer by way of an Addendum or Ordering Document, the Motorola Materials are the property of Motorola or its licensors, and Motorola or its licensors retain all right, title and interest in and to the Motorola Materials (including, all rights in patents, copyrights, trademarks, trade names, trade secrets, know-how, other intellectual property and proprietary rights, and all associated goodwill and moral rights). For clarity, this Agreement does not grant to Customer any shared development rights in or to any Motorola Materials or other intellectual property, and Customer agrees to execute any documents and take any other actions reasonably requested by Motorola to effectuate the foregoing. Motorola and its licensors reserve all rights not expressly granted to Customer, and no rights, other than those expressly granted herein, are granted to Customer by implication, estoppel or otherwise. Customer will not modify, disassemble, reverse engineer, derive source code or create derivative works from, merge with other software, distribute, sublicense, sell, or export the Products and Services or other Motorola Materials, or permit any third party to do so.

10.3. Ownership of Customer Data. Customer retains all right, title and interest, including intellectual property rights, if any, in and to Customer Data. Motorola acquires no rights to Customer Data except those rights granted under this Agreement including the right to Process and use the Customer Data as set forth in **Section 10.4 – Processing Customer Data** below and in other applicable Addenda. The Parties agree that with regard to the Processing of personal information which may be part of Customer Data, Customer is the controller and Motorola is the processor, and may engage sub-processors pursuant to **Section 10.4.3 – Sub-processors**.

10.4. Processing Customer Data.

10.4.1. Motorola Use of Customer Data. To the extent permitted by law, Customer grants Motorola and its subcontractors a right to use Customer Data and a royalty-free, worldwide, non-exclusive license to use Customer Data (including to process, host, cache, store, reproduce, copy, modify, combine, analyze, create derivative works from such Customer Data and to communicate, transmit, and distribute such Customer Data to third parties engaged by Motorola) to (a) perform Services and provide Products under the Agreement, (b) analyze the Customer Data to operate, maintain, manage, and improve Motorola Products and Services, and (c) create new products and services. Customer agrees that this Agreement, along with the Documentation, are Customer's complete and final documented instructions to Motorola for the processing of Customer Data. Any additional or alternate instructions must be agreed to according to the Change Order process. Customer represents and warrants to Motorola that Customer's instructions, including appointment of Motorola as a processor or sub-processor, have been authorized by the relevant controller.

10.4.2. Collection, Creation, Use of Customer Data. Customer further represents and warrants that the Customer Data, Customer's collection, creation, and use of the Customer Data (including in connection with Motorola's Products and Services), and Motorola's use of such Customer Data in accordance with the Agreement, will comply with all laws and will not violate any applicable privacy notices or infringe any third-party rights (including intellectual property and privacy rights). It is Customer's responsibility to obtain all required consents, provided all necessary notices, and meet any other applicable legal requirements with respect to collection and use (including Motorola's use) of the Customer Data as described in the Agreement.

10.4.3. Sub-processors. Customer agrees that Motorola may engage sub-processors who in turn may engage additional sub-processors to Process personal data in accordance with this Agreement. When engaging sub-processors, Motorola will enter into agreements with the sub-processors to bind them to data processing obligations to the extent required by law.

10.5. Data Retention and Deletion. Except as expressly provided otherwise under the Agreement, Motorola will delete all Customer Data following termination or expiration of this MCA or the applicable Addendum or Ordering Document, with such deletion to occur no later than ninety (90) days following the applicable date of termination or expiration, unless otherwise required to comply with applicable law. Any requests for the exportation or download of Customer Data must be made by Customer to Motorola in writing before expiration or termination, subject to **Section 13.9 – Notices**. Motorola will have no obligation to retain such

Customer Data beyond expiration or termination unless the Customer has purchased extended storage from Motorola through a mutually executed Ordering Document.

10.6. Service Use Data. Customer understands and agrees that Motorola may collect and use Service Use Data for its own purposes, including the uses described below. Motorola may use Service Use Data to (a) operate, maintain, manage, and improve existing and create new products and services, (b) test products and services, (c) to aggregate Service Use Data and combine it with that of other users, and (d) to use anonymized or aggregated data for marketing, research or other business purposes. Service Use Data may be disclosed to third parties. It is Customer's responsibility to notify Authorized Users of Motorola's collection and use of Service Use Data and to obtain any required consents, provide all necessary notices, and meet any other applicable legal requirements with respect to such collection and use, and Customer represents and warrants to Motorola that it has complied and will continue to comply with this Section.

10.7. Third-Party Data and Motorola Data. Motorola Data and Third-Party Data may be available to Customer through the Products and Services. Customer and its Authorized Users may use Motorola Data and Third-Party Data as permitted by Motorola and the applicable Third-Party Data provider, as described in the applicable Addendum. Unless expressly permitted in the applicable Addendum, Customer will not, and will ensure its Authorized Users will not: (a) use the Motorola Data or Third-Party Data for any purpose other than Customer's internal business purposes; (b) disclose the data to third parties; (c) "white label" such data or otherwise misrepresent its source or ownership, or resell, distribute, sublicense, or commercially exploit the data in any manner; (d) use such data in violation of applicable laws; (e) remove, obscure, alter, or falsify any marks or proprietary rights notices indicating the source, origin, or ownership of the data; or (f) modify such data or combine it with Customer Data or other data or use the data to build databases. Additional restrictions may be set forth in the applicable Addendum. Any rights granted to Customer or Authorized Users with respect to Motorola Data or Third-Party Data will immediately terminate upon termination or expiration of the applicable Addendum, Ordering Document, or this MCA. Further, Motorola or the applicable Third-Party Data provider may suspend, change, or terminate Customer's or any Authorized User's access to Motorola Data or Third-Party Data if Motorola or such Third-Party Data provider believes Customer's or the Authorized User's use of the data violates the Agreement, applicable law or Motorola's agreement with the applicable Third-Party Data provider. Upon termination of Customer's rights to use any Motorola Data or Third-Party Data, Customer and all Authorized Users will immediately discontinue use of such data, delete all copies of such data, and certify such deletion to Motorola. Notwithstanding any provision of the Agreement to the contrary, Motorola will have no liability for Third-Party Data or Motorola Data available through the Products and Services. Motorola and its Third-Party Data providers reserve all rights in and to Motorola Data and Third-Party Data not expressly granted in an Addendum or Ordering Document.

10.8. Feedback. Any Feedback provided by Customer is entirely voluntary, and will not create any confidentiality obligation for Motorola, even if designated as confidential by Customer. Motorola may use, reproduce, license, and otherwise distribute and exploit the Feedback without any obligation or payment to Customer or Authorized Users and Customer represents and warrants that it has obtained all necessary rights and consents to grant Motorola the foregoing rights.

10.9. Improvements; Products and Services. The Parties agree that, notwithstanding any provision of this MCA or the Agreement to the contrary, all fixes, modifications and

improvements to the Services or Products conceived of or made by or on behalf of Motorola that are based either in whole or in part on the Feedback, Customer Data, or Service Use Data (or otherwise) are the exclusive property of Motorola and all right, title and interest in and to such fixes, modifications or improvements will vest solely in Motorola. Customer agrees to execute any written documents necessary to assign any intellectual property or other rights it may have in such fixes, modifications or improvements to Motorola.

11. Force Majeure; Delays Caused by Customer.

11.1. Force Majeure. Except for Customer's payment obligations hereunder, neither Party will be responsible for nonperformance or delayed performance due to events outside of its reasonable control. If performance will be significantly delayed, the affected Party will provide notice to the other Party, and the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule.

11.2. Delays Caused by Customer. Motorola's performance of the Products and Services will be excused for delays caused by Customer or its Authorized Users or subcontractors, or by failure of any assumptions set forth in this Agreement (including in any Addendum or Ordering Document). In the event of a delay under this **Section 11.2 – Delays Caused by Customer**, (a) Customer will continue to pay the Fees as required hereunder, (b) the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule, and (c) Customer will compensate Motorola for its out-of-pocket costs incurred due to the delay (including those incurred by Motorola's affiliates, vendors, and subcontractors).

12. Disputes. The Parties will use the following procedure to resolve any disputes relating to or arising out of this Agreement (each, a "**Dispute**");

12.1. Governing Law. All matters relating to or arising out of the Agreement are governed by the laws of the State of Texas, unless Customer is the United States Government (or an agency thereof), in which case all matters relating to or arising out of the Agreement will be governed by the laws of the State in which the Products and Services are provided. The terms of the U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply.

12.2. Negotiation; Mediation. Either Party may initiate dispute resolution procedures by sending a notice of Dispute ("**Notice of Dispute**") to the other Party. The Parties will attempt to resolve the Dispute promptly through good faith negotiations, including timely escalation of the Dispute to executives who have authority to settle the Dispute (and who are at a higher level of management than the persons with direct responsibility for the matter). If a Dispute is not resolved through negotiation, either Party may initiate mediation by sending a notice of mediation ("**Notice of Mediation**") to the other Party. The Parties will choose an independent mediator within thirty (30) days of such Notice of Mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, but if the Parties are unable to agree upon a mediator, either Party may request that the American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute. All in person meetings under this **Section 12.2 – Negotiation; Mediation** will take place in Chicago, Illinois, and all communication relating to the Dispute resolution will be maintained in strict confidence by the Parties. Notwithstanding the foregoing, any Dispute arising from or relating to Motorola's intellectual property rights will not be subject to negotiation or mediation in

accordance with this Section, but instead will be decided by a court of competent jurisdiction, in accordance with **Section 12.3 – Litigation, Venue, Jurisdiction** below.

12.3. Litigation, Venue, Jurisdiction. If the Dispute has not been resolved by mediation within sixty (60) days from the Notice of Mediation, either Party may submit the Dispute exclusively to a court in Taylor County, Texas. Each Party expressly consents to the exclusive jurisdiction of such courts for resolution of any Dispute and to enforce the outcome of any mediation.

13. General.

13.1. Compliance with Laws. Each Party will comply with applicable laws in connection with the performance of its obligations under this Agreement, including that Customer will ensure its and its Authorized Users' use of the Products and Services complies with law (including privacy laws), and Customer will obtain any FCC and other licenses or authorizations (including licenses or authorizations required by foreign regulatory bodies) required for its and its Authorized Users' use of the Products and Services. Motorola may, at its discretion, cease providing or otherwise modify Products and Services (or any terms related thereto in an Addendum or Ordering Document), in order to comply with any changes in applicable law.

13.2. Audit; Monitoring. Motorola will have the right to monitor and audit use of the Products, which may also include access by Motorola to Customer Data and Service Use Data. Customer will provide notice of such monitoring to its Authorized Users and obtain any required consents, including individual end users, and will cooperate with Motorola in any monitoring or audit. Customer will maintain during the Term, and for two (2) years thereafter, accurate records relating to any software licenses granted under this Agreement to verify compliance with this Agreement. Motorola or a third party ("**Auditor**") may inspect Customer's and, as applicable, Authorized Users' premises, books, and records. Motorola will pay expenses and costs of the Auditor, unless Customer is found to be in violation of the terms of the Agreement, in which case Customer will be responsible for such expenses and costs.

13.3. Assignment and Subcontracting. Neither Party may assign or otherwise transfer this Agreement without the prior written approval of the other Party. Motorola may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without consent (a) for financing purposes, (b) in connection with a merger, acquisition or sale of all or substantially all of its assets, (c) as part of a corporate reorganization, or (d) to a subsidiary corporation. Subject to the foregoing, this Agreement will be binding upon the Parties and their respective successors and assigns.

13.4. Waiver. A delay or omission by either Party to exercise any right under this Agreement will not be construed to be a waiver of such right. A waiver by either Party of any of the obligations to be performed by the other, or any breach thereof, will not be construed to be a waiver of any succeeding breach or of any other obligation. All waivers must be in writing and signed by the Party waiving its rights.

13.5. Severability. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such provision will be deemed to be modified to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remaining provisions of this Agreement will not be affected, and each such provision will be valid and enforceable to the full extent permitted by applicable law.

13.6. Independent Contractors. Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership, or formal business organization of any kind.

13.7. Third-Party Beneficiaries. The Agreement is entered into solely between, and may be enforced only by, the Parties. Each Party intends that the Agreement will not benefit, or create any right or cause of action in or on behalf of, any entity other than the Parties. Notwithstanding the foregoing, a licensor or supplier of third-party software included in the software Products will be a direct and intended third-party beneficiary of this Agreement.

13.8. Interpretation. The section headings in this Agreement are included only for convenience. The words “including” and “include” will be deemed to be followed by the phrase “without limitation”. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

13.9. Notices. Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address provided by the other Party by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as FedEx, UPS, or DHL), and will be effective upon receipt.

13.10. Cumulative Remedies. Except as specifically stated in this Agreement, all remedies provided for in this Agreement will be cumulative and in addition to, and not in lieu of, any other remedies available to either Party at law, in equity, by contract, or otherwise. Except as specifically stated in this Agreement, the election by a Party of any remedy provided for in this Agreement or otherwise available to such Party will not preclude such Party from pursuing any other remedies available to such Party at law, in equity, by contract, or otherwise.

13.11. Survival. The following provisions will survive the expiration or termination of this Agreement for any reason: **Section 2.4 – Customer Obligations; Section 3.4 – Effect of Termination or Expiration; Section 4 – Payment and Invoicing; Section 6.5 – Warranty Disclaimer; Section 7.3 – Customer Indemnity; Section 8 – Limitation of Liability; Section 9 – Confidentiality; Section 10 – Proprietary Rights; Data; Feedback; Section 11 – Force Majeure; Delays Caused by Customer; Section 12 – Disputes; and Section 13 – General.**

13.12. Entire Agreement. This Agreement, including all Addenda and Ordering Documents, constitutes the entire agreement of the Parties regarding the subject matter hereto, and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and will have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing or by electronic signature. An electronic signature, facsimile copy, or computer image of a signature, will be treated, and will have the same effect as an original signature, and will have the same effect, as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment, or other form will not be considered an amendment or modification or part of this Agreement, even if a representative of each Party signs such document.

13.13. Non-Boycott of Israel Provision. In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless Motorola is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Motorola verifies that Motorola does not boycott Israel and will not boycott Israel during the Term of this Agreement.

13.14. Prohibition on Contracts with Certain Companies Provision. In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Motorola is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

13.15. Verification Against Discrimination of Firearm or Ammunition Industries Provision. Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the Company employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, Motorola represents that: (1) Motorola does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) Motorola will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association.

13.16. Termination for Non-funding. For any funding beyond the current fiscal year, the City reserves the right to terminate this Agreement by giving thirty (30) days' written notice, without liability to the City, in the event that funding for this Agreement is discontinued or is no longer available. The City's fiscal year runs from October 1" to September 30th. The City may terminate this Agreement if funds sufficient to pay its obligations under the Agreement are not appropriated by the applicable state legislature, federal government or other appropriate government entity or received from an intended third-party funding source. If a Customer has accepted delivery of any products or services performed through the date of termination, the Customer is obligated to pay for the products or services.

The Parties hereby enter into this MCA as of the Effective Date.

Motorola: Motorola Solutions, Inc.

Customer: [REDACTED]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Equipment Purchase and Software License Addendum

This Equipment Purchase and Software License Addendum (this “**EPSLA**”) is entered into between Motorola Solutions, Inc., with offices at 500 W. Monroe Street, Suite 4400, Chicago, IL 60661 (“**Motorola**”) and the entity set forth in the signature block below or in the MCA (“**Customer**”), and will be subject to, and governed by, the terms of the Master Customer Agreement entered into between the Parties, effective as of [REDACTED] (the “**MCA**”). Capitalized terms used in this EPSLA, but not defined herein, will have the meanings set forth in the MCA.

1. Addendum. This EPSLA governs Customer’s purchase of Equipment and license of Licensed Software (and, if set forth in an Ordering Document, related Services) from Motorola, and will form part of the Parties’ Agreement.

2. Delivery of Equipment and Licensed Software.

2.1. Delivery and Risk of Loss. Motorola will provide to Customer the Products (and, if applicable, related Services) set forth in an Ordering Document, in accordance with the terms of the Agreement. Motorola will, using commercially reasonable practices, pack the ordered Equipment and ship such Equipment to the Customer address set forth in the applicable Ordering Document or otherwise provided by Customer in writing, using a carrier selected by Motorola. Notwithstanding the foregoing, delivery of Equipment (and any incorporated Licensed Software) will occur, and title and risk of loss for the Equipment will pass to Customer, upon shipment by Motorola in accordance with Ex Works, Motorola’s premises (Incoterms 2020). Customer will pay all shipping costs, taxes, and other charges applicable to the shipment and import or export of the Products and Services, as applicable, and Customer will be responsible for reporting the Products for personal property tax purposes. Delivery of Licensed Software for installation on Equipment or Customer-Provided Equipment will occur upon the earlier of (a) electronic delivery of the Licensed Software by Motorola, and (b) the date Motorola otherwise makes the Licensed Software available for download by Customer. If agreed upon in an Ordering Document, Motorola will also provide Services related to such Products.

2.2. Delays. Any shipping dates set forth in an Ordering Document are approximate, and while Motorola will make reasonable efforts to ship Products by any such estimated shipping date, Motorola will not be liable for any delay or related damages to Customer. Time for delivery will not be of the essence, and delays will not constitute grounds for cancellation, penalties, termination, or a refund.

2.3. Beta Services. If Motorola makes any beta version of a software application (“**Beta Service**”) available to Customer, Customer may choose to use such Beta Service at its own discretion, provided, however, that Customer will use the Beta Service solely for purposes of Customer’s evaluation of such Beta Service, and for no other purpose. Customer acknowledges and agrees that all Beta Services are offered “as-is” and without any representations or warranties or other commitments or protections from Motorola. Motorola will determine the duration of the evaluation period for any Beta Service, in its sole discretion, and Motorola may discontinue any Beta Service at any time. Customer acknowledges that Beta Services, by their nature, have not been fully tested and may contain defects or deficiencies.

3. Licensed Software License and Restrictions.

3.1. Licensed Software License. Subject to Customer's and its Authorized Users' compliance with the Agreement (including payment terms), Motorola hereby grants Customer and its Authorized Users a limited, non-transferable, non-sublicenseable, and non-exclusive license to use the Licensed Software identified in an Ordering Document, in object code form only, and the associated Documentation, solely in connection with the Equipment provided by Motorola or authorized Customer-Provided Equipment (as applicable, the "**Designated Products**") and solely for Customer's internal business purposes. Unless otherwise stated in an Addendum or the Ordering Document, the foregoing license grant will be limited to the number of licenses set forth in the applicable Ordering Document and will continue for the life of the applicable Designated Product. Except as otherwise permitted in an applicable Addendum or Ordering Document, Customer may install, access, and use Licensed Software only in Customer's owned or controlled facilities, including any authorized mobile sites; provided, however, that Authorized Users using authorized mobile or handheld devices may also log into and access the Licensed Software remotely from any location.

3.2. Subscription License Model. If the Parties mutually agree that any Licensed Software purchased under this EPSLA will be replaced with or upgraded to Subscription Software, then upon such time which the Parties execute the applicable Ordering Document, the licenses granted under this EPSLA will automatically terminate, and such Subscription Software will be governed by the terms of the applicable Addendum under this Agreement.

3.3. End User Licenses. Notwithstanding any provision to the contrary in the Agreement, certain Licensed Software is governed by a separate license, EULA, or other agreement, including terms governing third-party equipment or software, such as open source software, included in the Products and Services. Customer will comply, and ensure its Authorized Users comply, with any such additional terms applicable to third-party equipment or software.

3.4. Customer Restrictions. Customers and Authorized Users will comply with the applicable Documentation in connection with their use of the Products. Customer will not and will not allow others, including the Authorized Users, to: (a) make the Licensed Software available for use by unauthorized third parties, including via a commercial rental or sharing arrangement; (b) reverse engineer, disassemble, or reprogram the Licensed Software or any portion thereof to a human-readable form; (c) modify, create derivative works of, or merge the Licensed Software with other software or equipment; (d) copy, reproduce, distribute, lend, lease, or transfer the Licensed Software or Documentation for or to any third party without the prior express written permission of Motorola; (e) take any action that would cause the Licensed Software or Documentation to be placed in the public domain; (f) use the Licensed Software to compete with Motorola; or (g) remove, alter, or obscure, any copyright or other notice.

3.5. Copies. Customer may make one (1) copy of the Licensed Software solely for archival, back-up, or disaster recovery purposes during the term of the applicable Licensed Software license. Customer may make as many copies of the Documentation reasonably required for the internal use of the Licensed Software during such Licensed Software's license term. Unless otherwise authorized by Motorola in writing, Customer will not, and will not enable or allow any third party to: (a) install a licensed copy of the Licensed Software on more than one (1) unit of a Designated Product; or (b) copy onto or transfer Licensed Software installed in a unit of a Designated Product onto another device. Customer may temporarily transfer Licensed Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Customer provides written notice to Motorola of the temporary transfer and identifies the device on which the Licensed is transferred. Temporary transfer of the Licensed Software to another device must be discontinued when the original Designated

Product is returned to operation and the Licensed Software must be removed from the other device. Customer must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

3.6. Resale of Equipment. Equipment contains embedded Licensed Software. If Customer desires to sell its used Equipment to a third party, Customer must first receive prior written authorization from Motorola and obtain written acceptance of the applicable Licensed Software license terms, including the obligation to pay relevant license fees, from such third party.

4. Term.

4.1. Term. The term of this EPSLA (the “**EPSLA Term**”) will commence upon either (a) the Effective Date of the MCA, if this EPSLA is attached to the MCA as of such Effective Date, or (b) the EPSLA Date set forth on the signature page below, if this EPSLA is executed after the MCA Effective Date, and will continue until the later of (i) three (3) years after the first order for Products is placed via an Ordering Document, or (ii) the expiration of all applicable warranty periods (as set forth in **Section 6.1 – Motorola Warranties** below) under this EPSLA, unless this EPSLA or the Agreement is earlier terminated in accordance with the terms of the Agreement.

4.2. Termination. Notwithstanding the termination provisions of the MCA, Motorola may terminate this EPSLA (and any Ordering Documents hereunder) immediately upon notice to Customer if Customer breaches **Section 3 – Licensed Software License and Restrictions** of this EPSLA, or any other provision related to Licensed Software license scope or restrictions set forth in an Ordering Document, EULA, or other applicable Addendum. For clarity, upon termination or expiration of the EPSLA Term, all Motorola obligations under this EPSLA (including with respect to Equipment and Licensed Software delivered hereunder) will terminate. If Customer desires to purchase additional Services in connection with such Equipment or Licensed Software, Customer may enter into a separate Addendum with Motorola, governing such Services. Customer acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Licensed Software and Documentation, and that Customer’s breach of the Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, in addition to termination, Motorola will be entitled to all available remedies at law or in equity, including immediate injunctive relief and repossession of all non-embedded Licensed Software and associated Documentation.

4.3. Equipment as a Service. In the event that Customer purchases any Equipment at a price below the MSRP for such Equipment in connection Customer entering into a fixed- or minimum required-term agreement for Subscription Software, and Customer or Motorola terminates the Agreement, this EPSLA, or other applicable Addendum (such as the Addendum governing the purchase of such Subscription Software) prior to the expiration of such fixed- or minimum required-term, then Motorola will have the right to invoice Customer for, and Customer will pay, the amount of the discount to the MSRP for the Equipment or such other amount set forth in the applicable Addendum or Ordering Document. This Section will not limit any other remedies Motorola may have with respect to an early termination.

5. Payment. Customer will pay invoices for the Products and Services provided under this EPSLA in accordance with the invoice payment terms set forth in the MCA. Generally, invoices are issued after shipment of Equipment or upon Motorola’s delivery of Licensed Software (in accordance with **Section 2.1 – Delivery and Risk of Loss**), as applicable, but if a specific

invoicing or payment schedule is set forth in the applicable Ordering Document, EULA or other Addendum, such schedule will control with respect to the applicable Products and Services referenced therein. Motorola will have the right to suspend future deliveries of Products and Services if Customer fails to make any payments when due.

6. Representations and Warranties; Liability.

6.1. Motorola Warranties. Subject to the disclaimers and exclusions set forth in the MCA and this EPSLA, (a) for a period of one (1) year commencing upon the delivery of Motorola-manufactured Equipment under **Section 2.1 – Delivery and Risk of Loss**, Motorola represents and warrants that such Motorola-manufactured Equipment, under normal use, will be free from material defects in materials and workmanship; (b) to the extent permitted by the providers of third-party software or hardware included in the Products and Services, Motorola will pass through to Customer any warranties provided by such third parties, which warranties will apply for the period defined by the applicable third party; and (c) for a period of ninety (90) days commencing upon the delivery of Motorola-owned Licensed Software under **Section 2.1 – Delivery and Risk of Loss**, Motorola represents and warrants that such Licensed Software, when used in accordance with the Documentation and the Agreement, will be free from reproducible defects that prevent operation of features critical to the primary functionality or successful operation of the Motorola-developed Licensed Software (as determined by Motorola). The warranty set forth in subsection (c) will be referred to as the “**Motorola Licensed Software Warranty**”. As Customer’s sole and exclusive remedy for any breach of the Motorola Licensed Software Warranty, Motorola will use commercially reasonable efforts to remedy the material defect in the applicable Licensed Software; provided, however, that if Motorola does not remedy such material defect within a reasonable time, then at Motorola’s sole option, Motorola will either replace the defective Licensed Software with functionally-equivalent software, provide substitute software to Customer, or terminate the applicable software license and refund any paid license fees to Customer on a pro-rata basis. For clarity, the Motorola Licensed Software Warranty applies only to the most current version of the Licensed Software issued by Motorola, and issuance of updated versions of any Licensed Software does not result in a renewal or extension of the Motorola Licensed Software Warranty beyond the ninety (90) day warranty period.

6.2. ADDITIONAL EXCLUSIONS. IN ADDITION TO THE EXCLUSIONS FROM DAMAGES SET FORTH IN THE MCA, AND NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, MOTOROLA WILL HAVE NO LIABILITY FOR (A) DEFECTS IN OR DAMAGE TO PRODUCTS RESULTING FROM USE OTHER THAN IN THE NORMAL AUTHORIZED MANNER, OR FROM ACCIDENT, LIQUIDS, OR NEGLIGENCE; (B) TESTING, MAINTENANCE, REPAIR, INSTALLATION, OR MODIFICATION BY PARTIES OTHER THAN MOTOROLA; (C) CUSTOMER’S OR ANY AUTHORIZED USER’S FAILURE TO COMPLY WITH INDUSTRY AND OSHA OR OTHER LEGAL STANDARDS; (D) DAMAGE TO RADIO ANTENNAS, UNLESS CAUSED BY DEFECTS IN MATERIAL OR WORKMANSHIP; (E) EQUIPMENT WITH NO SERIAL NUMBER; (F) BATTERIES OR CONSUMABLES; (G) FREIGHT COSTS FOR SHIPMENT TO REPAIR DEPOTS; (H) COSMETIC DAMAGE THAT DOES NOT AFFECT OPERATION; (I) NORMAL WEAR AND TEAR; (J) ISSUES OR OBSOLESCENCE OF LICENSED SOFTWARE DUE TO CHANGES IN CUSTOMER OR AUTHORIZED USER REQUIREMENTS, EQUIPMENT, OR SYSTEMS; (K) TRACKING AND LOCATION-BASED SERVICES; OR (L) BETA SERVICES.

6.3. Voluntary Remedies. Motorola is not obligated to remedy, repair, replace, or refund the purchase price for the disclaimed or excluded issues in the MCA or **Section 6.2 – Additional**

Exclusions above, but if Motorola agrees to provide Services to help resolve such issues, Customer will reimburse Motorola for its reasonable time and expenses, including by paying Motorola any Fees set forth in an Ordering Document for such Services, if applicable.

7. Copyright Notices. The existence of a copyright notice on any Licensed Software will not be construed as an admission or presumption of publication of the Licensed Software or public disclosure of any trade secrets associated with the Licensed Software.

8. Survival. The following provisions will survive the expiration or termination of this EPSLA for any reason: **Section 3 – Licensed Software License and Restrictions; Section 4 – Term; Section 5 – Payment; Section 6.2 – Additional Exclusions; Section 8 – Survival.**

Software Products Addendum

This Software Products Addendum (this “**SPA**”) is entered into between Motorola Solutions, Inc., with offices at 500 W. Monroe Street, Suite 4400, Chicago, IL 60661 (“**Motorola**”) and the entity set forth in the signature block below or in the MCA (“**Customer**”), and will be subject to, and governed by, the terms of the Master Customer Agreement entered into between the Parties, effective as of [REDACTED] (the “**MCA**”), and the applicable Addenda. Capitalized terms used in this SPA, but not defined herein, will have the meanings set forth in the MCA or the applicable Addenda.

9. Addendum. This SPA governs Customer’s purchase of certain Motorola software Products, including Software Systems, and will form part of the Parties’ Agreement. A “**Software System**” is a solution that includes at least one command center software Product and requires Integration Services to deploy such software Product at a Customer Site or onto any Customer-Provided Equipment or Equipment provided to Customer. In addition to the MCA, other Addenda may be applicable to the Software System or other software Products, including the Subscription Software Addendum (“**SSA**”), with respect to Subscription Software, and the Equipment Purchase and Software License Addendum (“**EPSLA**”), with respect to Licensed Software and Equipment, as further described below. This SPA will control with respect to conflicting terms in the MCA or any other applicable Addendum, but only as applicable to the Software System or other software Products purchased under this SPA and not with respect to other Products and Services.

10. Software Systems; Applicable Terms and Conditions.

10.1. On-Premise Software System. If Customer purchases an “on-premises Software System,” where Equipment and Licensed Software are installed at Customer Sites or on Customer-Provided Equipment, then, unless the Ordering Document(s) specify that any software is being purchased on a subscription basis (i.e., as Subscription Software), such Equipment and Licensed Software installed at Customer Sites or on Customer-Provided Equipment are subject to the EPSLA. On-premises Software Systems described in this Section qualify for the System Warranty as described in **Section 5 – On-Premises Software System Warranty** (the “**System Warranty**”). In connection with the on-premises Software System, Customer may also purchase additional Subscription Software that integrates with its on-premises Software System (e.g., CommandCentral Aware) (each, an “**Add-On Subscription**”). Any Add-On Subscription will be subject to the terms and conditions of the SSA and excluded from the System Warranty.

10.2. On-Premise Software System as a Service. If Customer purchases an “on-premises Software System as a service,” where Equipment and software Products are installed at Customer Sites or on Customer-Provided Equipment, and such software is generally licensed on a subscription basis (i.e., as Subscription Software), then such Subscription Software will be subject to the SSA and not the EPSLA. Any (a) Equipment purchased, (b) firmware preinstalled on such Equipment, and (c) Microsoft operating system Licensed Software are subject to the EPSLA. On-premises Software Systems as a service described in this Section are provided as a service and, accordingly, do not qualify for the System Warranty. System completion, however, is determined in accordance with the provisions of **Section 3 – Software System Completion** below.

10.3. Cloud Hosted Software System. If Customer purchases a “cloud hosted Software System,” where the applicable software is hosted in a data center and provided to Customer as a service (i.e., as hosted Subscription Software), including CommandCentral Products, then such Subscription Software is subject to the SSA. Any Equipment purchased in connection with a cloud Software System is subject to the EPSLA. Cloud hosted Software Systems described in this Section do not qualify for the System Warranty. System completion, however, is determined in accordance with the provisions of **Section 3 – Software System Completion** below.

10.4. Services. Any Integration Services or Maintenance and Support Services purchased in connection with, or included as a part of, a Software System are subject to the MCA, and as described in the applicable Ordering Document.

11. Software System Completion. Any Software System described in an Ordering Document hereunder (including the Products, Integration Services, and all other components thereof) will be deemed completed upon Customer’s (or the applicable Authorized User’s) Beneficial Use of each Product that is included in the Software System (unless alternative acceptance procedures are set forth in the applicable Ordering Document) (the “**System Completion Date**”). Customer will not unreasonably delay Beneficial Use of any Product within a Software System, and in any event, the Parties agree that Beneficial Use of a Product will be deemed to have occurred thirty (30) days after functional demonstration. For clarity, if a Software System is comprised of more than one Product, Motorola may notify Customer that all Integration Services for a particular Product within the Software System have been completed, and Customer may have Beneficial Use of such Product prior to having Beneficial Use of other Products in the Software System, or of the Software System as a whole. In such case, the Integration Services applicable to such Product will be deemed complete upon Customer’s Beneficial Use of the Product (“**Product Completion Date**”), which may occur before the System Completion Date. As used in this Section, “**Beneficial Use**” means use by Customer or at least one (1) Authorized User of the material features and functionalities of a Product within a Software System, in material conformance with Product descriptions in the applicable Ordering Document. This Section applies to Products purchased as part of a Software System notwithstanding the delivery provisions of the Addendum applicable to such Products, such as the SSA or EPSLA, and this Section will control over such other delivery provisions to the extent of a conflict.

12. Payment. Customer will pay invoices for the Products and Services covered by this SPA in accordance with the invoice payment terms set forth in the MCA. Fees for Software Systems will be invoiced as of the System Completion Date, unless another payment process or schedule or milestones are set forth in an Ordering Document or applicable Addendum. In addition to Equipment, Licensed Software, Subscription Software and Integration Services (as applicable) sold as part of a Software System, the Ordering Documents for a Software System may also include post-deployment Integration Services or other Services which are to be provided following the date of functional demonstration (“**Post-Deployment Services**”). Post-Deployment Services will be invoiced upon their completion and paid by Customer in accordance with the terms of the MCA.

13. On-Premises Software System Warranty. Subject to the disclaimers in the MCA and any other applicable Addenda, Motorola represents and warrants that, on the System Completion Date for an on-premises Software System described in **Section 2.1 – On-Premises Software System**, or on the applicable Product Completion Date for a specific Product within such on-premises Software System, if earlier, (a) such Software System or Product will perform

in accordance with the descriptions in the applicable Ordering Documents in all material respects, and (b) if Customer has purchased any Equipment or Motorola Licensed Software (but, for clarity, excluding Subscription Software) as part of such on-premises Software System, the warranty period applicable to such Equipment and Motorola Licensed Software will continue for a period of one (1) year commencing upon the System Completion Date for the Software System that includes such Products, or on the applicable Product Completion Date, if earlier, instead of commencing upon delivery of the Products in accordance with the terms and conditions set forth in **Section 6 – Representations and Warranties; Liabilities** of the EPSLA. The warranties set forth in the applicable Addenda are not otherwise modified by this SPA.

14. Prohibited Use. Customer will not integrate or use, or permit a third party or an Authorized User to integrate or use, any Non-Motorola Content with or in connection with a Software System or other software Product provided by Motorola under this SPA, without the express written permission of Motorola.

15. API Support. Motorola will use commercially reasonable efforts to maintain its Application Programming Interface (“API”) offered sold in connection with any Software System. APIs will evolve and mature over time, requiring changes and updates. Motorola will use reasonable efforts to continue supporting any version of an API for 6 months after such version is introduced, but if Motorola determines, in its sole discretion, determines to discontinue support of an API for any reason, Motorola will provide reasonable advance notification to Customer. If an API presents a security risk, Motorola may discontinue an API without prior notice.

16. Support of Downloaded Clients. If Customer purchases any software Product that requires a client installed locally on any Customer-Provided Equipment or Equipment in possession of Customer, Customer will be responsible for downloading and installing the current version of such client, as it may be updated from time to time. Motorola will use reasonable efforts to continue supporting any version of a client for forty-five (45) days following its release, but Motorola may update the current version of its client at any time, including for bug fixes, product improvements, and feature updates, and Motorola makes no representations or warranties that any software Product will support prior versions of a client.

17. Applicable End User Terms. Additional license terms apply to third-party software included in CAD and Records Products which are available online at: www.motorolasolutions.com/legal-flow-downs. Customer will comply, and ensure its Authorized Users comply, with all such additional license terms.

18. Additional Terms for On-Premise Software System as a Service. The terms set forth in this **Section 10 – Additional Terms for On-Premise Software System as a Service** apply in the event Customer purchases an on-premises Software System as a service under this SPA.

18.1. Transition to Subscription License Model. If the Parties mutually agree that any on-premises Subscription Software purchased under this SPA as part of an on-premises Software System as a service will be replaced with or upgraded to Subscription Software hosted in a data center, then upon such time which the Parties execute the applicable Ordering Document, (a) the licenses granted to such on-premises Subscription Software under the applicable Ordering Document will automatically terminate, (b) Customer and its Authorized Users will cease use of the applicable on-premises copies of Subscription Software, and (c) the replacement hosted Subscription Software provided hereunder will be governed by the terms of the SSA and this SPA.

18.2. Transition Fee. Motorola will not charge additional Fees for Services related to the transition to hosted Subscription Software, as described in **Section 10.1 – Transition to Subscription License Model**. Notwithstanding the foregoing, subscription Fees for the applicable hosted Subscription Software are subject to the SSA and the applicable Ordering Document, and may be greater than Fees paid by Customer for on-premises Subscription Software.

18.3. Software Decommissioning. Upon (a) transition of the on-premises Software System as a service to Subscription Software hosted in a data center or (b) any termination of the Subscription Software license for the on-premises Software System as a service, Motorola will have the right to enter Customer Sites and decommission the applicable on-premises Subscription Software that is installed at Customer's Site or on Customer-Provided Equipment. For clarity, Customer will retain the right to use Licensed Software that is firmware incorporated into Equipment purchased by Customer from Motorola and any Microsoft operating system Licensed Software.

19. Additional Terms for CAD and Records Products. The terms set forth in this **Section 11 – Additional Terms for CAD and Records Products** apply in the event Customer purchases any Computer Aided Dispatch (“CAD”) or Records Products under this SPA.

19.1. Support Required. Customer acknowledges and agrees that the licenses granted by Motorola under the Agreement to CAD and Records Products for on-premises Software Systems are conditioned upon Customer purchasing Maintenance and Support Services for such Products during the term of the applicable license. If at any time during the term of any such license, Customer fails to purchase associated Maintenance and Support Services (or pay the fees for such Services), Motorola will have the right to terminate or suspend the software licenses for CAD and Record Products, and this SPA or the applicable Ordering Document.

19.2. CJIS Security Policy. Motorola agrees to support Customer's obligation to comply with the Federal Bureau of Investigation Criminal Justice Information Services (“CJIS”) Security Policy and will comply with the terms of the CJIS Security Addendum for the term of the Addendum or Ordering Document for the applicable Product. Customer hereby consents to Motorola screened personnel serving as the “escort” within the meaning of CJIS Security Policy for unscreened Motorola personnel that require access to unencrypted Criminal Justice Information for purposes of Product support and development.

20. Additional Cloud Terms. The terms set forth in this **Section 12 – Additional Cloud Terms** apply in the event Customer purchases any cloud hosted software.

20.1. Data Storage. Motorola will determine, in its sole discretion, the location of the stored content for cloud hosted software. All data, replications, and backups will be stored at a location in the United States for Customers in the United States.

20.2. Data Retrieval. Cloud hosted software will leverage different types of storage to optimize software, as determined in Motorola's sole discretion. For multimedia data, such as videos, pictures, audio files, Motorola will, in its sole discretion, determine the type of storage medium used to store the content. The type of storage and medium selected by Motorola will determine the data retrieval speed. Access to content in archival storage may take up to 24 hours to be viewable.

20.3. Maintenance. Scheduled maintenance of cloud hosted Software will be performed periodically. Motorola will make commercially reasonable efforts to notify customers one (1) week in advance of any such maintenance. Unscheduled and emergency maintenance may be required from time to time. Motorola will make commercially reasonable efforts to notify customers of any unscheduled or emergency maintenance 24 hours in advance.

21. Survival. The following provisions will survive the expiration or termination of this SPA for any reason: **Section 1 – Addendum; Section 2 – Software Systems; Applicable Terms and Conditions; Section 6 – Prohibited Use; Section 9 – Applicable End User Terms; Section 13 – Survival.**

Subscription Software Addendum

This Subscription Software Addendum (this “**SSA**”) is entered into between Motorola Solutions, Inc., with offices at 500 W. Monroe Street, Suite 4400, Chicago, IL 60661 (“**Motorola**”) and the entity set forth in the signature block below or in the MCA (“**Customer**”), and will be subject to, and governed by, the terms of the Master Customer Agreement entered into between the Parties, effective as of [REDACTED] (the “**MCA**”). Capitalized terms used in this SSA, but not defined herein, will have the meanings set forth in the MCA.

1. Addendum. This SSA governs Customer’s purchase of Subscription Software (and, if set forth in an Ordering Document, related Services) from Motorola, and will form part of the Parties’ Agreement. Additional Subscription Software-specific Addenda or other terms and conditions may apply to certain Subscription Software, where such terms are provided or presented to Customer.

2. Delivery of Subscription Software.

2.1. Delivery. During the applicable Subscription Term (as defined below), Motorola will provide to Customer the Subscription Software set forth in an Ordering Document, in accordance with the terms of the Agreement. Motorola will provide Customer advance notice (which may be provided electronically) of any planned downtime. Delivery will occur upon Customer’s receipt of credentials required for access to the Subscription Software or upon Motorola otherwise providing access to the Subscription Software. If agreed upon in an Ordering Document, Motorola will also provide Services related to such Subscription Software.

2.2. Modifications. In addition to other rights to modify the Products and Services set forth in the MCA, Motorola may modify the Subscription Software, any associated recurring Services and any related systems so long as their functionality (as described in the applicable Ordering Document) is not materially degraded. Documentation for the Subscription Software may be updated to reflect such modifications. For clarity, new features or enhancements that are added to any Subscription Software may be subject to additional Fees.

2.3. User Credentials. If applicable, Motorola will provide Customer with administrative user credentials for the Subscription Software, and Customer will ensure such administrative user credentials are accessed and used only by Customer’s employees with training on their proper use. Customer will protect, and will cause its Authorized Users to protect, the confidentiality and security of all user credentials, including any administrative user credentials, and maintain user credential validity, including by updating passwords. Customer will be liable for any use of the Subscription Software through such user credential (including through any administrative user credentials), including any changes made to the Subscription Software or issues or user impact arising there from. To the extent Motorola provides Services to Customer in order to help resolve issues resulting from changes made to the Subscription Software through user credentials, including through any administrative user credentials, or issues otherwise created by Authorized Users, such Services will be billed to Customer on a time and materials basis, and Customer will pay all invoices in accordance with the payment terms of the MCA.

2.4. Beta Services. If Motorola makes any beta version of a software application (“**Beta Service**”) available to Customer, Customer may choose to use such Beta Service at its own discretion, provided, however, that Customer will use the Beta Service solely for purposes of Customer’s evaluation of such Beta Service, and for no other purpose. Customer acknowledges and agrees that all Beta Services are offered “as-is” and without any representations or warranties or other commitments or protections from Motorola. Motorola will determine the duration of the

evaluation period for any Beta Service, in its sole discretion, and Motorola may discontinue any Beta Service at any time. Customer acknowledges that Beta Services, by their nature, have not been fully tested and may contain defects or deficiencies.

3. Subscription Software License and Restrictions.

3.1. Subscription Software License. Subject to Customer's and its Authorized Users' compliance with the Agreement, including payment terms, Motorola hereby grants Customer and its Authorized Users a limited, non-transferable, non-sublicenseable, and non-exclusive license to use the Subscription Software identified in an Ordering Document, and the associated Documentation, solely for Customer's internal business purposes. The foregoing license grant will be limited to use in the territory and to the number of licenses set forth in an Ordering Document (if applicable), and will continue for the applicable Subscription Term. Customer may access, and use the Subscription Software only in Customer's owned or controlled facilities, including any authorized mobile sites; provided, however, that Authorized Users using authorized mobile or handheld devices may also log into and access the Subscription Software remotely from any location. No custom development work will be performed under this Addendum.

3.2. End User Licenses. Notwithstanding any provision to the contrary in the Agreement, certain Subscription Software is governed by a separate license, EULA, or other agreement, including terms governing third-party software, such as open source software, included in the Subscription Software. Customer will comply, and ensure its Authorized Users comply, with such additional license agreements.

3.3. Customer Restrictions. Customers and Authorized Users will comply with the applicable Documentation and the copyright laws of the United States and all other relevant jurisdictions (including the copyright laws where Customer uses the Subscription Software) in connection with their use of the Subscription Software. Customer will not, and will not allow others including the Authorized Users, to make the Subscription Software available for use by unauthorized third parties, including via a commercial rental or sharing arrangement; reverse engineer, disassemble, or reprogram software used to provide the Subscription Software or any portion thereof to a human-readable form; modify, create derivative works of, or merge the Subscription Software or software used to provide the Subscription Software with other software; copy, reproduce, distribute, lend, or lease the Subscription Software or Documentation for or to any third party; take any action that would cause the Subscription Software, software used to provide the Subscription Software, or Documentation to be placed in the public domain; use the Subscription Software to compete with Motorola; remove, alter, or obscure, any copyright or other notice; share user credentials (including among Authorized Users); use the Subscription Software to store or transmit malicious code; or attempt to gain unauthorized access to the Subscription Software or its related systems or networks.

4. Term.

4.1. Subscription Terms. The duration of Customer's subscription to the first Subscription Software and any associated recurring Services ordered under this SSA (or the first Subscription Software or recurring Service, if multiple are ordered at once) will commence upon delivery of such Subscription Software (and recurring Services, if applicable) and will continue for a twelve (12) month period or such longer period identified in an Ordering Document (the "**Initial Subscription Period**"). Following the Initial Subscription Period, Customer's subscription to the Subscription Software and any recurring Services will automatically renew for additional twelve (12) month periods (each, a "**Renewal Subscription Year**"), unless either Party notifies the other Party of its

intent not to renew at least thirty (30) days before the conclusion of the then-current Subscription Term. (The Initial Subscription Period and each Renewal Subscription Year will each be referred to herein as a “**Subscription Term**”.) Motorola may increase Fees prior to any Renewal Subscription Year. In such case, Motorola will notify Customer of such proposed increase no later than thirty (30) days prior to commencement of such Renewal Subscription Year. Unless otherwise specified in the applicable Ordering Document, if Customer orders any additional Subscription Software or recurring Services under this SSA during an in-process Subscription Term, the subscription for each new Subscription Software or recurring Service will (a) commence upon delivery of such Subscription Software or recurring Service, and continue until the conclusion of Customer’s then-current Subscription Term (a “**Partial Subscription Year**”), and (b) automatically renew for Renewal Subscription Years thereafter, unless either Party notifies the other Party of its intent not to renew at least thirty (30) days before the conclusion of the then-current Subscription Term. Thus, unless otherwise specified in the applicable Ordering Document, the Subscription Terms for all Subscription Software and recurring Services hereunder will be synchronized.

4.2. Term. The term of this SSA (the “**SSA Term**”) will commence upon either (a) the Effective Date of the MCA, if this SSA is attached to the MCA as of such Effective Date, or (b) the SSA Date set forth on the signature page below, if this SSA is executed after the MCA Effective Date, and will continue until the expiration or termination of all Subscription Terms under this SSA, unless this SSA or the Agreement is earlier terminated in accordance with the terms of the Agreement.

4.3. Termination. Notwithstanding the termination provisions of the MCA, Motorola may terminate this SSA (or any Addendum or Ordering Documents hereunder), or suspend delivery of Subscription Software or Services, immediately upon notice to Customer if (a) Customer breaches **Section 3 – Subscription Software License and Restrictions** of this SSA, or any other provision related to Subscription Software license scope or restrictions set forth in an Addendum or Ordering Document, or (b) it determines that Customer’s use of the Subscription Software poses, or may pose, a security or other risk or adverse impact to any Subscription Software, Motorola, Motorola’s systems, or any third party (including other Motorola customers). Customer acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Subscription Software and Documentation, and that Customer’s breach of the Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Customer breaches this Agreement, in addition to termination, Motorola will be entitled to all available remedies at law or in equity (including immediate injunctive relief).

4.4. Wind Down of Subscription Software. In addition to the termination rights in the MCA, Motorola may terminate any Ordering Document and Subscription Term, in whole or in part, in the event Motorola plans to cease offering the applicable Subscription Software or Service to customers.

5. Payment.

5.1. Payment. Unless otherwise provided in an Ordering Document (and notwithstanding the provisions of the MCA), Customer will prepay an annual subscription Fee set forth in an Ordering Document for each Subscription Software and associated recurring Service, before the commencement of each Subscription Term. For any Partial Subscription Year, the applicable annual subscription Fee will be prorated based on the number of months in the Partial Subscription Year. The annual subscription Fee for Subscription Software and associated recurring Services may include certain one-time Fees, such as start-up fees, license fees, or other fees set forth in an Ordering Document. Motorola will have the right to suspend the Subscription Software and any recurring Services if Customer fails to make any payments when due.

5.2. License True-Up. Motorola will have the right to conduct an audit of total user licenses credentialed by Customer for any Subscription Software during a Subscription Term, and Customer will cooperate with such audit. If Motorola determines that Customer's usage of the Subscription Software during the applicable Subscription Term exceeded the total number of licenses purchased by Customer, Motorola may invoice Customer for the additional licenses used by Customer, pro-rated for each additional license from the date such license was activated, and Customer will pay such invoice in accordance with the payment terms in the MCA.

6. Liability.

6.1. ADDITIONAL EXCLUSIONS. IN ADDITION TO THE EXCLUSIONS FROM DAMAGES SET FORTH IN THE MCA, AND NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, MOTOROLA WILL HAVE NO LIABILITY FOR (A) INTERRUPTION OR FAILURE OF CONNECTIVITY, VULNERABILITIES, OR SECURITY EVENTS; (B) DISRUPTION OF OR DAMAGE TO CUSTOMER'S OR THIRD PARTIES' SYSTEMS, EQUIPMENT, OR DATA, INCLUDING DENIAL OF ACCESS TO USERS, OR SHUTDOWN OF SYSTEMS CAUSED BY INTRUSION DETECTION SOFTWARE OR HARDWARE; (C) AVAILABILITY OR ACCURACY OF ANY DATA AVAILABLE THROUGH THE SUBSCRIPTION SOFTWARE OR SERVICES, OR INTERPRETATION, USE, OR MISUSE THEREOF; (D) TRACKING AND LOCATION-BASED SERVICES; OR (E) BETA SERVICES.

6.2. Voluntary Remedies. Motorola is not obligated to remedy, repair, replace, or refund the purchase price for the disclaimed or excluded issues in the MCA or **Section 6.1 – Additional Exclusions** above, but if Motorola agrees to provide Services to help resolve such issues, Customer will reimburse Motorola for its reasonable time and expenses, including by paying Motorola any Fees set forth in an Ordering Document for such Services, if applicable.

7. Motorola as a Controller or Joint Controller. In all instances where Motorola acts as a controller of data, it will comply with the applicable provisions of the Motorola Privacy Statement at https://www.motorolasolutions.com/en_us/about/privacy-policy.html#privacystatement, as may be updated from time to time. Motorola holds all Customer Contact Data as a controller and shall Process such Customer Contact Data in accordance with the Motorola Privacy Statement. In instances where Motorola is acting as a joint controller with Customer, the Parties will enter into a separate Addendum to the Agreement to allocate the respective roles as joint controllers.

8. Survival. The following provisions will survive the expiration or termination of this SSA for any reason: **Section 4 – Term; Section 5 – Payment; Section 6.1 – Additional Exclusions; Section 8 – Survival.**

Mobile Video Addendum

This Mobile Video Addendum (this “**MVA**”) is entered into between Motorola Solutions, Inc., with offices at 500 W. Monroe Street, Suite 4400, Chicago, IL 60661 (“**Motorola**”) and Customer (as defined in the MCA), and will be subject to, and governed by, the terms of the Master Customer Agreement, available at www.motorolasolutions.com/product-terms (the “**MCA**”), and the applicable Addenda. Capitalized terms used in this MVA, but not defined herein, will have the meanings set forth in the MCA or the applicable Addenda.

22. Addendum. This MVA, available at www.motorolasolutions.com/product-terms, governs Customer’s purchase of any Motorola mobile video Products, including participation in Motorola’s Video-as-a-Service Program (“**VaaS Program**”). A “**Mobile Video System**” is a solution that includes at least one mobile video Product and requires Integration Services to deploy such mobile video Product or the associated evidence management Product at a Customer Site. In addition to the MCA, other Addenda may be applicable to Products offered under this MVA, including the Subscription Software Addendum (“**SSA**”), with respect to Subscription Software, and the Equipment Purchase and Software License Addendum (“**EPSLA**”), with respect to Licensed Software and Equipment, as each of those terms are defined therein, and as further described below. This MVA will control with respect to conflicting or ambiguous terms in the MCA or any other applicable Addendum, but only as applicable to the Mobile Video System or other Products purchased under this MVA and not with respect to other Products or Services.

23. Evidence Management Systems; Applicable Terms and Conditions.

23.1. On-Premise Evidence Management. If Customer purchases a Mobile Video System where Equipment and Licensed Software for evidence management is installed at Customer Sites (an “**On-Premises Evidence Management System**”), then, unless the Ordering Document(s) specify that any software is being purchased on a subscription basis (i.e., as Subscription Software), any (i) Equipment and (ii) Licensed Software installed at Customer Sites or on Customer-Provided Equipment, in each case purchased in connection with the On-Premises Evidence Management System, are subject to the EPSLA. On-Premises Evidence Management Systems described in this Section qualify for the System Warranty as described in **Section 4 – On-Premises Evidence Management System Warranty** (the “**System Warranty**”).

23.2. Cloud Hosted Evidence Management. If Customer purchases Mobile Video System where the software for evidence management is hosted in a data center and provided to Customer as a service (“**Cloud Hosted Evidence Management System**”), including CommandCentral Evidence and EvidenceLibrary.com Products, then such Cloud Hosted Evidence Management System is subject to the SSA. Any Equipment purchased in connection with Cloud Hosted Evidence Management System is subject to the EPSLA. Cloud Hosted Evidence Management System described in this Section do not qualify for the System Warranty. System completion, however, is determined in accordance with the provisions of **Section 7 –System Completion** below.

23.3. Services. Any Integration Services or Maintenance and Support Services purchased in connection with, or included as a part of, a Mobile Video System are subject to the MCA, and as described in the applicable Ordering Document.

24. Payment. Customer will pay invoices for the Products and Services covered by this MVA in accordance with the invoice payment terms set forth in the MCA. Fees for Mobile Video Systems will be invoiced as of the System Completion Date, unless another payment process or schedule or milestones are set forth in an Ordering Document or applicable Addendum. In addition to

Equipment, Licensed Software, Subscription Software and Integration Services (as applicable) sold as part of a Mobile Video System, the Ordering Documents for a Mobile Video System may also include post-deployment Integration Services or other Services which are to be provided following the date of functional demonstration (“**Post-Deployment Services**”). Post-Deployment Services will be invoiced upon their completion and paid by Customer in accordance with the terms of the MCA.

25. On-Premises Evidence Management System Warranty. Subject to the disclaimers in the MCA and any other applicable Addenda, Motorola represents and warrants that, on the System Completion Date (as defined below) for an On-Premises Evidence Management System described in **Section 2.1 – On-Premises Evidence Management** (a) such On-Premises Evidence Management System will perform in accordance with the descriptions in the applicable Ordering Documents in all material respects, and (b) if Customer has purchased any Equipment or Motorola Licensed Software (but, for clarity, excluding Subscription Software) as part of such On-Premises Evidence Management System, the warranty period applicable to such Equipment and Motorola Licensed Software will continue for a period of one (1) year commencing upon the System Completion Date for the On-Premises Evidence Management System that includes such Products, or on the applicable Product Completion Date, if earlier, instead of commencing upon delivery of the Products in accordance with the terms and conditions set forth in **Section 6 – Representations and Warranties; Liabilities** of the EPSLA. The warranties set forth in the applicable Addenda are not otherwise modified by this MVA.

26. Additional Software and Video Terms.

26.1. Unlimited Storage. In the event Customer purchases a Cloud Hosted Evidence Management System with “Unlimited Storage”, including evidence management under the VaaS Program, then “Unlimited Storage” means storage of all data captured using Equipment sold under this MVA, provided that (1) video recordings are recorded in an event-based setting where users are not recording an entire shift under one video footage and (2) Customer’s data retention policies and practices do not result in the retention of data beyond the statutory minimums set forth by the State in which the Customer resides. In the event Customer does not comply with the preceding clauses (1) and (2), Motorola shall have the right to charge Customer for such excess data storage at the prevailing rates. Motorola also has the right to place any data that has not been accessed for a consecutive six (6) month period into archival storage, retrieval of which may take up to twenty-four (24) hours from any access request.

26.2. Applicable End User Terms. Additional license terms apply to third-party software included in certain software Products which are available online at: www.motorolasolutions.com/legal-flow-downs. Customer will comply, and ensure its Authorized Users comply, with all such additional license terms.

26.3. WatchGuard Detector Mobile. Any order by Customer of WatchGuard Detector Mobile is on a subscription basis and subject to the SSA.

26.4. Vigilant Access. Customer may opt for subscription to additional Subscription Software, including use of the Law Enforcement Archival Network (“**LEARN**”), which is subject to the SSA and any additional terms governing the use of LEARN. If Customer purchases a subscription to commercial license plate recognition data, then Customer will execute and agree to the terms of Motorola’s standard Data License Addendum.

26.5. License Plate Recognition Data. License plate recognition (“**LPR**”) data collected by Customer is considered Customer Data (as defined in the MCA) and is therefore subject to the Customer’s own retention policy. Customer, at its option, may share its LPR data with other similarly situated Law Enforcement Agencies (“**LEAs**”) which contract with Motorola to access LEARN by selecting this option within LEARN. Other similarly situated LEAs may similarly opt to share their LPR data with Customer using LEARN. Such LPR data generated by other LEAs is considered Third-Party Data (as defined in the MCA), is governed by the retention policy of the respective LEA, and shall be used by Customer only in connection with its use of LEARN. LPR data that has reached its expiration date will be deleted from LEARN. Only individuals who are agents and/or sworn officers of Customer and who are authorized by Customer to access LEARN on behalf of Customer through login credentials provided by Customer (“**User Eligibility Requirements**”) may access LEARN. Vigilant in its sole discretion may deny access to LEARN to any individual based on such person’s failure to meet the User Eligibility Requirements. Customer will ensure no user logins are provided to agents or officers of other local, state, or Federal LEAs without the express written consent of Vigilant. Customer will be responsible for all individuals’ access to, and use of, LEARN through use of Customer login credentials, including ensuring their compliance with this Agreement.

26.6. API Support. Motorola will use commercially reasonable efforts to maintain its Application Programming Interface (“**API**”) sold in connection with any Mobile Video System. APIs will evolve and mature over time, requiring changes and updates. Motorola will use reasonable efforts to continue supporting any version of an API for six (6) months after such version is introduced, but if Motorola determines, in its sole discretion, to discontinue support of an API for any reason, Motorola will provide reasonable advance notification to Customer. If an API presents a security risk, Motorola may discontinue an API without prior notice.

26.7. Support of Downloaded Clients. If Customer purchases any software Product that requires a client installed locally on Customer-Provided Equipment or Equipment in possession of Customer, Customer will be responsible for downloading and installing the current version of such client, as it may be updated from time to time. Motorola will use reasonable efforts to continue supporting any version of a client for forty-five (45) days following its release, but Motorola may update the current version of its client at any time, including for bug fixes, product improvements, and feature updates, and Motorola makes no representations or warranties that any software Product will support prior versions of a client.

26.8. CJIS Security Policy. Motorola agrees to support Customer’s obligation to comply with the Federal Bureau of Investigation Criminal Justice Information Services (“**CJIS**”) Security Policy and will comply with the terms of the CJIS Security Addendum for the term of the Addendum or Ordering Document for the applicable Product. Customer hereby consents to Motorola screened personnel serving as the “escort” within the meaning of CJIS Security Policy for unscreened Motorola personnel that require access to unencrypted Criminal Justice Information for purposes of Product support and development.

27. VaaS Program Terms. All hardware provided by Motorola to Customer under the VaaS Program will be considered “Equipment”, as defined in the EPSLA, and constitutes a purchase of such Equipment subject to the terms of the EPSLA. Additionally, the following terms and conditions apply to any Equipment purchased under the VaaS Program:

27.1. Technology Refresh. All body cameras and associated batteries purchased under the VaaS Program (“**Body Cameras**”) are eligible for a one-time replacement at no additional cost to the Customer beginning on the date three (3) years following the date of delivery of the initial Body

Cameras and associated batteries provided under the VaaS Program. In order to receive any replacement Body Camera applicable under this **Section 6.1 – Technology Refresh**, Customer must return the existing Body Camera to Motorola in working condition. The corresponding replacement Body Camera will be the then-current model of the Body Camera at the same tier as the Body Camera that is returned to Motorola. For clarity, any other Equipment received by Customer as part of the VaaS Program, other than Body Cameras, will not be eligible for a technology refresh hereunder.

27.2. No-Fault Warranty. Subject to the disclaimers set forth in the MCA and EPSLA, upon delivery of any Equipment purchased as part of the VaaS Program, Motorola will provide a No-fault Warranty to Customer for such Equipment that extends until the end of the Commitment Term (as defined below) applicable to such Equipment; except that the No-fault Warranty will not apply to: (i) any Equipment with intentionally altered or removed serial numbers, (ii) any other damages disclaimed under the MCA or EPSLA, or (iii) any Equipment that Motorola determines was changed, modified, or repaired by Customer or any third party. The **“No-fault Warranty”** means that Motorola will repair or replace any Equipment components or parts that render the applicable Equipment unable to perform its intended purpose. With respect to any batteries in Body Cameras, a battery will be considered faulty and covered under this No-fault Warranty if it falls below sixty percent (60%) of rated capacity.

27.3. Commitment Term. Customer accepts that following the delivery of any Equipment under the VaaS Program, Customer commits to a five (5) year subscription term for such Equipment at the rate provided in the Ordering Document (the **“Initial Commitment Term”**). If Customer, for any reason, terminates any of its obligations to Motorola prior to expiration of the applicable Commitment Term (as defined below), Customer will be subject to the payments described in **Section 6.7.2 – Termination** hereunder.

27.4. Additional Devices. Any additional Equipment, including any accessory items, ordered by Customer after Customers’ initial purchase of Equipment hereunder may be subject to an incremental increase in Fees. In the event Customer orders additional Equipment under the VaaS Program within the ninety (90) days immediately following its initial purchase, such Equipment will be included in and subject to the Initial Commitment Term. Any additional Equipment purchased under the VaaS Program subsequent to such ninety (90) day period, will commence an additional subscription term commitment for such Equipment of five (5) years (a **“Subsequent Commitment Term”**) with respect to the monthly Fee associated with such additional Equipment. For purposes of this Addendum, the Initial Commitment Term and each Subsequent Commitment Term are each also referred to herein as a **“Commitment Term”**.

27.5. Included Subscription Software.

27.5.1. EvidenceLibrary.com. Subject to **Section 6.7.1 – VaaS Term**, the VaaS Program provides Customer with a subscription to the Cloud Hosted Evidence Management System specified in the Ordering Document during the VaaS Term (as defined below), the use of which is subject to the SSA. Customer’s subscription will include unlimited users, Unlimited Storage and unlimited sharing, provided any media or data uploaded to the Cloud Hosted Evidence Management System is done so using Motorola Equipment actively enrolled in the VaaS Program. Following expiration of the applicable Commitment Term, if Customer desires to continue use of expired Equipment with the Cloud Hosted Evidence Management System, Customer must purchase additional access to Cloud Hosted Evidence Management System based

on Motorola's prevailing rates, or Motorola may disconnect connectivity of any expired Equipment to the Cloud Hosted Evidence Management System.

27.5.2. CommandCentral. For each Body Camera, in-car system or integrated system purchased, Customer will receive one user license for Motorola CommandCentral, which provides access to CC Community, CC Capture, CC Vault and CC Records. If the Customer requires additional licenses to CommandCentral they must be purchased for an additional fee.

27.5.3. CarDetector Mobile. If Customer's VaaS Program order includes an in-car system, Customer will receive a subscription to WatchGuard CarDetector Mobile during the VaaS Term, the use of which is subject to the SSA.

27.6. VaaS Program Payment. Unless otherwise provided in an Ordering Document (and notwithstanding the provisions of the MCA), Customer will prepay a subscription Fee quarterly (each a "**Subscription Quarter**"), as set forth in an Ordering Document. If Customer orders any additional Product(s) under the VaaS Program subsequent to the initial purchase by Customer, Fees for such additional Product will be added to the quarterly subscription Fee, and will be payable on the same Fee payment schedule as the initial Product purchased under the VaaS Program; provided, however, that for the first Subscription Quarter during which such additional Product is purchased, the subscription Fee for the applicable additional Product will be pro-rated based on the applicable number of days remaining in the such initial Subscription Quarter.

27.7. VaaS Program Term and Termination.

27.7.1. VaaS Term. Customer's participation in the VaaS Program will commence upon the System Completion Date under this MVA, and will continue through the end of the final Commitment Term hereunder ("the "**VaaS Term**"). Following the end of any Commitment Term, Customer's access to the Cloud Hosted Evidence Management System with respect to the Equipment purchased relative to that Commitment Term will expire, and Customer must download or transfer all Customer Data associated with the applicable Equipment within thirty (30) days following expiration unless Customer purchases extended access to the Cloud Hosted Evidence Management System from Motorola at the prevailing rates. Motorola has no obligation to retain Customer Data for expired Equipment beyond thirty (30) days following expiration of the applicable Commitment Term. For example, if Customer purchases 100 devices on January 1 of Year 1 of the VaaS Term, and then 100 additional devices on January 1 of Year 3, on December 31 of Year 5 (i.e., the conclusion of the Initial Commitment Term), Customer's access to the Cloud Hosted Evidence Management System with respect to the first 100 devices will be discontinued, and Customer must purchase extended storage or transfer all Customer Data associated with the first 100 devices within thirty (30) days of expiration of the Initial Commitment Term. In the foregoing example, the Cloud Hosted Evidence Management System access and data storage for the second 100 devices purchase will extend until December 31 of Year 7.

27.7.2. Termination. The termination provisions applicable to the VaaS Program will be those set forth in the MCA, EPSLA and SSA, as applicable. If Customer's participation in the VaaS Program is terminated for any reason prior to the end of the Initial Commitment Term or any Subsequent Commitment Term, Customer will pay the pro-rated remainder of the aggregate Equipment MSRP price (prevailing as

of the time of delivery), calculated by multiplying the MSRP price of all Equipment purchased under the VaaS Program by the percentage resulting from dividing the number of months remaining in the Commitment Term applicable to such Equipment by sixty (60). In the event Customer purchased Equipment on multiple dates, resulting in separate Commitment Terms for certain Equipment, the preceding calculation will be made relative to the applicable Commitment Term for each Equipment order. For example, if Customer purchased \$1,000 worth of Equipment on January 1 of Year 1 of the VaaS Term, and then \$1,000 worth of Equipment on January 1 of Year 2, and then Customer's VaaS Program terminates on December 31 of Year 3, Customer will be required to repay: $\$1,000 \times (24/60) + \$1,000 \times (36/60)$, which is equal to \$1,000 in the aggregate.

28. System Completion. Any Mobile Video System sold hereunder will be deemed completed upon Customer's (or the applicable Authorized User's) Beneficial Use of the applicable Mobile Video System (the "**System Completion Date**"). Customer will not unreasonably delay Beneficial Use, and in any event, the Parties agree that Beneficial Use will be deemed to have occurred thirty (30) days after functional demonstration. As used in this Section, "**Beneficial Use**" means use by Customer or at least one (1) Authorized User of the material features and functionalities of Mobile Video System, in material conformance with Product descriptions in the applicable Ordering Document. Any additional Equipment sold in connection with the initial Mobile Video System shall be deemed delivered in accordance of the terms of the EPSLA. Any additional Subscription Software purchased under the VaaS Program will be deemed delivered upon Customer's receipt of credentials required for access to the Cloud Hosted Evidence Management System or upon Motorola otherwise providing access to the Cloud Hosted Evidence Management System. This Section applies to Products purchased under the MVA notwithstanding the delivery provisions of the Addendum applicable to such Products, such as the SSA or EPSLA, and this Section will control over such other delivery provisions to the extent of a conflict.

29. Additional Cloud Terms. The terms set forth in this **Section 8 – Additional Cloud Terms** apply in the event Customer purchases any cloud hosted software Products under this MVA, including a Cloud Hosted Evidence Management System.

29.1. Data Storage. Motorola will determine, in its sole discretion, the location of the stored content for cloud hosted software Products. All data, replications, and backups will be stored at a location in the United States for Customers in the United States.

29.2. Data Retrieval. Cloud hosted software Products will leverage different types of storage to optimize software, as determined in Motorola's sole discretion. For multimedia data, such as videos, pictures, audio files, Motorola will, in its sole discretion, determine the type of storage medium used to store the content. The type of storage and medium selected by Motorola will determine the data retrieval speed. Access to content in archival storage may take up to twenty-four (24) hours to be viewable.

29.3. Availability. Motorola will make reasonable efforts to provide monthly availability of 99.9% for cloud hosted software Products with the exception of maintenance windows. There are many factors beyond Motorola's control that may impact Motorola's ability to achieve this goal.

29.4. Maintenance. Scheduled maintenance of cloud hosted software Products will be performed periodically. Motorola will make commercially reasonable efforts to notify customers one (1) week in advance of any such maintenance. Unscheduled and emergency maintenance may be required

from time to time. Motorola will make commercially reasonable efforts to notify customers of any unscheduled or emergency maintenance twenty-four (24) hours in advance.

30. Survival. The following provisions will survive the expiration or termination of this MVA for any reason: **Section 1 – Addendum; 2 – Evidence Management Systems; Applicable Terms and Conditions; Section 3 – Payment; Section 5.2 – Applicable End User Terms; Section 6.5.1 – EvidenceLibrary.com; Section 6.7 – VaaS Program Term and Termination; Section 9 – Survival.**

ECH Add-on Cloud Interface Software Addendum

This ECH Add-on Cloud Software as a Service Addendum (this “**Interface Addendum**”) is entered into between Motorola Solutions, Inc., with offices at 500 W. Monroe Street, Suite 4400, Chicago, IL 60661 (“**Motorola**”) and the entity set forth in the signature block below or in the Subscription Software Agreement (“**Customer**”), and will be subject to, and governed by, the terms of the Subscription Software Agreement entered into between the Parties, effective as of _____ (the “**Subscription Software Agreement**”), and the applicable Addenda. Capitalized terms used in this Interface Addendum, but not defined herein, will have the meanings set forth in the Subscription Software Agreement or the applicable Addenda.

31. Scope. This Interface Addendum covers certain add-on cloud products listed in EXHIBIT 1 (the “**Add-on Cloud Products**”) and will control with respect to conflicting terms in the Subscription Software Agreement or any other applicable Addendum, but only as applicable to the products and Services purchased under this Interface Addendum. A list of the on-premise software available for license under this Interface Addendum is attached hereto as EXHIBIT 2 (collectively, the “**Cloud Interface Software**”). In connection with the Add-on Cloud Products, Customer may also purchase certain Add-On Cloud Services as described in **Section 2.2 Services** hereto.

32. Applicable Terms and Conditions.

32.1. Cloud Interface Software

32.1.1. Software License. Subject to Customer’s and its Authorized Users’ compliance with the Subscription Software Agreement (including payment terms), Motorola hereby grants Customer and its Authorized Users a limited, non-transferable, non-sublicenseable, and non-exclusive license to use the Cloud Interface Software identified in an Ordering Document, in object code form only, and the associated Documentation, solely in connection with the equipment provided by Motorola, or Customer-Provided Equipment (as applicable, the “**Designated Products**”) and solely for Customer’s internal business purposes. Unless otherwise stated in an Addendum or the Ordering Document, the foregoing license grant will be limited to the number of licenses set forth in the applicable Ordering Document and will continue for the life of the applicable Designated Product. Except as otherwise permitted in an applicable Addendum or Ordering Document, Customer may install, access, and use Cloud Interface Software only in Customer’s owned or controlled facilities, including any authorized mobile sites; provided, however, that Authorized Users using authorized mobile or handheld devices may also log into and access the Cloud Interface Software remotely from any location.

32.1.2. End User Licenses. Notwithstanding any provision to the contrary in the Subscription Software Agreement, certain Cloud Interface Software is governed by a separate license, end-user license agreement, or other agreement, including terms governing third-party equipment or software, such as open source software, included in the Cloud Interface Software. Customer will comply, and ensure its Authorized Users comply, with any such additional terms applicable to third-party equipment or software.

32.1.3. Customer Restrictions. Customers and Authorized Users will comply with the applicable Documentation in connection with their use of the Cloud Interface Software. Customer will not and will not allow others, including the Authorized

Users, to: (a) make the Cloud Interface Software available for use by unauthorized third parties, including via a commercial rental or sharing arrangement; (b) reverse engineer, disassemble, or reprogram the Cloud Interface Software or any portion thereof to a human-readable form; (c) modify, create derivative works of, or merge the Cloud Interface Software with other software or equipment; (d) copy, reproduce, distribute, lend, lease, or transfer the Cloud Interface Software or Documentation for or to any third party without the prior express written permission of Motorola; (e) take any action that would cause the Cloud Interface Software or Documentation to be placed in the public domain; (f) use the Cloud Interface Software to compete with Motorola; or (g) remove, alter, or obscure, any copyright or other notice.

32.1.4. Copies. Customer may make one (1) copy of the Cloud Interface Software solely for archival, back-up, or disaster recovery purposes during the term of the applicable Cloud Interface Software license. Customer may make as many copies of the Documentation reasonably required for the internal use of the Cloud Interface Software during such Cloud Interface Software's license term. Unless otherwise authorized by Motorola in writing, Customer will not, and will not enable or allow any third party to: (a) install a licensed copy of the Cloud Interface Software on more than one (1) unit of a Designated Product; or (b) copy onto or transfer Cloud Interface Software installed in a unit of a Designated Product onto another device. Customer may temporarily transfer Cloud Interface Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Customer provides written notice to Motorola of the temporary transfer and identifies the device on which the Cloud Interface Software is transferred. Temporary transfer of the Cloud Interface Software to another device must be discontinued when the original Designated Product is returned to operation and the Cloud Interface Software must be removed from the other device. Customer must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

32.1.5. Motorola Warranties. Subject to the disclaimers and exclusions set forth in this Interface Addendum, (a) to the extent permitted by the providers of third-party software included in the Add-on Cloud Products and Services, Motorola will pass through to Customer any warranties provided by such third parties, which warranties will apply for the period defined by the applicable third party, and (b) for a period of ninety (90) days commencing upon delivery of Motorola-owned Cloud Interface software, Motorola represents and warrants that such Cloud Interface Software, when used in accordance with the Documentation and the Interface Addendum, will be free from reproducible defects that prevent operation of features critical to the primary functionality or successful operation of the Motorola-developed Cloud Interface Software (as determined by Motorola). The warranty set forth in subsection (b) will be referred to as the “**Motorola Licensed Software Warranty**”. As Customer's sole and exclusive remedy for any breach of the Motorola Licensed Software Warranty, Motorola will use commercially reasonable efforts to remedy the material defect in the applicable Cloud Interface Software; provided, however, that if Motorola does not remedy such material defect within a reasonable time, then at Motorola's sole option,

Motorola will either replace the defective Cloud Interface Software with functionally-equivalent software, provide substitute software to Customer, or terminate the applicable software license and refund any paid license fees to Customer on a pro-rata basis. For clarity, the Motorola Licensed Software Warranty applies only to the most current version of the Cloud Interface Software issued by Motorola, and issuance of updated versions of any Cloud Interface Software does not result in a renewal or extension of the Motorola Licensed Software Warranty beyond the ninety (90) day warranty period.

32.1.6. WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS AND PASS THROUGH WARRANTIES IN THIS INTERFACE ADDENDUM, PRODUCTS AND SERVICES PURCHASED HEREUNDER ARE PROVIDED “AS IS” AND WITH ALL FAULTS. WARRANTIES SET FORTH IN THE INTERFACE ADDENDUM ARE THE COMPLETE WARRANTIES FOR THE SOFTWARE AND SERVICES AND MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND QUALITY. MOTOROLA DOES NOT REPRESENT OR WARRANT THAT USE OF THE PRODUCTS AND SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF SECURITY VULNERABILITIES, OR THAT THEY WILL MEET CUSTOMER’S PARTICULAR REQUIREMENTS.

32.1.7. ADDITIONAL EXCLUSIONS. IN ADDITION TO THE EXCLUSIONS FROM DAMAGES SET FORTH IN THIS AGREEMENT, AND NOTWITHSTANDING ANY PROVISION OF THE SUBSCRIPTION SOFTWARE AGREEMENT AND THIS INTERFACE ADDENDUM TO THE CONTRARY, MOTOROLA WILL HAVE NO LIABILITY FOR (A) TESTING, MAINTENANCE, REPAIR, INSTALLATION, OR MODIFICATION BY PARTIES OTHER THAN MOTOROLA, OR (B) TRACKING AND LOCATION-BASED SERVICES

32.2. Services.

32.2.1. Motorola will provide services related to purchased Add-on Cloud Products (“**Add-on Cloud Services**”), to the extent set forth in an Ordering Document.

32.2.2. Service Ordering Documents. The Fees for Add-on Cloud Services will be set forth in an Ordering Document and any applicable project schedules. A Customer point of contact will be set forth in the applicable statement of work for the Add-on Cloud Services. For purposes of clarity, each statement of work will be incorporated into, and form an integral part of, the Interface Addendum.

32.2.3. Integration Services. If specified in an Ordering Document, Motorola will provide, for the term of such Ordering Document, (a) design, deployment, and integration Services in order to design, install, set up, configure, and/or integrate the applicable Add-on Cloud Products at the applicable locations, agreed upon by the Parties (“**Integration Services**”) as further described in the applicable statement of work.

32.2.4. Completion of Integration Services. Unless otherwise specified in the applicable Ordering Document, Integration Services described in an Ordering Document will be deemed complete upon the earlier of Customer's (or the applicable Authorized User's) (i) Beneficial Use (as defined below) of the applicable Add-on Cloud Products or (ii) Motorola's functional demonstration to Customer of the installation and integration of the Add-On Services. For clarity, if the Add-On Cloud Products are comprised of more than one product, Motorola may notify Customer that the installation and integration for a particular product have been completed, and Customer may have Beneficial Use of such Add-On Product prior to having Beneficial Use of other Add-On Products. In such case, the installation and integration applicable to such product will be deemed complete upon Customer's Beneficial Use of the product. As used in this Section, "**Beneficial Use**" means the ability to use the material features and functionalities of a product in material conformance with product descriptions in the applicable Ordering Document.

32.2.5. Post-Installation Support and Maintenance Services. Motorola agrees to provide Customer support services, if purchased, as identified in the applicable accepted Order Document and in accordance with the applicable Motorola support documentation. Support for Motorola proprietary software and firmware is available pursuant to Motorola's Next Generation 9-1-1 Software Support Program, a copy of which is attached hereto as **EXHIBIT 3** and incorporated herein by reference. Motorola's Managed Services such as Remote Monitoring, AntiVirus Definition Update Services, Disaster Recovery Services and Patch Management Services are available, if purchased, pursuant to the terms and conditions of the Motorola's Managed Services Offerings Policy which is attached hereto as **EXHIBIT 4** and incorporated herein by reference. The purchase of Add-on Cloud Products includes Cloud Interface Software that allows connectivity to the cloud services. If Customer currently has or purchases a new Monitoring and Response agreement for VESTA 9-1-1, technical support will be included for Add-on Cloud Products. Monitoring of Add-on Cloud Products events will be included as long as additional appropriate application licenses have been acquired and installed.

EXHIBIT 1 – ADD-ON CLOUD PRODUCTS

CommandCentral Citizen Input (“**Citizen Input**”)

CommandCentral Smart Transcription (“**Smart Transcription**”)

CommandCentral Aware (“**Aware**”)

EXHIBIT 2 –CLOUD INTERFACE PRODUCTS

Console Transcription Application (CTA)

VESTA API

VESTA Edge

EXHIBIT 3 - NEXT GENERATION 9-1-1 SOFTWARE SUPPORT PROGRAM

[see attached]

EXHIBIT 4 - MANAGED SERVICES OFFERINGS POLICY

[see attached]

EXHIBIT 5 – M500 AND V300 PRODUCT SCOPE

Managed Software Installation Service; Complete On-Site Install, Training, Configuration, Project Management, Consultation

WGW00122-402

CommandCentral Evidence Standard - Five (5) Year Subscription – Extra User Licenses

SSV00S02600A-05

Digital Evidence Management

Field Response Application

Records Management

Five (5) Year Subscription Duration

Priced Per Named User (Qty = # of Users)

20 qty

Body-worn camera and evidence management software - 5 Year Video-as-a-Service Package @ \$49 per Month

AAS-BWC-5YR-001 (*PaaS*)

Video-as-a-Service includes CommandCentral Evidence, the cloud-based evidence management system with unlimited device storage and unlimited cloud sharing. 1 User License per Body Worn Camera.

50 GB of non-device storage included per device, averaged across all devices in the program

CommandCentral Evidence, Records, Redaction, Sharing, Community Engagement capabilities and capture application included.

Body-worn camera (battery + choice of mount included)

Third year technology (Hardware) refresh.

5-year agreement billed Annually

Advanced hardware replacement service & 24/7 support

No-Fault hardware warranty

143 qty

V300, Battery, Removable and Rechargeable, 3.8V, 4180mAh

WGP02614

236 qty

Pre-Configured V300 Transfer Station II with Power Supply and Cables.

BW-ACK-V3-TSC

V300 Transfer Station II

TS02, D350, 8-Slot Rack Mount Charge/Upload Dock, 10GB includes kit with Power Supply and Cables.

19 qty

V300 Base Assembly, USB Desktop Dock

WGA00640-KIT1

18 qty

M500 In-car video system with Integrated V300 Body-worn camera and Command Central Evidence - 5 Year Video-as-a-Service Package @ \$205 per Month

AAS-M5-BWC-5YR (*PaaS*)

Video-as-a-Service Bundle includes the cloud-based evidence management system, with unlimited storage and unlimited cloud sharing. 1 User License per bundle.

CommandCentral Evidence, capture, records, redaction and community engagement capabilities included.

V300 Body-worn camera (choice of mount)

M500 In-Car Video System

M500 with 1TB DVR, 5" touch display, front camera with 4k sensor, infrared cabin camera, Smart Power Switch

5-year agreement, billed Annually

No-Fault hardware warranty

Advanced hardware replacement service & 24/7 support

93 qty

Video System Removal (Per Unit Charge)

WGW00119

93 qty

4RE / M500 System Installation, In-Car (Per Unit Charge)

WGW00121

93 qty

Sierra MP70 with sharkfin antenna and 5 year warranty and support and AMM cloud management

93 qty

M500 Basic ALPR VaaS

AAS-M5-ALPR-01

\$43 / month + \$500 remote commissioning (up to 5 units) CarDetector Mobile, Vigilant PlateSearch (agency data only) Includes free 90-day trial to Investigative Data Platform (IDP)

93 qty

New Interview Room Solution - Qty 10

The interview room subscription is per interview room, and that covers the interview room live streaming application, its features, and storage

Interview Room Subscription - 5 Year Subscription and includes:

Interview Room Video Solution - \$169 Monthly per Room (CCE Suite Add On)

Available for 4RE cameras and associated microphones

Transcription (post interview w/ CCE Plus)

Video Streaming for remote viewers (up to 10)

Prosecutor Portal functionality through CC Evidence

Five (5) Year Subscription Duration

Requires CCE Subscription for each Interview Room user

Priced per Interview Room

Data Migration and Transfer * Requires: Migration Quote Checklist to be completed *****

WGW00166

Data Migration between EL On Prem & Cloud versions (Either direction)

Sold on a per Terabyte basis

30 qty

Integration between Spillman and CC Evidence

Spillman Integration

New judicial sharing service.

Judicial Sharing Service

WatchGuard Premier Support Service (Annual Subscription)

WGW00164 (*PaaS*)

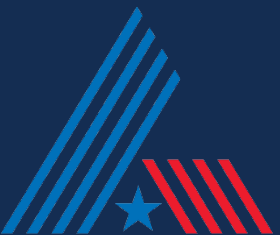
5 years

Resolution:
**Authorizing Purchase Agreement for Body
-Worn, In-Car cameras and Real Time
Information Center**

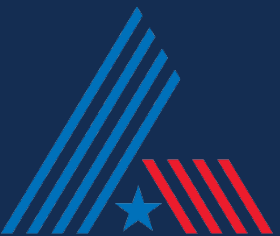


Body-Worn / In-Car and Interview Room Cameras

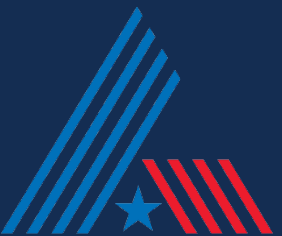
- We are currently using Motorola Solutions for our existing body-worn cameras (BWC) and in-car cameras, and our interview rooms.
- The BWC have exceeded their 5 year warranty and are in need of replacing. We are consistently experiencing battery failures.
- The need for new technology in how we store digital video evidence and a desire to create a Real-Time-Information-Center allowed us to take a holistic approach in how we sought a camera system upgrade.



- Other vendors were contacted and field tests done with their product(s) to assess capabilities and properly evaluate differences.
- Motorola Solutions was ultimately the vendor chosen.
- With the package that we are recommending for purchase, we will be able to outfit all officers with upgraded BWCs with a better battery solution to ensure full shift functionality.
- The in-car cameras will utilize License Plate Reader technology.



- Through use of in-car Wi-Fi, we will also be able to start mobile uploads from any location. This will greatly improve our historically long delays in video processing.
- Additionally, with this technology we will soon be able to live stream video from any location. This is a distinct advantage during critical in-progress incidents.



Real-Time-Information-Center (RTIC)

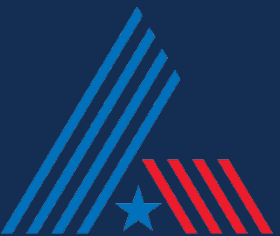
- An RTIC is an intelligence/crime reduction public safety approach that incorporates cameras along with analytics to provide “real time” information to officers in the field and video to support investigations.



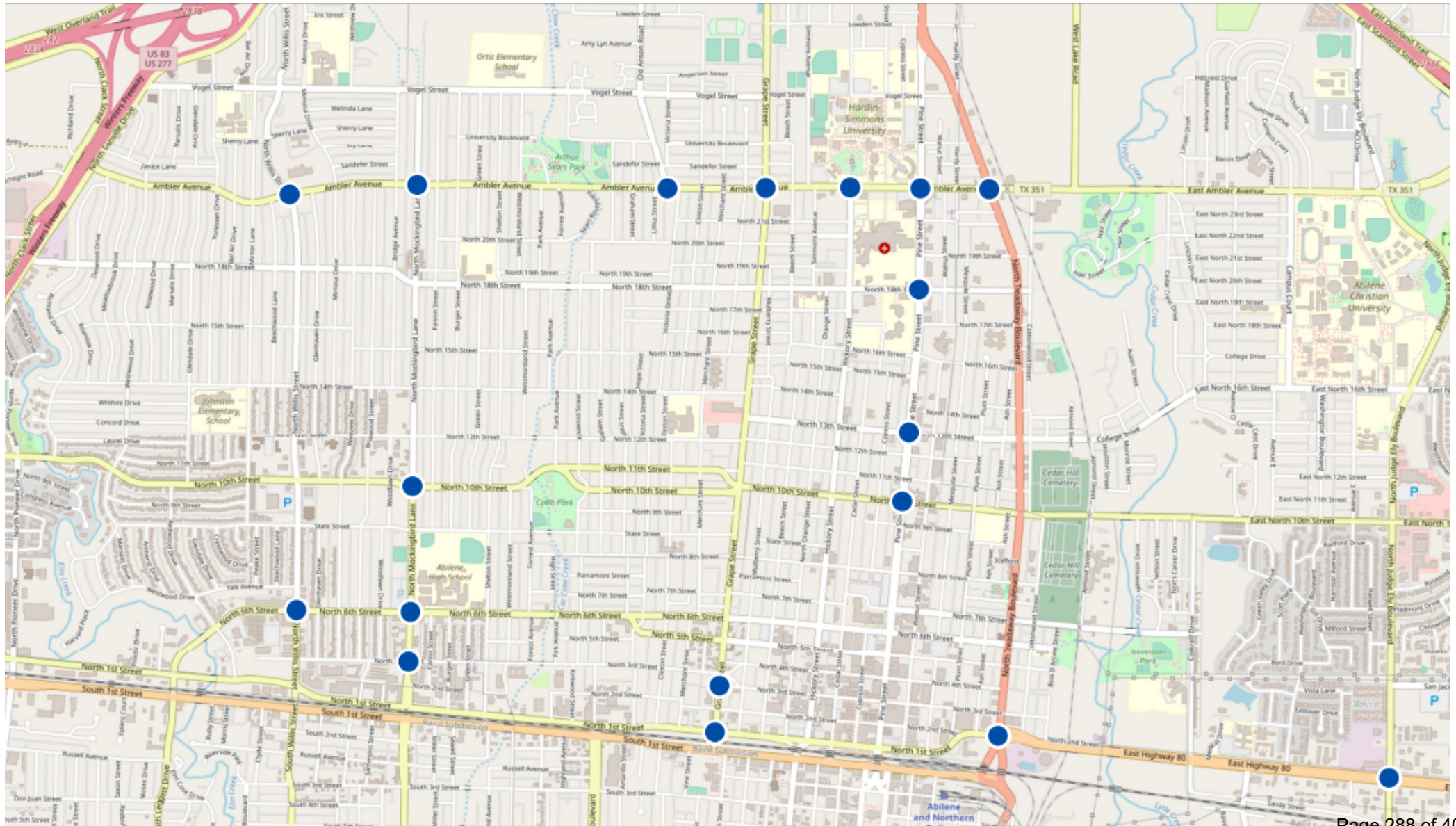


Real-Time-Information-Center (RTIC)

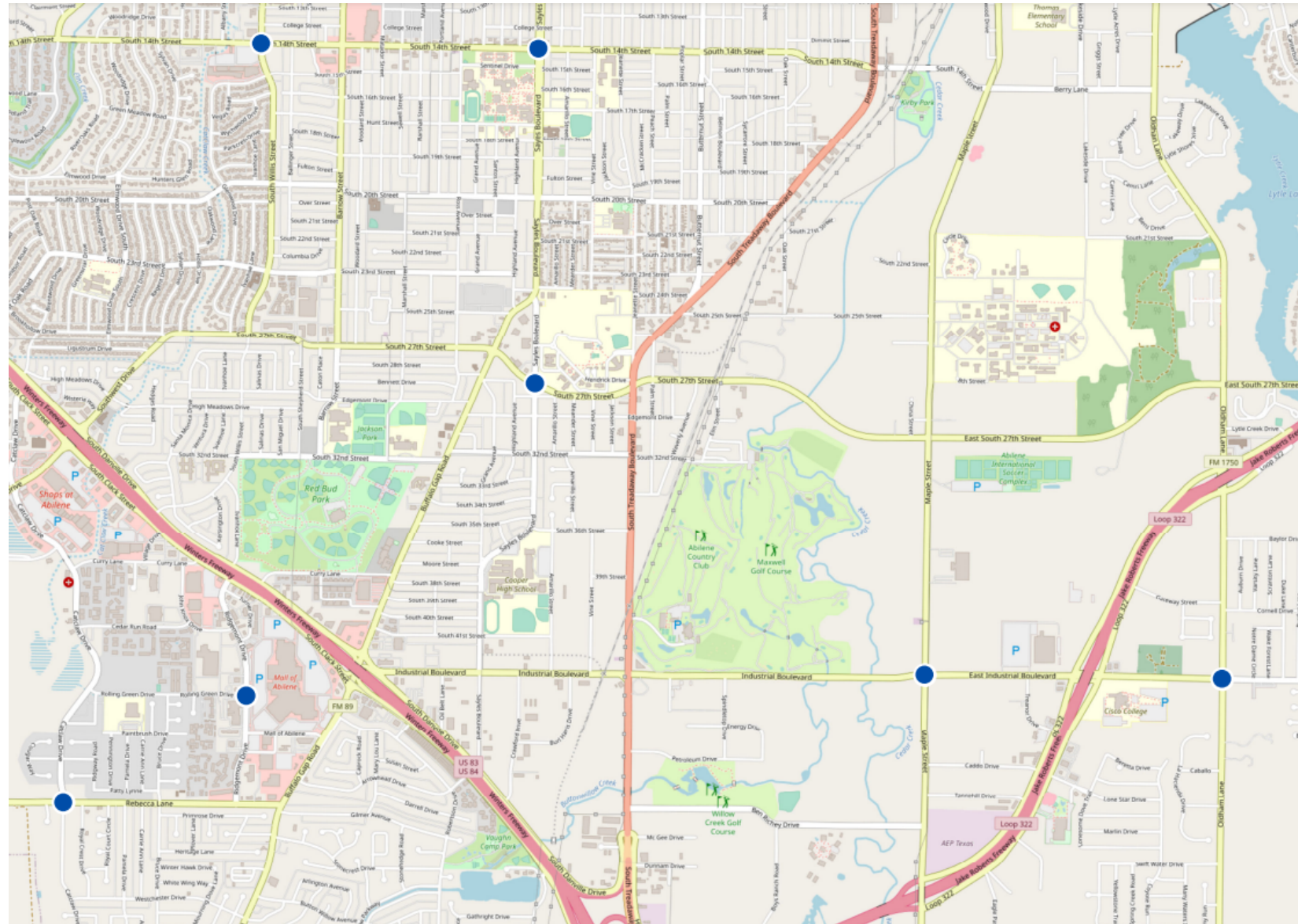
- The desire to start a RTIC was initially thought to be something that would start small. However, this purchase would drastically speed up the formation of a RTIC.
- The Motorola Solution Command Central Aware product, included in this purchase, will afford us the ability to leverage existing camera equipment in the City and gain viewable access to all of the traffic signal cameras (upwards of 120 cameras).



Traffic Camera Locations – North Abilene



Camera Locations – South Abilene



Vendor Purchase Cost

- \$2,034,426 Motorola Agreement Total Costs
- Payment spaced out over 5 years:
 - Year 1 - \$440,666
 - Year 2, 3, 4, and 5 - \$398,440
- Police Apparatus Funds available:
 - FY22 - \$1,450,000 (Includes \$1.1 mil Apparatus & \$350k RTIC MIP)
 - FY22 – Remaining in Apparatus Fund after Year 1 payment - \$1,009,334

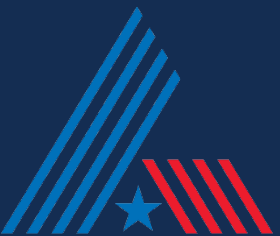
(Apparatus Fund established as a funding source for high dollar critical equipment needs. It receives contributions annually. Projected at \$1.1 mil yearly.)



Vendor Purchase Cost

Purchase includes:

- All of the BWCs, in-car cameras, and the interview rooms.
- The Command Central Aware Plus for the RTIC components and access to City owned traffic signal cameras.
- CAD integration (already a Motorola CAD client).
- The in-car Wi-Fi hotspot environment technology.
- Cloud based evidence storage.

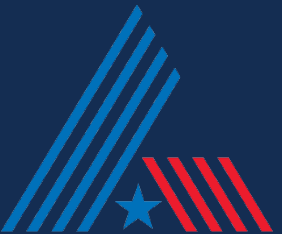


Items Included in Purchase

Description	Qty
CommandCentral Evidence	256
New Interview Room Solution	10
Video-as-a-Service Package for the V300	143
Video-as-a-Service Package for the M500	93
Sierra MP70 with Sharkfin Antenna and 5 Year Warranty and Support and AMM Cloud Management	93
M500 Basic ALPR VaaS Add-on	93
M500 Device Streaming	93
V300 Device Streaming	236



QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 2/10/2022

TO: Robert Hanna, City Manager

FROM: Cande Flores, Fire Chief

SUBJECT: 15. Ordinance (Final Reading): Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Amend Chapter 10, Article III, “Fire Prevention Code”, Division 1, Sec. 10-46 of the Abilene Municipal Code (Cande Flores).

GENERAL INFORMATION

The Fire Prevention Code was last updated in 2009.

The 2021 version of the International Fire Code has been reviewed and is proposed as an amendment to the Abilene Municipal Code.

SPECIAL CONSIDERATIONS

A review committee was organized to review the 2021 version of the International Fire Code and to suggest possible amendments to this code. The committee was chaired by the Abilene Fire Marshal and included five (5) other members. The additional members represented fire protection systems, architecture, and construction.

Language has been adjusted since the First Reading to meet recommendations from City Council members.

FUNDING/FISCAL IMPACT

There is no fiscal impact to the ordinance amendment.

STAFF RECOMMENDATION

Staff recommends amending Chapter 10, Article III, “Fire Prevention Code”, Division 1, Sec. 10-46 to adopt the 2021 International Fire Code in its entirety, with the amendments outlined in Attachment “A”.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Amended Ordinance 2
2. Exhibit A
3. Attachment A
4. Fire Code Presentation

AN ORDINANCE AMENDING CHAPTER 10, ARTICLE III, “FIRE PREVENTION CODE”, FOR THE CITY OF ABILENE; SEC. 10-46 OF THE ABILENE MUNICIPAL CODE BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SERVERABILITY CLAUSE; AND DECLARING A PENALTY.

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

- PART 1:** That Chapter 10, Article III, Division I, Sec. 10.46 of the Abilene Municipal Code be amended as set out in Exhibit “A” and Attachment “A”, attached hereto and made a part of this ordinance for all purposes.
- PART 2:** That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.
- PART 3:** 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 punishable as provided in section 1-9 of this Code. Each day such violation shall continue or permitted to continue, shall be deemed a separate offense. 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 FIRST READING this 9th day of September, 2021.

After passage on first reading, 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 6th day of February, 2022, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 10th day of February, 2022, to permit the public to be heard.

PASSED ON SECOND AND FINAL READING this 10th day of February, 2022.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

ORDINANCE NO. _____

EXHIBIT “A”

ABILENE CODE

DIVISION 1. GENERALLY

Replace Sec. 10-46 as follows:

Sec. 10-46. Adopted.

The International Fire Code, 2021 Edition, published by the International Code Council, Inc., together with the Abilene Fire Code booklet amending and supplementing that code, are hereby enacted and adopted by reference, as the fire code for the City of Abilene, and is here by incorporated herein. The Abilene Fire Code booklet, along with the International Fire Code, are on file in the Fire Marshal’s and City Secretary’s Offices.

Any cross-reference to other codes contained herein shall be construed to mean those codes as adopted by the City of Abilene and amended by local ordinance.

Any cross-reference to specific state agencies tasked with duties or oversight under the International Fire Code shall be construed to mean the agency in the state of Texas then tasked with the duties or oversight referenced, even if such agency might change from time to time.

ATTACHMENT “A”

ABILENE FIRE CODE

The following chapters and appendices of the 2021 International Fire Code are adopted in their entirety:

Chapters: 2, 4, 7, 8, 10, 11, 12, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 50, 51, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 80.

Appendices: B, C, D, E, F, G, H, I, M, N.

Appendices A, J, K, and L are deleted in their entirety.

Chapters 1, 3, 5, 6, 9, 33 and Appendix D of the 2021 International Fire Code are adopted with the following amendments:

Chapter 1 ADMINISTRATION

SECTION 101 GENERAL

101.1 Title. *{Amend to read as follows.}* These regulations shall be known as the *Fire Code* of the City of Abilene, hereinafter referred to as “this code”

{Amend Section 103 heading as follows.} SECTION 103 DIVISION OF FIRE PREVENTION

103.1 Creation of Agency. *{Amend to read as follows.}* The division of Fire Prevention is established within the Fire Department under the direction of the fire code official. The function of the division shall be the implementation, administration and enforcement of the provisions of this code.

103.2 Appointment. *{Amend to read as follows and add sentence at the end.}* The fire code official shall be appointed by the fire chief. The fire code official shall also be known as fire marshal.

103.3 Deputies. *{Amend to read as follows.}* In accordance with the prescribed procedures of the Fire Department and with the concurrence of the fire chief, the fire code official shall have the authority to appoint two deputy fire marshals, other related technical officers, inspectors, and other employees.

{Amend Section 111 heading as follows}

SECTION 111

APPEALS

111.1 Appeals. *{Delete in its entirety and add the following.}* The Board of Building Standards as established in Chapter 8, Sec. 8-361, et. seq. of the City Code of the City of Abilene, Texas is charged with hearing appeals arising from any decision of the fire code official concerning this code, determining the suitability of alternate materials and methods of construction and providing reasonable interpretation of this code.

Any reference to the board of appeals in this code shall be construed to mean and does mean the Board of Building Standards as established in Chapter 8, Sec. 8-361, et. seq. of the City Code of the City of Abilene, Texas. In the event the board should be of the opinion that any provisions of this code needs to be amended, it shall make such recommendation to the City Council for consideration.

SECTION 112

VIOLATIONS

112.4 Violation penalties. *{Amend to read as follows.}* Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair, or do work in violation of the approved construction documents or directive of the code official, or of a permit or certificate used under provisions of this code, shall be guilty of a Class C Misdemeanor, punishable by a fine of not more than five hundred dollars (\$500).

SECTION 113

STOP WORK ORDER

113.4 Failure to comply. *{Amend to read as follows.}* Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to

remove a violation or unsafe condition, shall be liable for a fine of not more than five hundred dollars (\$500).

Chapter 3

GENERAL PRECAUTIONS AGAINST FIRE

SECTION 308

OPEN FLAMES

308.1.4 Open-flame cooking devices. *{Amend to read as follows.}* Charcoal burners and other open-flame cooking devices shall not be operated or located on combustible balconies or within 10 feet (3048 mm) of combustible construction.

308.1.7 Religious ceremonies. *{Delete in its entirety.}*

SECTION 319

MOBILE FOOD PREPARATION VEHICLES

319.1 General. *{Amend to read as follows.}* Mobile food preparation vehicles that are equipped with appliances that produce smoke or grease-laden vapors shall comply with this section. The extinguishing system is only required over the cooking surface areas. Existing vehicles will be afforded a grace period of 36 months to become compliant with Sections 319.3 and 319.4.1. This period shall begin with the initial adoption of the 2021 IFC.

Chapter 5

FIRE SERVICE FEATURES

SECTION 503

FIRE APPARATUS ACCESS ROADS

503.2.1 Dimensions. *{Amend to read as follows.}* Fire apparatus access roads shall have an unobstructed width of not less than 24 feet, exclusive of shoulders, except for approved security gates in accordance with Section 503.6 and an unobstructed vertical clearance of not less than 14 feet.

503.2.2 Authority. *{Amend to read as follows.}* The fire code official shall have the authority to require an increase in the minimum access widths and vertical heights where they are inadequate for fire or rescue operations.

503.2.3 Surface. *{Amend to read as follows.}* An engineered road shall be constructed of asphalt, concrete, processed road base material or other approved driving surface capable of supporting the imposed loads of a fire apparatus. The road shall be properly graded to drain so as to prevent the road from failing to support the fire apparatus imposed load during a rainfall event.

503.3 Identification. *{Amend to read as follows.}* Where required by the fire code official, approved markings and/or signs shall be provided for fire apparatus access roads to identify such roads or prohibit the obstruction thereof. Markings and signs shall be maintained in a clean and legible condition at all times and be replaced or repaired when necessary to provide adequate visibility. Marking shall consist of a red stripe not less than six inches wide along both borders of a fire apparatus access road. The words “FIRE LANE NO PARKING” shall be marked on the stripes in white letters not less than four inches high at intervals of not more than 25 feet. The stripe and words shall consist of traffic paint or other city approved equal. The markings shall be applied to the vertical face of curbs if adjacent to the fire apparatus access road. If curbs are not present, then the markings shall be applied to the pavement.

{Add Subsection 503.3.1}

503.3.1 Signs. Signs shall be not less than 12 inches wide and 18 inches high. Signs shall consist of a white background bordered by a red stripe not less than 3/8 inch wide with the words “FIRE LANE NO PARKING” in red letters not less than two inches high. The sign face shall be retro-reflective. Signs shall be permanently affixed to stationary posts or, where approved by the fire code official, buildings or walls. The bottom of signs shall be not less than seven feet above grade. Signs shall be placed at intervals of not more than 50 feet.

SECTION 506 KEY BOXES

506.1 Key Boxes. *{Add following sentence.}* Any structure that is 12,000 square feet or more, or contains a fire protection or detection device will be required to have a key box installed.

506.1 Installation. *{Add following sentences.}* Where required, a key box will be installed on the right hand side not less than 60 inches (5feet) from the main entrance of the structure. The key box placement is required to be between 60 inches and 72 inches (between 5 and 6 feet) above the finished floor or as approved by the fire code official.

SECTION 507 FIRE PROTECTION WATER SUPPLIES

507.5.4 Obstruction. *{Amend to read as follows.}* Unobstructed access to fire hydrants, fire department inlet connections, or fire protection system control valves shall be maintained at all times. The fire department shall not be deterred or hindered from gaining immediate access to fire protection equipment or fire hydrants.

SECTION 510 EMERGENCY RESPONDER COMMUNICATION COVERAGE

510.1 Emergency responder communication coverage in new buildings. *{Amend Exception to read as follows.}*

Exceptions:

2. Where it is determined by the fire code official that the radio coverage system is not needed. This occurs when the fire department radio system provides adequate coverage throughout the building.

510.2 Emergency responder communication coverage in existing buildings. *{Add Exception to read as follows.}*

Exception:

1. Where it is determined by the fire code official that the radio coverage system is not needed. This occurs when the fire department radio system provides adequate coverage throughout the building.

Chapter 6 BUILDING SERVICES AND SYSTEMS

SECTION 605 FUEL-FIRED APPLIANCES

605.5 Portable unvented heaters. *{Amend to read as follows.}* Rooms or areas where listed and approved portable unvented fuel-fired heating equipment is allowed shall be provided with a means of

ventilation capable of supplying required combustion air and preventing the accumulation of toxic products of combustion. **Exceptions:** *{Delete exception1}*

Chapter 9 FIRE PROTECTION SYSTEMS

SECTION 903 AUTOMATIC SPRINKLER SYSTEMS

903.2.8 Group R *{Add following.}*

Exception: 1 and 2 Family Dwellings.

903.3.1.1.1 Exempt locations. *{Amend first sentence to read.}* Where approved by the fire code official, automatic sprinklers shall not be required in the following rooms or areas where such rooms or areas are protected with an approved automatic fire detection system in accordance with Section 907.2 that will respond to visible or invisible particles of combustion.

Exception 3. *{Amend to read as follows.}* Generator and transformer rooms under the direct control of a public utility and separated from the remainder of the building by walls and floor/ceiling or roof/ceiling assemblies having a fire-resistance rating of not less than 2 hours.

Exception 4. *{Delete Number 4 in its entirety.}*

907.6.6.2 MIY Monitoring. *{Amend to read as follows.}* Direct transmission of alarms associated with Monitor it Yourself (MIY) transmitters to a public safety answering point (PSAP) shall not be permitted.

SECTION 3305 PRECAUTIONS AGAINST FIRE

3305.5.1.1 Fire Watch during Construction. *{Amend to read as follows.}* A Fire Watch shall begin once the structure has exceeded the 50,000 square footage and 40 foot height above lowest adjacent grade threshold and shall be provided during non-working hours. Fire Watch shall remain in effect until acceptance tests meet NFPA requirements for the fire alarm system, and has been approved by the fire code official.

Exceptions:

1. Fire Watch will not be required for buildings of Type I and Type II construction.
2. Buildings of Type III, Type IV, and Type V construction that provide equivalent protection to a Fire Watch, including, but not limited to:
 - a. secured perimeter fencing, nighttime lighting, limited access to the site at all times, posted warning signs, and
 - b. monitored camera surveillance or contracted security with hourly perimeter checks

APPENDIX D – SECTION D107

ONE- OR TWO-FAMILY RESIDENTIAL DEVELOPMENTS

D107.1 One- or two-family dwelling residential developments. *{Add Exception}*

Exceptions:

3. The number of dwelling units accessed from a single fire apparatus access road shall not be increased unless fire apparatus access roads will be increased in width, as determined by the fire code official. A minimum of 24' of unobstructed clearance shall be maintained for fire apparatus. Dwelling increases of up to 99 units are authorized under this exception.

2021 Abilene Fire Code

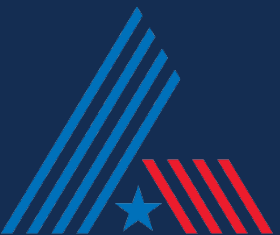
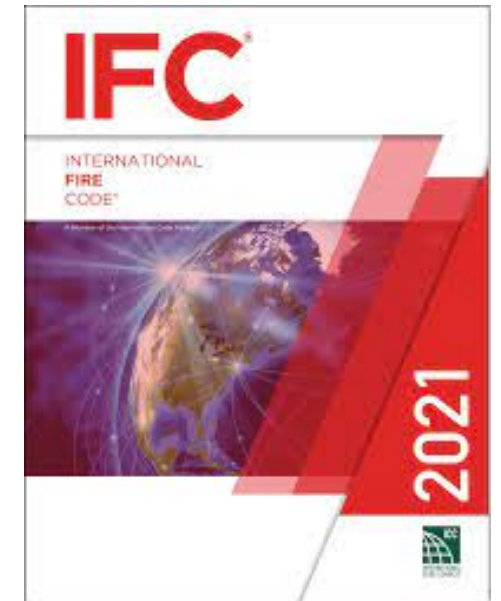
ABILENE FIRE DEPARTMENT

February, 2022



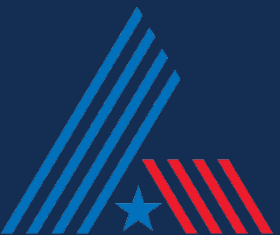
ABILENE FIRE CODE

- Local adoption of the International Fire Code (IFC)
 - Includes local amendments that only apply to the City of Abilene
- IFC is published by the International Code Council
 - Establishes minimum requirements for fire prevention and fire protection systems
 - Updated every 3 years
- The Abilene Fire Code has not been updated since 2009



AMENDMENT PROCESS

- The AFD Fire Marshal created a committee to review the latest edition of the International Fire Code
 - Comprised of:
 - Fire Marshal (chair)
 - Jim Bob Barbee (Fire Protection Systems)
 - Alfredo Gunderson (Fire Protection Systems)
 - Ruppert Rangel (Architect)
 - Will Duncan (Architect)
- The IFC Committee met several times and decided which parts of the Code would be adopted in whole and which parts required amendments
- The amendments, in conjunction with the IFC resulted in the Abilene Fire Code



APPLICABILITY

- The Abilene Fire Code is applicable to all commercial structures within the city limits of Abilene
- Buildings that are pre-existing will be labeled as “Existing – Non-Compliant”

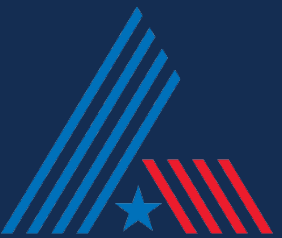


RECOMMENDATION

- The Abilene Fire Marshal's Office recommends amending Article II "Fire Prevention Code" of the City Ordinance to include the 2021 version of the Abilene Fire Code.
 - 2021 IFC
 - Attachment "A"



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 2/10/2022

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Chief Building Official

SUBJECT: **16. Ordinance (Final Reading) Z-2021-38: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Exceptional Holdings LP (represented by Michael Burton) to amend terms and conditions of Planned Development District Number 122 (a.k.a. PD 122) specifically to modify the requirement for screening along or near the north and east boundaries of a tract occupied by an existing restaurant building at 3001 South Danville Drive *(Tim Littlejohn)***

GENERAL INFORMATION

Amendment to the Terms and Conditions of Planned Development District 122 (PDD 122)

SPECIAL CONSIDERATIONS

The applicant is requesting to amend one section of the PD language that affects Tract 1. This section is specifically listed under Site Development requirements, Screening and Fencing (Part 7; II; D; 2):

“There shall be a solid evergreen hedge along the northern and eastern boundary of Tract 1. Plant materials selected shall be of a variety to achieve a minimum height of 8 feet within 3 years of planting and shall be spaced to provide an effective visual barrier to properties along High Meadows Drive and Wisteria Way. Visibility corners at driver entrances shall be maintained.”

The applicant is now requesting that Part 7; II; D;2 within the Planned Development District ordinance be amended to instead require a 36-inch tall continuous hedge, fence, wall, berm, or combination of these along property boundaries where parking lot areas are visible from residentially zoned districts.

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 4-0.

ATTACHMENTS:

1. Z-2021-38 Council Ordinance
2. Z-2021-38 Staff Report
3. Z-2021-38 Council Presentation

ORDINANCE NO. _____

EXHIBIT "A"

PAGE 1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "LAND DEVELOPMENT CODE," OF THE ABILENE CITY CODE AND CONCERNING PD-122, A PLANNED DEVELOPMENT DISTRICT, AND ORDINANCE NUMBER 02-2008; 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 the Land Development Code of the City of Abilene is hereby amended by changing Ordinance Numbers 02-2008; specifically, 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 ordinance 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.

PASSED ON FIRST READING this 27th day of January, 2022.

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 18th day of December, 2021, the same being more than fifteen (15) days prior to a public hearing held at the Abilene Public Library's South Branch in the Mall of Abilene at 4310 Buffalo Gap Road in Abilene, Texas, at 8:30 a.m. on the 10th day of February, 2022, 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 SECOND AND FINAL READING THIS 10th day of February, 2022.

ATTEST:

Shawna Atkins,
CITY SECRETARY

Anthony Williams,
MAYOR

APPROVED:

Stanley Smith,
CITY ATTORNEY

Exhibit "A"

1st Amendment to Ordinance No. 02-2008.

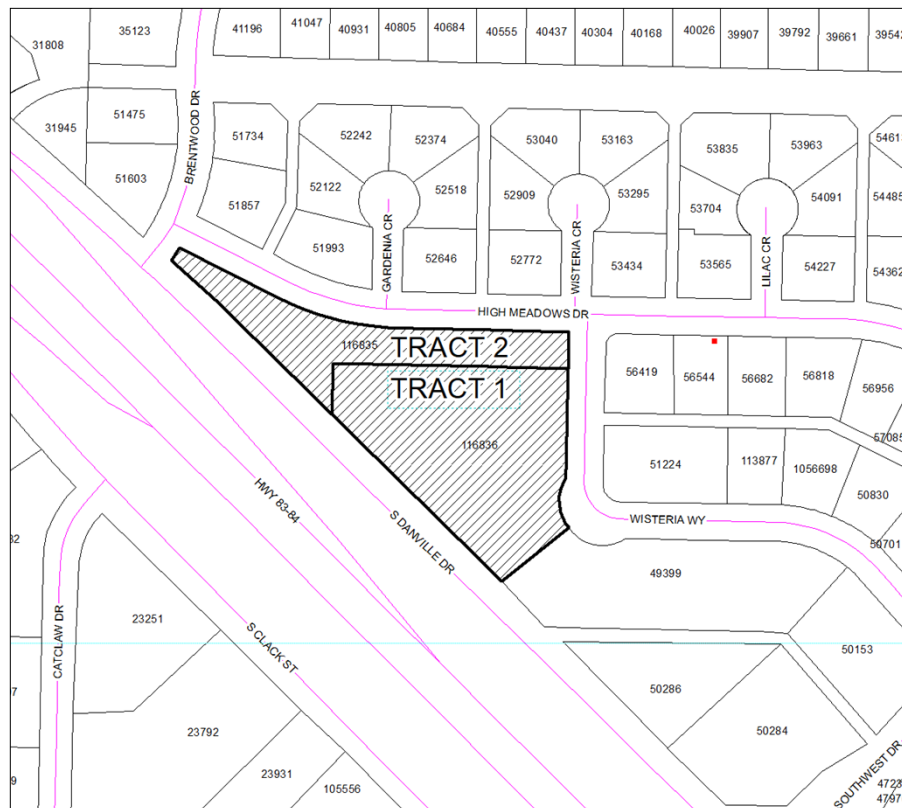
PART 7:Specific Modifications: The following regulations shall govern the use and development of this Planned Development District:

DELETE: D. Screening and Fencing:

(2). There shall be a solid evergreen hedge along the northern and eastern boundary of Tract 1. Plant materials selected shall be of a variety to achieve a minimum height of 8 feet within 3 years of planting and shall be spaced to provide an effective visual barrier to properties along High Meadows Drive and Wisteria Way. Visibility corners at drive entrances shall be maintained.

ADD: D. Screening and Fencing:

(2). Parking lots, driving lanes, loading areas, or other similar areas of vehicular access shall be screened from residentially zoned properties, whether adjacent or across a street, by a continuous hedge, fence, wall, berm, or combination of these, with a minimum height of 36 inches. Said screening must be provided along the property boundary separating Tract 1 and Tract 2 in the provided exhibit as well as along the eastern property boundary of Tract 1.



Location: 2901, and 3001 S. Danville Drive, Abilene, Texas

END

ZONING CASE Z-2021-38

STAFF REPORT



Scheduled Hearings

Planning & Zoning Commission: January 4, 2022

City Council 1st Reading: January 27, 2022

City Council 2nd Reading: February 10, 2022

Applicant

Owner: Exceptional Holdings LP

Agent: Michael Burton

Request

Amendment to the Terms and Conditions of Planned Development District 122 (PDD 122)

Location

2901, and 3001 S. Danville Drive, Abilene, Texas.

Background

Planned Development (PD) District 122 was created in 2008 (02-2008). This PD is split into two (2) tracts of land, Tract 1 being Lot 102, Block A, of FD Abilene and Tract 2 being Lot 1, Block A, FD Abilene. The applicant owns both tracts. The current specific modifications of this PD permit Tract 1 to have a base zoning of a General Retail District, whereas Tract 2 is restricted to Residential Single Family (RS-6) district standards, however, this tract it is to remain undeveloped and can only be used as green space for passive recreational purposes.

The applicant is requesting to amend one section of the PD language that affects Tract 1. This section is specifically listed under *Site Development requirements, Screening and Fencing* (Part 7; II; D; 2):

“There shall be a solid evergreen hedge along the northern and eastern boundary of Tract 1. Plant materials selected shall be of a variety to achieve a minimum height of 8 feet within 3 years of planting and shall be spaced to provide an effective visual barrier to properties along High Meadows Drive and Wisteria Way. Visibility corners at driver entrances shall be maintained.”

The applicant is now requesting that Part 7; II; D;2 within the Planned Development District ordinance be amended to instead require a 36-inch tall continuous hedge, fence, wall, berm, or combination of these along property boundaries where parking lot areas are visible from residentially zoned districts.

Criteria Assessment

Section 1.4.1.4 of Abilene's Land Development Code states that, 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.

This requested amendment does not affect the Comprehensive Plan nor the Future Land Use and Development Plan Map.

(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.

This amendment does not affect the permitted uses nor the standards applicable to such uses in the immediate area of the land.

(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 properties currently have access to existing utilities and public amenities, which are adequate for servicing the development. The request presents no apparent conflict with existing or proposed plans for community facilities and related infrastructure.

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

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

Staff Recommendation

Staff recommends approval, the requested revisions to the screening requirement are in compliance with the screening standards ordinarily applicable regarding the screening of commercial parking lots from residential zoning districts (LDC Section 4.2.4.2 (c))

Notification

Pursuant to Section 1.2.2.2 of Abilene's Land Development Code, City staff mailed personal notices on December 17 of 2021, to the applicant and to other owners of property within a 200-foot radius of this subject property. These property owners and associated parcel identification numbers are identified in Table 1.

TABLE 1

Owner	Parcel ID	Situs	Response
AUGUSTUS ANTHONY & ADRIANNA	51475	2834 BRENTWOOD DR	
BENIVAMONDEZ FABIAN & JACQUELINE	51603	2842 BRENTWOOD DR	
BOYD LINDA JO	52518	15 GARDENIA CR	
BRENNAN RICHARD S SR	51734	2833 BRENTWOOD DR	
BROWNING LARRY & PAULA	52772	10 WISTERIA CR	
CANON TIMOTHY R	52646	5 GARDENIA CR	
CHAPAPOTE INVESTMENTS LLC	31945	2601 S DANVILLE DR	OPPOSED
DUDLEY R MICHAEL	52122	20 GARDENIA CR	OPPOSED
EXCEPTIONAL HOLDINGS LP	116836	3001 S DANVILLE DR	
EXCEPTIONAL HOLDINGS LP	116835	2901 S DANVILLE DR	
LIVING CHIC HOMES LLC	52909	20 WISTERIA CR	
MCBRIDE LISA SHERENE	56544	3933 HIGH MEADOWS DR	
MONHOLLON MICHAEL L & RACHEL	53565	10 LILAC CR	
NEWTON JOSEPH ADAM	51857	2841 BRENTWOOD DR	
PCKC LLC	50286	3117 S DANVILLE DR	
SECHRIST TIMOTHY R & JORI	56419	3949 HIGH MEADOWS DR	OPPOSED
SMITH DAVID & BRENDA	53434	5 WISTERIA CR	
SMITH JERRY DON & SHARON SUE	51993	10 GARDENIA CR	FAVOR
SMITH KYLE & CAROLYN	53295	15 WISTERIA CR	FAVOR
WISTERIA HEALTH HOLDINGS LLC	49399	3917 WISTERIA WY	
WISTERIA HEALTH HOLDINGS LLC	51224	3934 WISTERIA WY	

Attachments

Application

PowerPoint Presentation

Ordinance 02-2008

Land Development Code Section 4.2.4.2 (c)

Zoning Map

Legend

- Z-2021-37
- RS-8: Residential Single-Family
- MD: Medium Density Residential
- GC: General Commercial
- PD: Planned Development
- Expressway

Map Details:

- Tracts:** TRACT 1 and TRACT 2 are highlighted in brown with diagonal hatching.
- Lot Numbers:** 51945, 51603, 51734, 51857, 52122, 52242, 52374, 52618, 52809, 53040, 53163, 53295, 53434, 53635, 53704, 53665, 55419, 55544, 51224, 49399, 23251, 23792, 50286, 50284.
- Streets:** BRENTWOOD DR, GARDENIA DR, HIGH MEADOWS DR, WISTERIA DR, WISTERIA AVE, S 9TH ST, S 10TH ST, S 11TH ST, ONTARIO DR, HWY 28.
- Zoning Codes:** RS-8, MD, PD, GC.



Development Application

Planning

☐ Conditional Use
 ☐ Easement Release
 ☐ Rezoning
 ☐ Other
☒ PDD NW
☐ Street Name Change
 ☐ Thoroughfare Abandonment
 ☒ PDD Amendment
 Other: _____

Project Name: Miguel's Mex Tex Cafe
 Address: 3001 S Danville Drive Abilene, TX No. of lots: _____ Acreage: _____
 Legal Description: ID 116836, F D ABILENE, BLOCK A, LOT 102 REP, ACRES 2.116 (FROM CITY CODE COMPLIANCE NOTICE)
 Subdivision Name: _____ Block: _____ Lot: _____
 Current Zoning: PDD Proposed Zoning (if applicable): _____

OWNER AND AUTHORIZATION

Owner Name: Exceptional Holdings, LP
 Address: 1902 Industrial Blvd
 City, State, Zip: Abilene, TX 79602 Fax: _____
 Phone: 325-698-2600 Email: mburton@exbrandstx.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) Michael Burton will act as my agent before the Planning and Zoning Commission.

Agent Name: Michael Burton
 Address: 1902 Industrial Blvd
 City, State, Zip: Abilene, TX 79602 Fax: 325-698-2355
 Phone: 325-698-2600 Email: mburton@exbrandstx.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: _____ Date: 10/18/21

FOR OFFICE USE ONLY

Received: 10/18/2021 Fee: \$ 1000 Receipt No.: 0001065383 (11/09/2021)
 Case No.: Z-2021-38 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.

Reference PDD-122, Ordinance No 02-2008, Exhibit A part 7,II, D, 2

We would like to amend the existing section D. "Screening and Fencing" by removing the requirement of an 8-foot evergreen hedge and instead require a 36-inch continuous hedge, fence, wall, berm or combination of these along all parking lot areas that are visible from residentially zoned districts.

All the reasons for this request were discussed at December 7th Planning & Zoning Meeting. Thank you for your consideration.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, CONCERNING PDD-122 A PLANNED DEVELOPMENT DISTRICT; 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 23, Subpart E, known as the Zoning Ordinance 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.

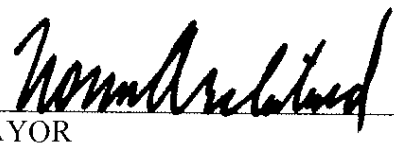
PASSED ON FIRST READING this 20th day of December A.D. 2007.

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 15th day of November, 2007, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m., on the 10th day of January, 2008, 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 SECOND AND FINAL READING THIS 10th day of January, A.D. 2008.

ATTEST:

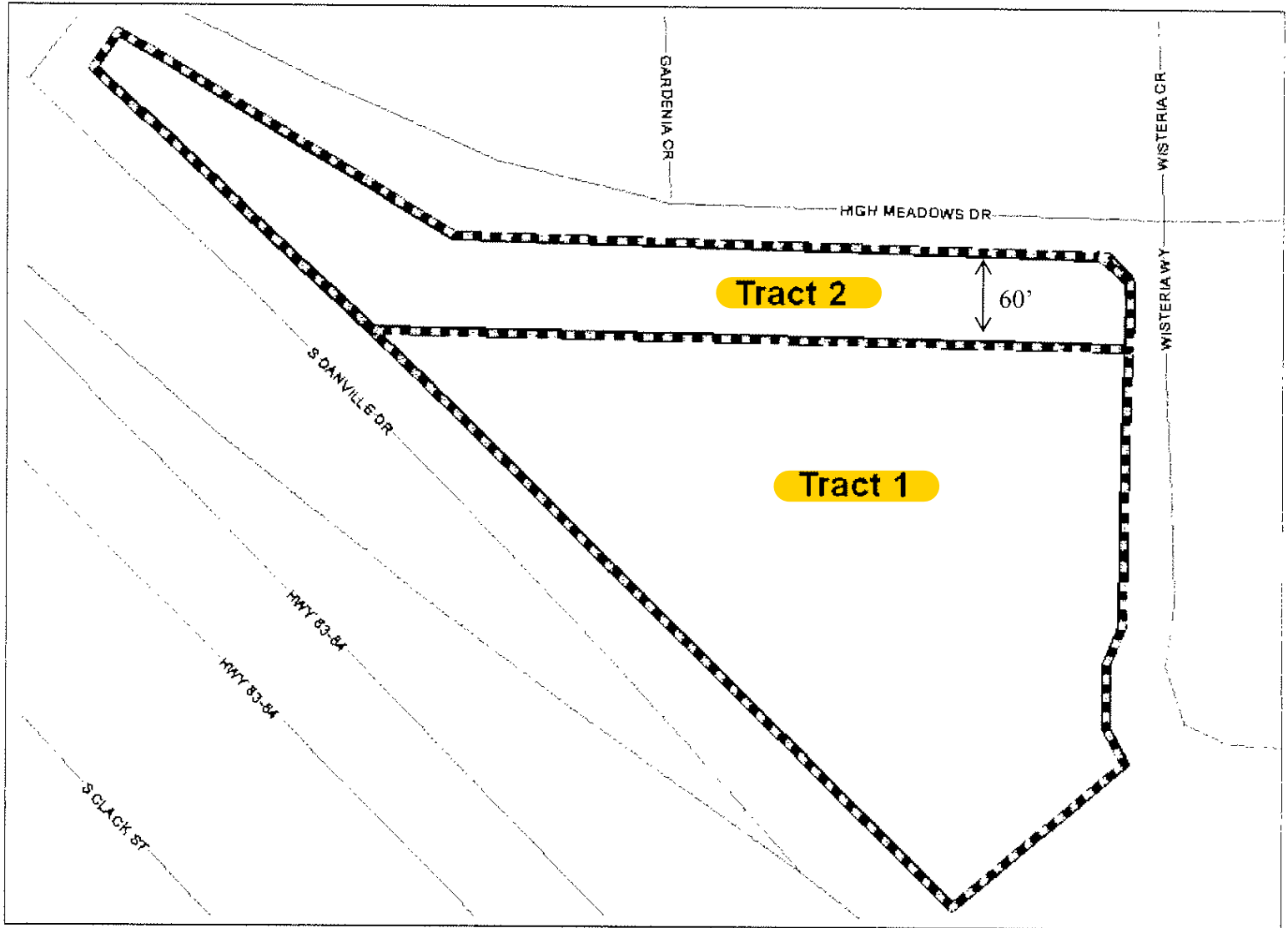

CITY SECRETARY


MAYOR

APPROVED:


CITY ATTORNEY

Ordinance No. 02-2008
Exhibit "B"



ORDINANCE NO. 02-2008

Exhibit "A"

PART 1: Land Title. Title to land not dedicated to public use and services or for utility purposes and not otherwise designated for development purposes shall remain in possession of the owner thereof, his heirs, assigns, lessees and successors in interest and shall not be the responsibility of the City of Abilene for any purpose.

PART 2: Development Specifications. All development in the Planned Development District shall be in accordance with any maps, topographical and drainage plans, utility plans, architectural drawings, site plan, plat, and any other required plans filed in connection with this requested Planned Development District and are hereby incorporated by reference and included as part of this ordinance.

All use and development within the Planned Development District must be in compliance with the general Comprehensive Zoning Ordinance of the City of Abilene except as otherwise specifically provided herein.

PART 3: Building Specifications. All structures in the herein said Planned Development District shall be constructed in accordance with all pertinent building and construction codes of the City of Abilene.

PART 4: Zoning. That Chapter 23, Subpart E, Abilene Municipal Code, known as the Zoning Ordinance of the City of Abilene, is hereby further amended by changing the zoning district boundaries, as hereinafter set forth: From LC (Limited Commercial) and RM-3 (Multi-Family Residential) to PDD (Planned Development District).

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.

PART 5: Legal Description. The legal description of this PDD is as follows:

Hedges Addition, Section 4, Block 3, Lots 320-301, and 208.

Tract 1: See "Exhibit B"

Tract 2: See "Exhibit B"

PART 6: Purpose. The purpose of the Planned Development District (PDD) request is to allow for mix of commercial and residential development: and related activities of a tract, which generally has not developed under present zoning and development procedures.

PART 7: Specific Modifications. The following regulations and the attached concept plan shall govern the use and development of this Planned Development District. Where there is a conflict between the ordinance text and concept plan, the ordinance text shall apply. The standards of the Shopping Center zoning district shall apply within Tract 1 of this Planned Development District and the standards of the RS-8 district shall apply within Tract 2 of this Planned Development District, unless specifically modified below.

I. PERMITTED USES:

A. Tract 1:

All uses allowed within Shopping Center zoning.

B. Tract 2:

Shall be regulated by the RS-6 zoning district standards.

- 1) The tract shall be replatted and remain as a single lot fronting on Wisteria Way.
- 2) This tract shall remain undeveloped except that it may be used as a green space or for passive recreational purposes including such facilities as gazebos, picnic tables and similar uses in no case shall the tract be covered by more than 25% impervious cover.

II. SITE DEVELOPMENT

A. Parking and ingress/ egress:

- 1) Streets and driveways shall comply with all applicable City of Abilene and State of Texas access management regulations, in addition to the following.
- 2) A maximum of one driveway shall be permitted from Wisteria Way to serve the entire PDD, and signage shall be installed to restrict delivery vehicles from using this drive.
- 3) A maximum of two drive connections shall be allowed onto S. Danville Drive.
- 4) There shall be no drive access to High Meadows Drive to/from any tract within this PDD.

B. Signage:

Signage within the PDD must comply with the requirements of the City's Sign Ordinance, except as modified by the following:

1) Freestanding Signs:

- a. There shall be 1 (one) pole sign for the entire PDD with a maximum height of 43' and a maximum of 225 square feet.
- b. Sign lighting shall be shielded from the view of residential properties. In addition, internally lit signs must use lighting and colors to avoid excessive spillover lighting on residential properties.
- c. Temporary signs and freestanding banners, are only permitted for real estate signs, including a "Coming Soon" sign, and a "grand opening" event within 30 days of the issuance of a Certificate Occupancy.
- d. Electronic message boards or movable LED type signage utilizing scrolling or animation are only permitted if the message or text does not change for a minimum of 15 seconds.

2) Wall signs:

Wall signage may not exceed 10% of the area of any wall on which the signs are located.

3) Banners:

a. Banners shall only be located flat against the face of a building and shall count toward the maximum allowable wall signage.

4) Prohibited signs:

a. Portable signs

b. Streamers, pennants, balloons, and similar devices

C. Landscaping:

1) Landscaping in the PDD must comply with the requirements of the City's Landscaping Ordinance.

D. Screening and Fencing:

1) Facilities for power, air conditioning, mechanical equipment, including rooftop equipment, and solid waste handling shall be screened from view of publicly accessible areas.

2) There shall be a solid evergreen hedge along the northern and eastern boundary of Tract 1. Plant materials selected shall be of a variety to achieve a minimum height of 8 feet within 3 years of planting and shall be spaced to provide an effective visual barrier to properties along High Meadows Drive and Wisteria Way. Visibility corners at drive entrances shall be maintained

E. Sidewalks:

All development must comply with the requirements of the Sidewalk Master Plan except that no sidewalk shall be required along Tract 2.

F. Outdoor Storage and Display:

1) Outdoor storage and display is prohibited.

2) Freight containers are prohibited.

3) Outside speakers shall be limited to the building façade(s) facing S. Danville Dr.

G. Lighting:

All site lighting shall comply with the performance standards governing exterior illumination in the City of Abilene Zoning Ordinance. Additionally, all lighting shall be fully shielded and directed away from residential areas.

H. Traffic Control:

1) The property owner shall be responsible for the construction of 2 (two) speed humps along High Meadows Dr., if the speed humps are warranted by a traffic analysis conducted by the City of Abilene.

2) If the speed humps are not required at the time of development, a second traffic analysis will be conducted within 1 (one) year of the issuance of a Certificate of Occupancy, to determine

whether or not speed humps are warranted at that time. If warranted, the property owner is responsible for the construction costs of the speed humps.

- 3) If speed humps are required, the property owner shall only be responsible for costs up to \$6,000.00 (six thousand dollars) of the construction costs, with the City of Abilene responsible for the remainder, if necessary.

1. Building Materials:

- 1) A minimum of 10% of the exterior face of any building visible from publicly accessible areas, such as streets, driveways, parking lots, and walkways (loading areas are not included) shall be composed of brick, stone, decorative block, or similar materials.
- 2) The remaining area of the building face shall be limited to glass, EIFS, stucco, stucco-like finishes, or other similar materials.
- 3) Elevation plans shall be submitted with the Site Plan for review and approval by the Planning Director prior to site plan approval. Any variation in design or materials will be subject to review and may be permissible at the discretion of the Planning Director.

PART 8:

Development Schedule. If a building permit is not approved within 18 months of the date of this ordinance, the Planning Director may initiate rezoning of the PDD to the previous zoning designation.

- END -

Section 4.2.4.2 Land Use Buffers

(a) Buffer yards consisting of a minimum width landscaping area, landscape plantings, and/or walls or fencing are required between land uses of different intensities for the purpose of mitigating negative impacts such as noise, trash, light, and visual appearance.

(1) Type A Buffer is required between Residential Multifamily (MD and MF), Office (NO and O), College-University (CU), Medical Use (MU), or Neighborhood Retail (NR) districts and any lower intensity residential district. A Type A Buffer shall consist of a 5-foot wide buffer yard plus at least 15 points based on the points listed in subsection (3) below.

(2) Type B Buffer is required between Heavy Commercial (HC), General Commercial (GC), or General Retail (GR) districts and a residential district or between any Industrial district and any other non-industrial district other than Heavy Commercial (HC) and General Commercial (GC). A Type B Buffer shall consist of a 5-foot wide buffer yard plus at least 25 points based on the points listed in subsection (3) below.

(3) Points.

a. Opaque masonry wall with 6 foot minimum height = 15 points.

b. Opaque fence with 6 foot minimum height = 5 points.

c. An existing, continuous fence or wall on the adjacent property = 1/2 the points of a fence or wall on the subject property.

d. Each additional 5 feet of buffer yard = 5 points (maximum of 15 points).

e. One tree with a mature height of at least 20 feet and height of at least 8 feet at time of planting per 25 lineal feet of buffer yard = 10 points.

f. Three smaller trees per 25 lineal feet of buffer yard = 10 points.

(b) Buffer yards are required between adjacent uses as indicated. For purposes of this section adjacent includes properties separated by an alley, but does not include properties separated by a street.

(c) Parking lots, driving lanes, loading areas, or other similar areas of vehicular access shall be screened from residentially zoned property, whether adjacent or across a street, by a continuous hedge, fence, wall, berm, or combination of these, with a minimum height of 36 inches. This requirement shall not be required on expressways and major arterial roads.

(d) Open space in buffer yards shall be planted in grass or other vegetative ground cover, except for authorized driveways across the buffer yard or approved pedestrian facilities.

(e) Alternative buffering may be allowed through the site plan review process as long as the buffering and aesthetic intent of these requirements are met.

(Ord. No. 8-2010, pt. 1 (Exh. A), 4-22-10; Ord. No. 14-2015, pt. 1 (Exh. A, 4), 3-12-15)



Watts, Nick <nick.watts@abilenetx.gov>

[Planning] #Z-2021-38

4 messages

jerry smith <jd6593@sbcglobal.net>
To: planning@abilenetx.gov

Wed, Dec 1, 2021 at 12:15 PM

Parcel ID51993
Jerry Don & sharon smith
10 gardenia circle

We are not opposed to this, they maintain the area nicely, would like to see employee parking on wisteria and high meadows addressed because Miguel's staff all park on the streets causing congestion

--

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/636759C1-92A5-4686-8A57-3F73F2A28CAA%40sbcglobal.net>.

Watts, Nick <nick.watts@abilenetx.gov>
To: jerry smith <jd6593@sbcglobal.net>
Cc: Planning Services <planning@abilenetx.gov>

Wed, Dec 1, 2021 at 1:11 PM

Jerry,

Thank you for your response to Z-2021-38. Just for clarification purposes, are you IN FAVOR, IN OPPOSITION, or would you like to provide no opinion?

Nick Watts, MBA, CNU-A

Planner I & Historic Preservation Officer
Planning & Development Services
(325) 437-4585 (Office)
555 Walnut Street, Suite 100
Abilene, Texas 79601-5254

[Quoted text hidden]

jerry smith <jd6593@sbcglobal.net>
To: "Watts, Nick" <nick.watts@abilenetx.gov>

Wed, Dec 1, 2021 at 2:51 PM

In Favor

Sent from my iPhone

On Dec 1, 2021, at 1:12 PM, Watts, Nick <nick.watts@abilenetx.gov> wrote:

[Quoted text hidden]

Watts, Nick <nick.watts@abilenetx.gov>
To: jerry smith <jd6593@sbcglobal.net>

Wed, Dec 1, 2021 at 2:56 PM

Jerry,

Thank you for your timely response.

[Quoted text hidden]

[Quoted text hidden]

For the PLANNING & ZONING COMMISSION

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

CASE #: Z-2021-38

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: SMITH KYLE & CAROLYN

Parcel I.D.: 53295

Address: 15 WISTERIA CR

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: Kyle H. Smith

I am in favor so long as the residents in this area do not see any good reason why the hedge should not be removed. (I have not lived in Abilene for 13 years so I am not familiar with the pros and cons).

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-2021-38

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: DUDLEY R MICHAEL
Parcel I.D.: 52122
Address: 20 GARDENIA CR

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: Mike Dudley

DEC 3 PM 3:33

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-2021-38

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: SECHRIST TIMOTHY R & JORI

Parcel I.D.: 56419

Address: 3949 HIGH MEADOWS DR

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 7 PM12:01

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-2021-38

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: CHAPAPOTE INVESTMENTS LLC

Parcel I.D.: 31945

Address: 2601 S DANVILLE DR

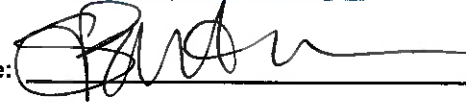
Mailing To: Planning and Development Services
P.O. Box 60, Abilene TX 79604-0060

Email: planning@abilenetx.gov

I am in favor ☐
Additional Comments:

I am opposed ☒

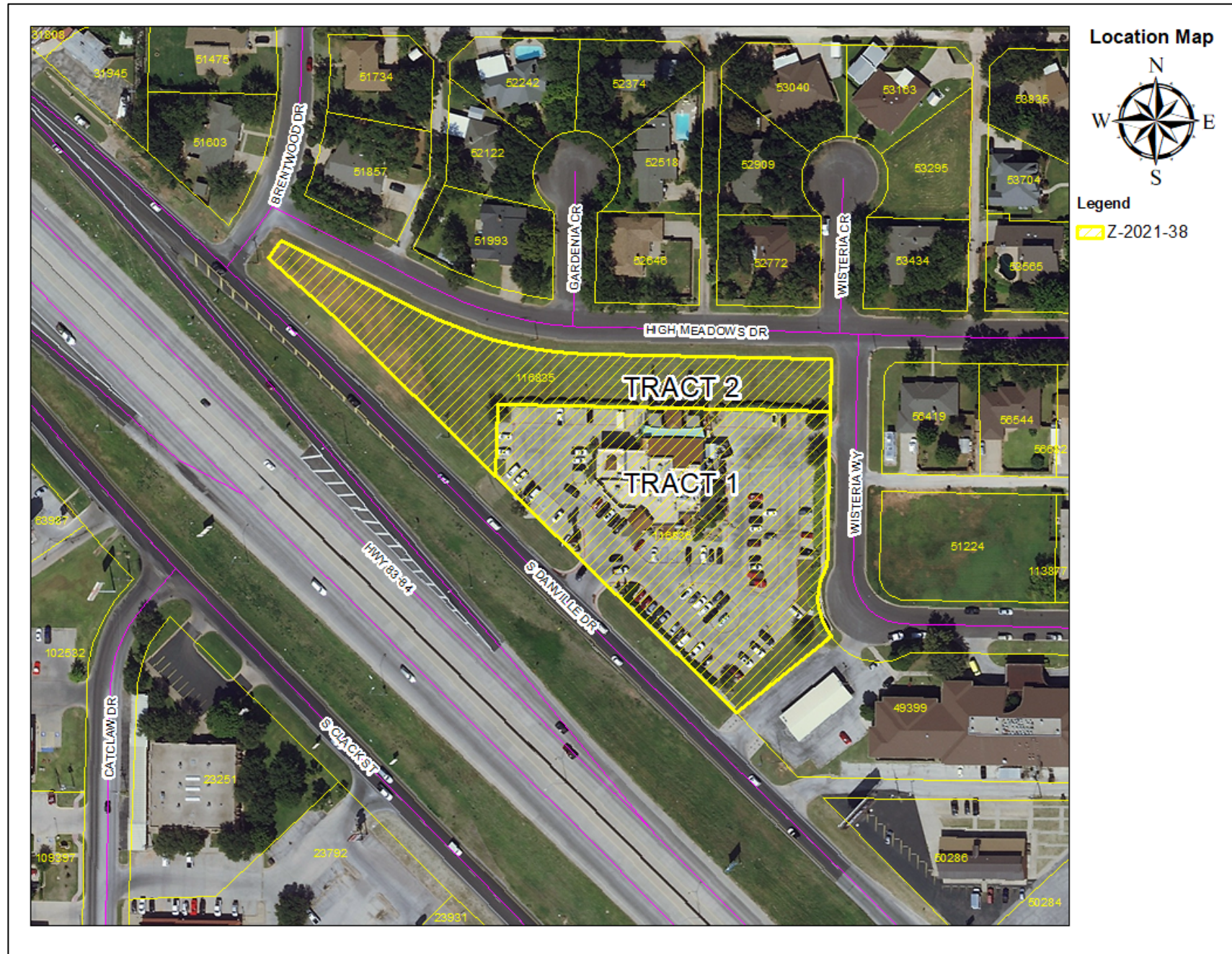
Signature: _____

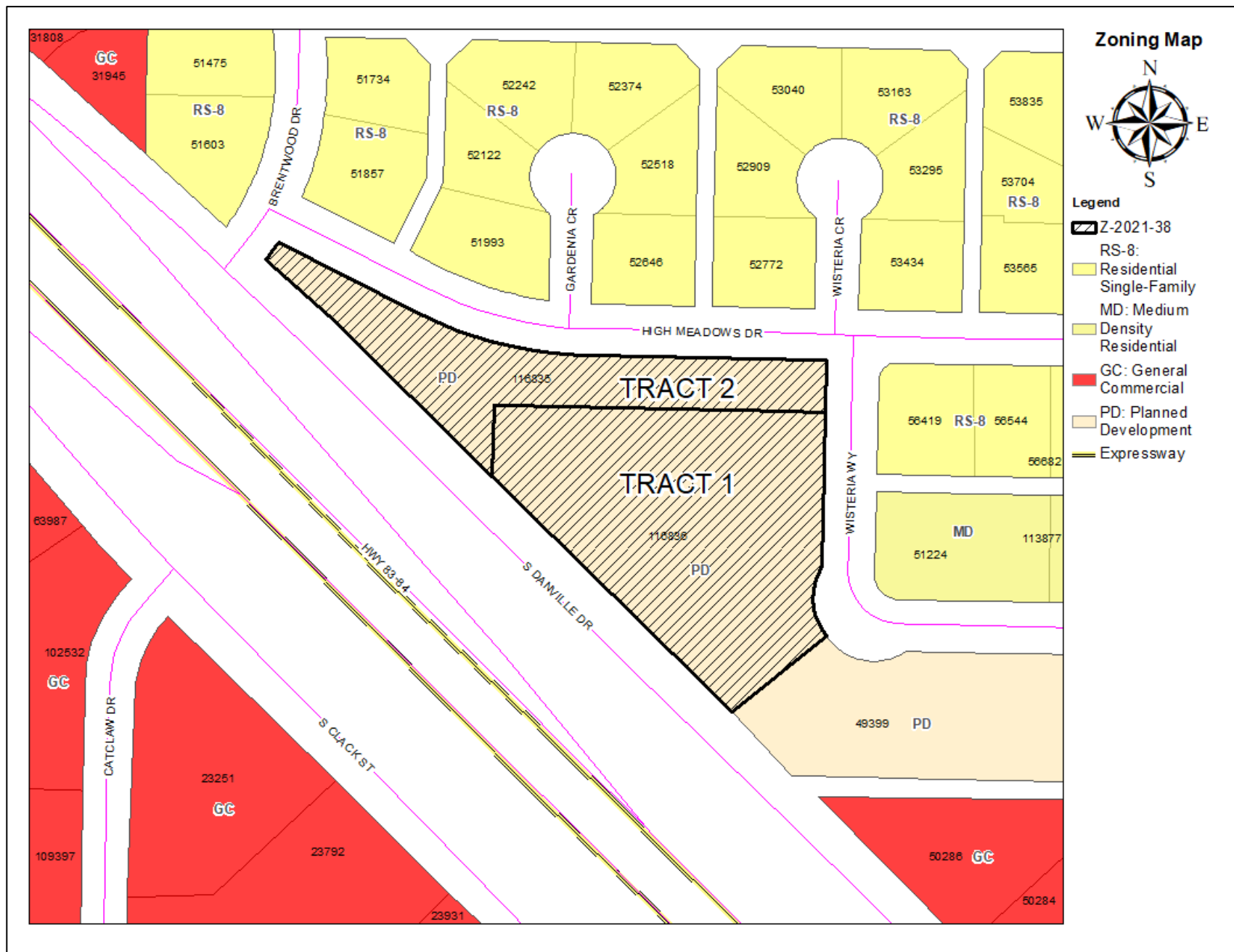


DEC 15 AM 10:26

Case:	Z-2021-38
Owner:	Exceptional Holdings LP
Agent:	Michael Burton
Request:	Amendment to the Terms and Conditions of Planned Development 122
Location:	2901 and 3001 S. Danville Drive
Notification:	2 in Favor, 3 Opposed
Planning & Zoning:	Approval, January 4, 2022

Z-2021-38 LOCATION MAP





Ordinance 02-2008

PART 7; (II.) SITE DEVELOPMENT; (D.) SCREENING AND FENCING

“There shall be a solid evergreen hedge along the northern and eastern boundary of Tract 1. Plant materials selected shall be of a variety to achieve a minimum height of 8 feet within 3 years of planting and shall be spaced to provide an effective visual barrier to properties along High Meadows Drive and Wisteria Way. Visibility corners at drive entrances shall be maintained”.

PD-122 AMENDMENT:

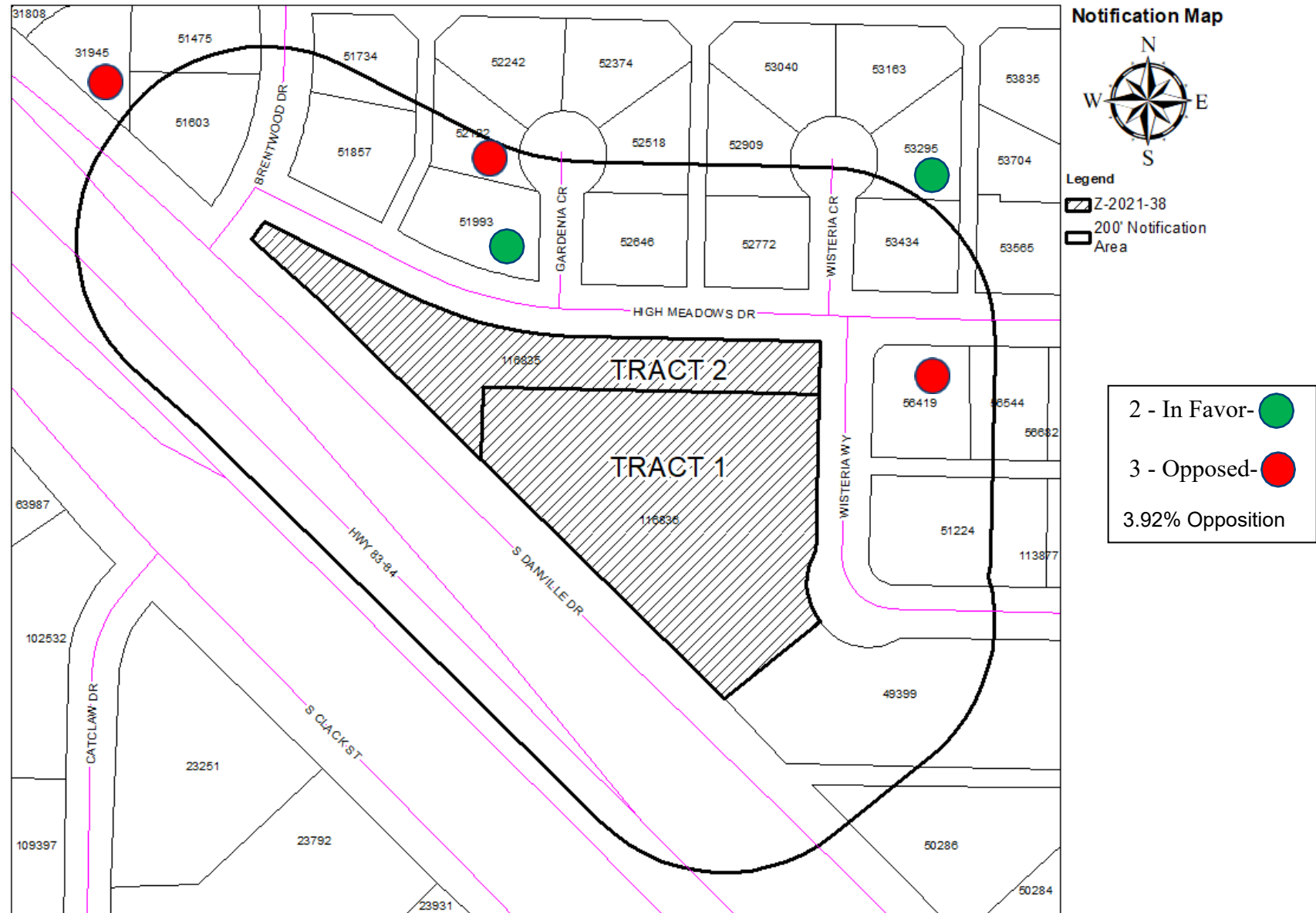
PART 7; (II.) SITE DEVELOPMENT; (D.) SCREENING AND FENCING

“Parking lots, driving lanes, loading areas, or other similar areas of vehicular access shall be screened from residentially zoned properties, whether adjacent or across a street, by a continuous hedge, fence, wall, berm, or combination of these, with a minimum height of 36 inches. Said screening must be provided along the property boundary separating Tract 1 and Tract 2 in the provided exhibit as well as along the eastern property boundary of Tract 1.”

Z-2021-38 VIEWS OF SUBJECT & ADJACENT PROPERTIES



Z-2021-38 NOTIFICATION AREA MAP



- Consistent with the *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: 2/10/2022

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Chief Building Official

SUBJECT: **17. Ordinance (Final Reading) Z-2022-01: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Lien Jung and Yi-Chien (represented by Jacob & Martin LLC) to change zoning from Agricultural Open Space (AO) to a Planned Development (PD) District allowing landscape contractor services, in addition to uses commensurate with General Retail zoning, on approximately 12.94 acres of now-vacant land at the southwest corner of Antilley Road and Fairway Oaks Boulevard in south Abilene (Tim Littlejohn)**

GENERAL INFORMATION

The request is to rezone from Agricultural Open (AO) to a Planned Development (PD) District allowing uses commensurate with General Retail (GR) zoning as well as landscaping contractor services.

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 5-0.

ATTACHMENTS:

1. Z-2022-01 Council Ordinance
2. Z-2022-01 Staff report
3. Z-2022-01 Council presentation

ORDINANCE NO. _____

EXHIBIT "A"

PAGE 1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING THE, "LAND DEVELOPMENT CODE," OF THE ABILENE CITY CODE, CONCERNING PD-175 A PLANNED DEVELOPMENT DISTRICT; 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 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.

PASSED ON FIRST READING this 27th day of January, 2022.

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 18th day of December, 2021, the same being more than fifteen (15) days prior to a public hearing held at the Abilene Public Library's South Branch in the Mall of Abilene at 4310 Buffalo Gap Road in Abilene, Texas, at 8:30 a.m. on the 10th day of February, 2022, 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 SECOND AND FINAL READING THIS 10th day of February, 2022.

ATTEST:

Shawna Atkins,
CITY SECRETARY

Anthony Williams,
MAYOR

APPROVED:

Stanley Smith,
CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT "A"

PAGE 4

ORDINANCE NO. _____

Exhibit "A"

PART 1: Land Title. Title to land not dedicated to public use and services or for utility purposes and not otherwise designated for development purposes shall remain in possession of the owner thereof, his heirs, assigns, lessees and successors in interest and shall not be the responsibility of the City of Abilene for any purpose.

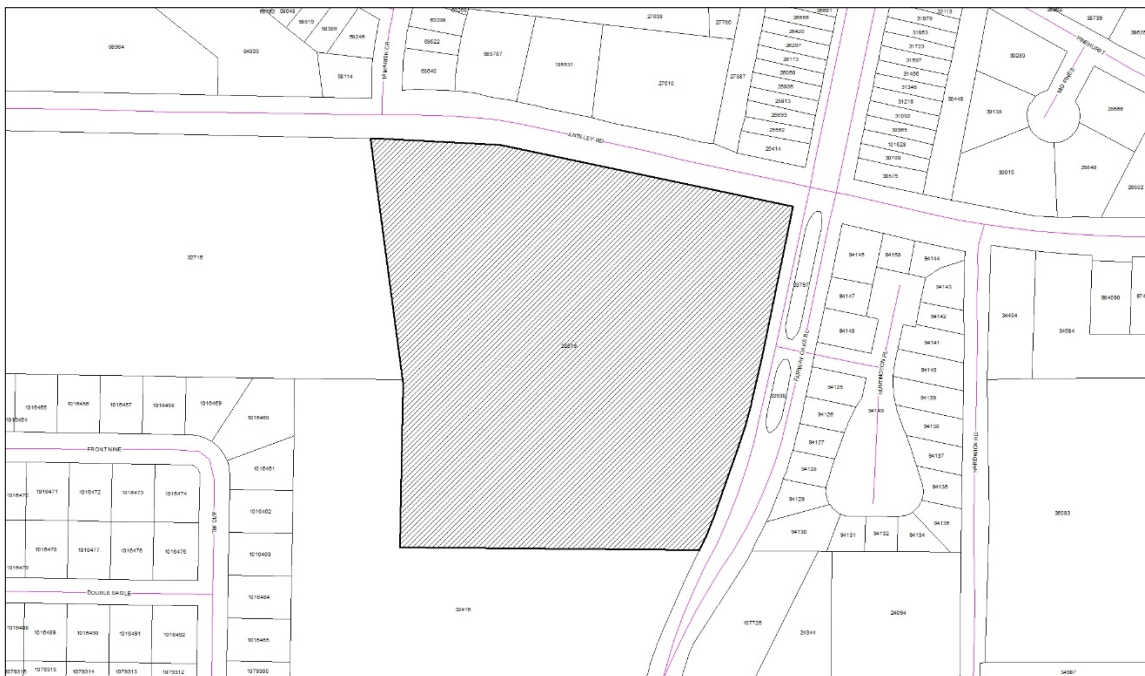
PART 2: Development Specifications. All development in the Planned Development shall be in accordance with any maps, topographical and drainage plans, utility plans, architectural drawings, site plan, plat, and any other required plans filed in connection with this requested Planned Development, which are hereby incorporated by reference and included as part of this ordinance. All use and development within the Planned Development must be in compliance with the Land Development Code of the City of Abilene except as otherwise specifically provided herein.

PART 3: Building Specifications. All structures in the herein said Planned Development shall be constructed in accordance with all pertinent building and construction codes of the City of Abilene.

PART 4: Zoning. That the Land Development Code of the City of Abilene is hereby further amended by changing the zoning district boundaries ask hereinafter set forth: from Agricultural Open (AO) to Planned Development (PD) District.

PART 5: Legal Description. The legal description of this PD District is as follows: A tract containing 12.94 acres, more or less, out of a 19.30 acre tract out of Section 11, Lunatic Asylum lands, and the C.A. Donovan Survey, Taylor County, Texas, said 19.30 acre tract being described in a Warranty Deed dated July 17, 1984, from Hollis E. Swofford, Jr. and William F. (Pete) Baker to Paul F. Patterson, Jr. and wife, Connie J. Patterson, and recorded in Volume 1372, Page 805, of the Deed Records of Taylor County, Texas and being all of 19.30 are tract SAVE AND EXCEPT the following:

1. A tract containing 4.622 acres conveyed to Garden Homes at Fairway, Ltd., a Texas limited partnership, in a general warranty deed dated March 26, 1996, recorded in Volume 2147, Page 328, Official Public Records of Taylor County, Texas.
2. A tract containing 1.74 acres conveyed to the City of Abilene, Texas, in a warranty deed dated April 18, 1985, recorded in Volume 1400, Page 210, Official Public Records of Taylor County, Texas.



Location: 12.94 acres at the southwest corner of Antilley Road and Fairway Oaks Boulevard in south Abilene, Taylor County, Texas

PART 6: Purpose. The purpose of this Planned Development District is to allow landscaping contractor services on land which is otherwise reserved for general retail (GR) uses.

PART 7. Specific Modifications. The use and development of land and buildings in this Planned Development District shall generally be subject to requirements of the General Retail (GR) zoning classification, except as modified below:

A. Permitted Uses:

In addition to uses ordinarily allowed by right in General Retail (GR) Districts, landscaping contractor services shall also be permitted:

1. For the purpose of this ordinance, the term “landscaping contractor services” shall be construed to mean a business or enterprise engaged in altering or ornamenting an existing outdoor environment, specifically with living plant material such as lawn, groundcover, trees, shrubs, and flowers; and also including accessory outdoor elements such as fountains, pools, paved or decorative surfaces (excluding driveways, parks, loading or storage areas) as well as sculptural elements. Continued maintenance of all above-described features shall also be embraced by the term “landscaping contractor services”, but not the production of plant material.

B. Screening & Storage Requirements:

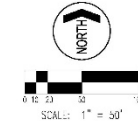
All requirements for screening, buffering and fencing (including limitations on outside storage and display) that are ordinarily applicable in General Retail zoning districts shall be applicable in this Planned Development District, as well as the following additional requirements:

1. Storage of tools and equipment (not displayed for sale) commonly associated with landscaping contractor services must be enclosed indoors and out-of-view from beyond the bounds of this district; or completely screened from view outside the bounds of this district, by a solidly opaque fence or wall at least six feet (6') high or higher if necessary for complete screening but, in no circumstance, higher than ten feet (10'). This includes any type of trailer or semi-trailer, any type of motorized equipment for earthmoving or dredging, and any commercial vehicle having a rated capacity of more than two-and-a-half tons.
2. Bulk storage of landscaping ground covers and fillers (including but not to be limited to soil, sand, sod, mulch, gravel, granite, caliche, etc.) shall be screened from view outside the bounds of this district, by a solidly opaque fence or wall at least six feet (6') high or higher if necessary for complete screening but, in no circumstance, higher than ten feet (10'). This restriction is applicable even to temporary and/or staging of such materials, in preparation for individual off-site work efforts.
3. All other outdoor storage of materials and equipment not for sale shall be prohibited.
4. All internal areas utilized for vehicle parking and maneuvering, and which are not screened by a solidly opaque fence or wall, shall have an all-weather surface composed of hot-mix asphaltic or Portland cement binder pavement.
5. Storage of equipment/materials and the construction of solid fencing/walls within the floodway shall be in accordance with City standards.

C. Graphic Concept Plan:

1. Use and development of the land within this Planned Development District shall generally conform to the graphic concept plan shown as Exhibit "B" attached hereto and made a part of this ordinance for all purposes. Subdividing of the subject property in the Planned Development District into lots or tracts smaller than that shown on such graphic concept plan shall be allowed only with an amendment to this ordinance.

EXHIBIT "B" GRAPHIC CONCEPT PLAN



THIS DOCUMENT IS
NOT ELIGIBLE FOR REVIEW
ONLY UNDER THE
AUTHORIZATION OF
1. CRYPT. FILE NO. 114,
P. 48735 AND IS NOT
TO BE USED FOR
CONSTRUCTION,
REPRODUCTION,
PERMITTING PURPOSES

3465 CURRY LANE
ABILENE, TX 79606
325-595-1070

1508 SANTA FE DR, STE 204
WEATHERFORD, TX 76086
817-594-9580

1014 BROADWAY STREET
LUBBOCK, TX 79401
806-368-6375



**JACOB
MARTIN**
FIRM# F-2448

ARL FNF, TEXAS

EXTREME EXTERIORS

CONCEPT SITE PLAN

10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100									
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

ZONING CASE Z-2022-01

STAFF REPORT



Scheduled Hearings

Planning & Zoning Commission: January 4, 2022

City Council 1st Reading: January 27, 2022

City Council 2nd Reading: February 10, 2022

Applicant

Owner: Lien Jung C & Yi Chien

Agent: Jacob & Martin

Request

Rezone from Agricultural Open (AO) to a Planned Development (PD) District allowing uses commensurate with General Retail (GR) zoning as well as landscaping contractor services.

Location

6325 Fairway Oaks Blvd, being 12.94 acres of now-vacant land at the southwest corner of Antilley Road and Fairway Oaks Boulevard in south Abilene. Legal description being a certain 12.94 acres (approximately) out of the C.A. Donovan Survey in Abilene, Taylor County, Texas.

Background

This property was annexed to the City limits of Abilene during 1980. This property has remained vacant since being annexed into the City of Abilene. The subject property is intersected by Buttonwillow Creek which subsequently leads to a majority of this property being inundated by flood hazard areas.

Zoning and Existing Land Use

Current zoning and existing land use of properties adjacent to and in the subject property's immediate area are illustrated on the map included in this report. As indicated on the map, properties to the north across the width of Antilley Road are residences and office buildings located within Planned Development District 4 (PDD-4); commonly referred to as the Fairways PD. East of the subject property and across Fairway Oaks Boulevard is a subdivision of patio homes within a Patio Home (PH) zoning district. South and west of the subject property are Agricultural Open (AO) zoning districts; west of the subject property is a single-family residence and south of the subject property is currently vacant land.

Criteria Assessment

Section 1.4.1.4 of Abilene's Land Development Code states that, 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 displayed in Abilene's Comprehensive Plan identifies the subject property and its surroundings to be in a "Gateway/Mixed-Use" area. According to the Comprehensive Plan; mixed-use areas should develop with a mix of mutually supportive and integrated residential and non-residential land uses, allowing an appropriate blend of residential, retail, and employment activities in close proximity to one another. This proposed rezoning will achieve the goal of integrating multiple land uses and encouraging a variety of activities. According to the Comprehensive Plan, this encouragement of mixed land uses will create a more interesting and dynamic urban environment. This proposed PD District seems generally consistent with the land-use policies of Abilene's Comprehensive Plan.

(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 vast majority of this site is inundated by the floodway. This presents challenges to development on the majority of the site. Due to the existence of this floodway, the most useful portion of this property is the northeastern most corner of the site, which is located at the intersection of a major arterial street (Antilley Road) and collector street (Fairway Oaks Boulevard.). Traditional planning considers locations such as this to be desirable for commercial activity as it optimizes public access and provides the exposure necessary for success; while providing convenient access to activities that may serve nearby neighborhoods.

Given that allowed nonresidential use will be limited to General Retail (GR) activities, which are customarily appropriate at the intersections of major arterial and collector streets. This proposed PD District seems generally compatible with existing residential land uses east of Fairway Oaks Boulevard, which are separated by a landscaped median, and residences north of Antilley Road, each of these adjacent residential land uses are separated by an approximate 100-foot-wide right-of-way. Furthermore, the commercial activity at this location will not appear out of character due to the existing office buildings located north of Antilley Road.

Additionally, with the allowance of landscaping contractor services in this PD, there will be additional screening requirements for the storage of equipment and materials associated with landscaping contractor services (i.e. equipment must be stored indoors, or by opaque fences/walls). Said screening requirement will apply to all equipment that is not displayed for sale in order to mitigate the appearance of the contractor service activity at this location; all other outdoor storage of materials not for sale will be prohibited. The outdoor display of merchandise for sale shall be subject to the following requirements which are ordinarily applicable within General Retail (GR) zoning. Outdoor display of merchandise is not allowed within 10-feet of a property line adjacent to a street. Outdoor display of merchandise shall be limited to 5% of the total site area, up to 15% if any excess over 5% is completely screened from view from rights-of-way and adjacent properties. Outdoor display of merchandise is limited to the rear and interior side yards or within 20-feet of the front of the principal building.

(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 lies at the intersection of a fully-improved arterial street (Antilley Road) and a fully improved collector street (Fairway Oaks Boulevard). Furthermore, the subject property has direct access to 8" and 6" sanitary sewer mains and a 12" water main. The development of this site will not require additional public improvements.

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

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

Staff Recommendation

City staff recommends **approving** this requested zone change to a Planned Development (PD) District incorporating the features described earlier in this report and as shown on an accompanying graphic concept plan.

Notification

Pursuant to Section 1.2.2.2 of Abilene's Land Development Code, City staff mailed personal notices on December 17 of 2021, to the applicant and to other owners of property within a 200-foot radius of this subject property. These property owners and associated parcel identification numbers are identified in Table 1.

TABLE 1

Owner	Parcel ID	Situs	Response
ABILENE COUNTRY CLUB INC	64035		
ABILENE HUNTINGTON RIDGE	94149		
ABILENE URBAN PROPERTIES LP	27510	3190 ANTILLEY RD	
ARDOYNO JUSTIN D	25552	80 FAIRWAY OAKS BL	
BRADSHAW DAVID T	58246	81 TAMARISK CR	
BYRD MIKE	32416	6542 FAIRWAY OAKS BL	
CACERES ALFREDO	94148	6326 HUNTINGTON PL	
CAMPBELL BONNIE L	58386	79 TAMARISK CR	
DELAGARZA RUBEN JR & STARLA	94150	6302 HUNTINGTON PL	
DENNIS STEPHEN CHASE &	32715	3469 ANTILLEY RD	
DOBY KYLE R	25414	3152 ANTILLEY RD	
FITZHUGH CINDY G BURLESON	63640	1 TAMARISK CR	
GREEN OAKS TOWN HOMES	27387		OPPOSED
HELMSTADTER JOSHUA L & AIMEE R	94129	6374 HUNTINGTON PL	
LEE JOSHUA & STACY	94145	6310 HUNTINGTON PL	
LIEN JUNG C & YI-CHIEN	33519	6325 FAIRWAY OAKS BL	FAVOR
LIN YEY ENTERPRISES LTD	105531	3210 ANTILLEY RD	
LONG INVESTMENTS LLC	58114	83 TAMARISK CR	
LOYOLA FAMILY LTD	107726		
MILLER JAMES P & BARBARA L	30700	77 FAIRWAY OAKS BL	
MURPHY KENNETH T	30575	79 FAIRWAY OAKS BL	OPPOSED
ONYX PROPERTIES INC	33930		
ONYX PROPERTIES INC	33797		
ORREN SHIRLEY A	63522	3 TAMARISK CR	
POOLE RYAN V	94128	6366 HUNTINGTON PL	
PREMIER PROPERTIES ABILENE LLC	25693	78 FAIRWAY OAKS BL	FAVOR
RAMOLIA PARAS	985787	3226 ANTILLEY RD	
ROBINSON LEAH P	94126	6350 HUNTINGTON PL	
SCOTT WILLIAM V & RHONDA L	94127	6358 HUNTINGTON PL	
THORNQVIST LENORE	101528	75 FAIRWAY OAKS BL	
TINDELL MARY HELEN LIFE ESTATE	25813	76 FAIRWAY OAKS BL	
TULL MATTHEW WARREN &	94130	6382 HUNTINGTON PL	
WILLIAMSON ROBERT A & DONNA	94125	6342 HUNTINGTON PL	
WOOD JERRY W & JOAN E	94147	6318 HUNTINGTON PL	

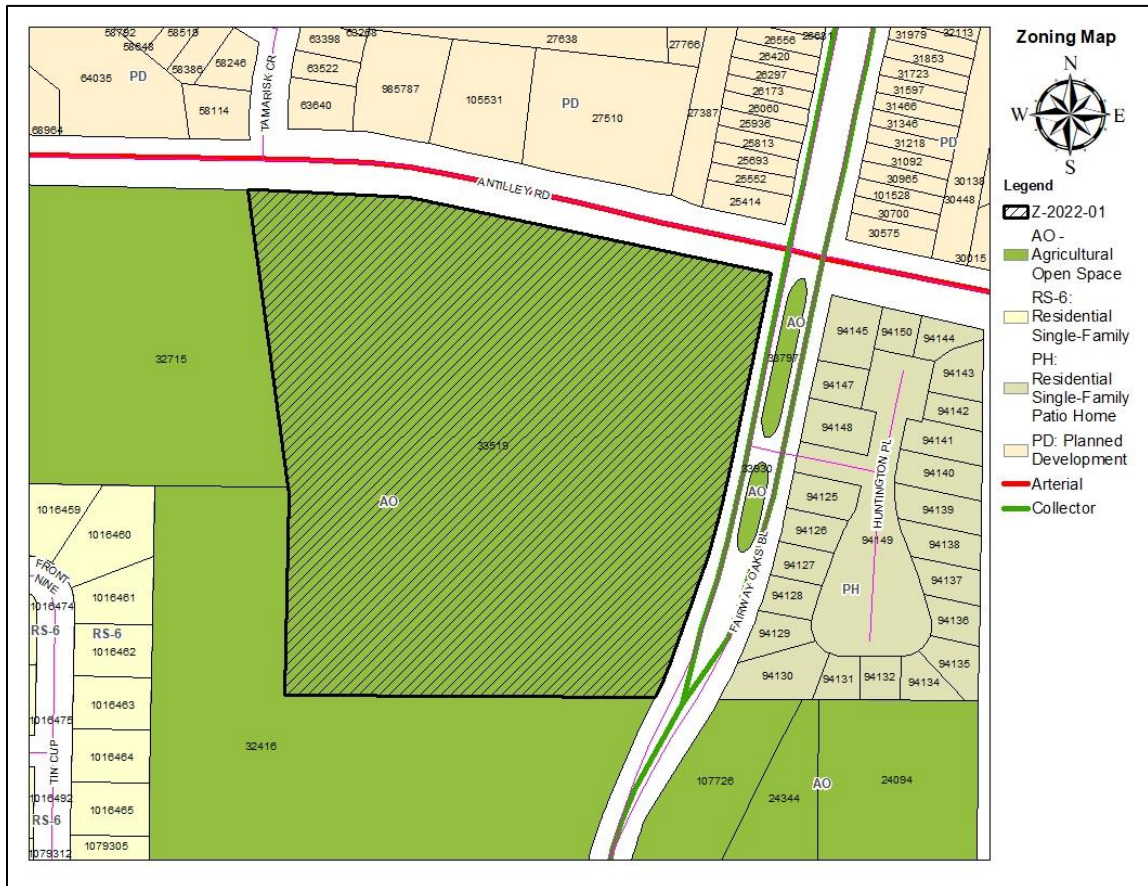
Attachments

Application
PowerPoint Presentation
Graphic Concept Plan
PD Ordinance

LOCATION MAP



ZONING MAP



[illegible]



Development Application

Planning

☐ Conditional Use

☐ Easement Release

☐ Rezoning

☐ Other

☒ PDD

☐ Street Name Change

☐ Thoroughfare Abandonment

☐ PDD Amendment

Other: _____

Project Name: Extreme Exteriors

Address: 6325 Fairway Oaks Blvd No. of lots: 1 Acreage: 12.94

Legal Description: _____

Subdivision Name: _____ Block: _____ Lot: _____

Current Zoning: AO Proposed Zoning (if applicable): PD

OWNER AND AUTHORIZATION

Owner Name: Lien Jung C + Y; Chien

Address: 2404 Piedra Drive

City, State, Zip: Plano TX 75023 Fax: _____

Phone: _____ 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) Jacob + Martin will act as my agent before the Planning and Zoning Commission.

Agent Name: Tal Fillingim - Jacob + Martin

Address: 3465 Curry Lane

City, State, Zip: Abilene TX 79606 Fax: _____

Phone: 325-695-1070 Email: Tal@jacobmartin.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: [Signature] Date: Dec 02, 2021

FOR OFFICE USE ONLY

Received: _____ Fee: \$ _____ Receipt No.: _____

Case No.: _____ Reviewed By: _____



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.

PD – Base zoning as General Retail with an allowance for Landscaping Contractor Services. This Property is located at the intersection of an arterial and a collector with significant buffering on the south and west sides of the property due to existing creek and associated flood plain. Residential development to the east is separated by a boulevard style roadway with a landscaped median. The north property boundary is separated from the existing offices and townhomes, by the 100' Antilley Road right-of-way and a 5 lane paved roadway.



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: _____

Dec 02, 2021
B-SIGNED
0949C1...

DATE: Dec 02, 2021

For the PLANNING & ZONING COMMISSION

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

CASE #: Z-2022-01

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: GREEN OAKS TOWN HOMES

Parcel I.D.: 27387

Address:

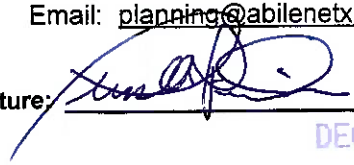
Mailing To: Planning and Development Services
P.O. Box 60, Abilene TX 79604-0060

Email: planning@abilenetx.gov

I am in favor ☐

I am opposed ☒

Additional Comments:

Signature: 

DEC 23 PM12:06

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-2022-01

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: MURPHY KENNETH T

Parcel I.D.: 30575

Address: 79 FAIRWAY OAKS BL

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: Kenneth T. Murphy

DEC 28 PM 12:06

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.

planning@abilenetx.gov

For the PLANNING & ZONING COMMISSION
Please call (325) 676-6237 if you have any questions about this notice.

CASE #: Z-2022-01

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: LIEN JUNG C & YI-CHIEN
Parcel I.D.: 33519
Address: 6325 FAIRWAY OAKS BL

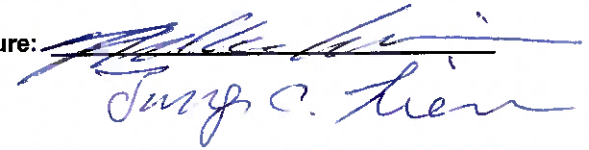
Mailing To: Planning and Development Services
P.O. Box 60, Abilene TX 79604-0060

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature:



JAN 3 AM 11:19

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-2022-01

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: PREMIER PROPERTIES ABILENE LLC

Parcel I.D.: 25693

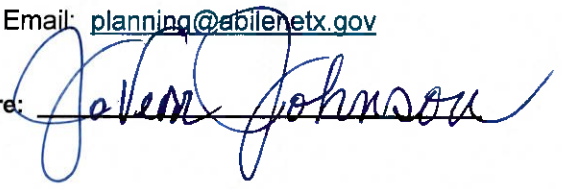
Address: 78 FAIRWAY OAKS BL

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: 

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

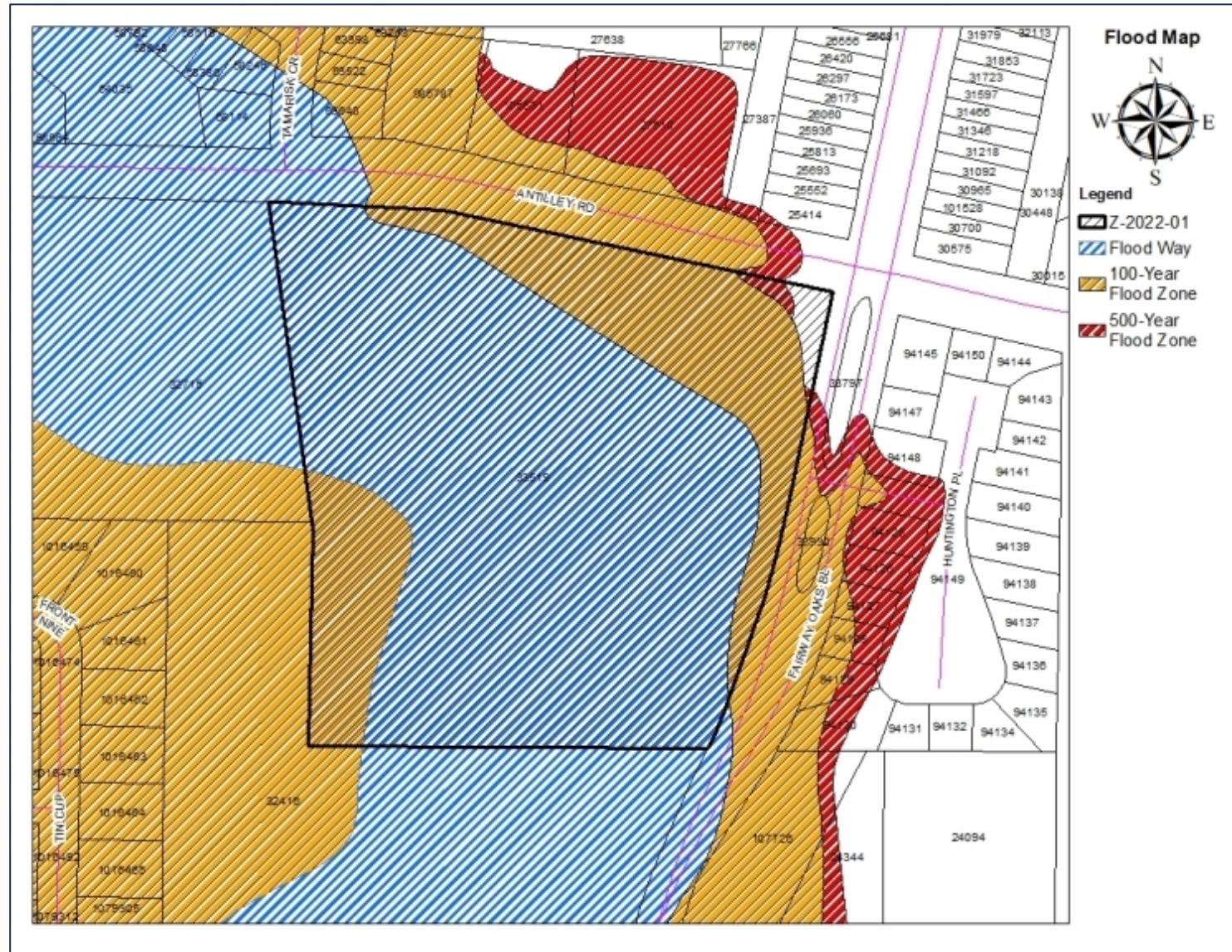
We work together to build and maintain a community of the highest quality for present and future generations.

Case:	Z-2022-01
Owner:	Lien Jung & Yi Chien
Agent:	Jacob & Martin
Request:	Rezone from Agricultural Open (AO) to a Planned Development (PD) District allowing uses commensurate with GR zoning as well as landscaping contractor services
Location:	6325 Fairway Oaks Blvd.
Notification:	2 in Favor, 2 Opposed
Planning & Zoning:	Approval, January 4, 2022

Z-2022-01 LOCATION MAP







Permitted Uses in AO Zoning

RESIDENTIAL USES:

- C Bed & Breakfast
- P Dwelling– Industrialized Housing Unit
- P Dwelling – Single-Family Detached
- C Vacation Travel Trailer Park

ACCESSORY AND INCIDENTAL USES:

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P Animal Lot
- P/C Day Care Operation – Home-Based*
- P Dwelling – Accessory*
- TP Field Office or Construction Office (temporary)*
- P Freight Container*
- P Garage Sale
- P Home Occupation
- C Mobile Home (permanent security residence)
- C Mobile Home (temporary security residence)
- TP Subdivision Sales Office (temporary)
- P Swimming Pool, Private (accessory to residential use)
- P Tennis Court, Private (accessory to residential use)
- P/SE Wind Energy Conversion Systems*

CULTURAL AND RECREATIONAL USES:

- p Civic, Social, and Fraternal Organization
- P Fairgrounds/Rodeo
- C Motorized Racing
- C Recreation – Outdoors (active)
- P Recreation – Outdoors (passive)
- P Zoo

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Community Home
- C Correction, Detention, or Penal Facilities
- P Fire/Police Station
- C Military and Armed Forces Reserve Center
- C Sanitary Landfill

EDUCATIONAL AND RELIGIOUS USES:

- C Cemetery, Crematorium, and Mausoleum
- P Church or Place of Worship
- P School: Public/Private

SERVICE

- C Kennel (with outdoor pens)
- P Kennel (without outdoor pens)
- P Veterinary Service (all size animals)

TRADE – RETAIL USES

- C Liquor Store (on premises consumption) (Defined under Liquor Store)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- C Airport, Heliport and Flying Field Terminals – Commercial
- C Antenna Tower – Commercial
- P Public Utility Facility
- C Utility Generation, Production, Treatment

RESOURCE PRODUCTION AND EXTRACTION USES:

- P Farming, Ranching & Livestock, Hatchery
- C Mining
- C Petroleum or Gas Well
- P Urban Garden

LEGEND

P
C
TP

Permitted as a Right-of-Use (may be subject to compliance with conditions described within Division 3- Requirements Applicable to Specific Land Uses of the Land Development Code)
Permitted as a Conditional Use Permit, Requiring Approval by City Council
Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment

Permitted Uses in GR Zoning

RESIDENTIAL USES:

- P Bed & Breakfast
- P Dwelling – Industrialized Housing Unit
- P Dwelling – Institutional
- C Dwelling – Multiple-Family
- P Dwelling – Single Family Detached
- P Hotel/Motel

ACCESSORY AND INCIDENTAL USES:

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P ATM's, Self-Serve Kiosks, and Similar Facilities
- P/C Day Care Operation – Home Based
- P Drive-Thru Facility
- TP Field Office or Construction Office (temporary)
- C Freight Container
- P Fuel Sales
- P Garage Sales
- P Home Occupation
- TP Itinerant Business
- P Manufacturing (incidental)
- TP Mobile Home (temporary security residence)
- P Recreation Building, Multipurpose
- P Recreation Equipment, Mobile (storage and parking)
- P Recycling Collection Point
- P Subdivision Sales Office (temporary)
- P Swimming Pools, Private (accessory to residential use)
- P Tennis Courts, Private (accessory to residential use)
- P/SE Wind Energy Conversion Systems

CULTURAL AND RECREATIONAL USES:

- P Civic, Social, and Fraternal Organization
- P Cultural Facilities
- C Recreation – Outdoors (active)
- P Recreation – Outdoors (passive)
- P Recreation and Commercial Entertainment - Indoor

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- C Ambulance Service
- P Fire/Police Station
- P Medical/Dental Laboratory
- P Post Office
- C Social Service Facility

EDUCATIONAL AND RELIGIOUS USES:

- P Arts School
- P Church or Place of Worship
- P Day-Care Operation - Center-Based
- P Educational and Scientific Research
- P School: Public/Private
- C Trade/Business School
- P University/College

SERVICE

- P/C Automobile Wash
- C Funeral Home/ Mortuary/Morgue
- P Kennel (Without Outdoor Pens)
- P Laundry/Dry Cleaning Services & Facilities
- P Office (general, professional, financial)
- P Personal Services
- C Printing, Copying, Reproduction, Publishing
- P Repair and Maintenance Services - Automobile/Small Truck (minor)
- P Repair and Maintenance Services (indoor)
- C Tattoo Parlor
- P Veterinary Service (small animals)

TRADE – RETAIL USES

- P ATM's, Self-Serve Kiosks, and Similar Facilities
- P Fuel Sales
- P Liquor Store (Off Premises Consumption) (*Defined under Liquor Store*)
- P Liquor Store (On Premises Consumption) (*Defined under Liquor Store*)
- P Restaurant, Brew Pub
- P Restaurant, Fast Food
- P Restaurant, Standard
- P Retail Sales/Rental (indoor)
- C Retail Sales/Rental (outdoors, non-vehicle)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- C Antenna Tower- Commercial
- P Automobile Parking Lot or Structure - Commercial
- P Broadcast Studio
- P Public Utility Facility

RESOURCE PRODUCTION AND EXTRACTION USES:

- P Petroleum or Gas Well
- P Urban Garden

LEGEND

P
C
TP

Permitted as a Right-of-Use (may be subject to compliance with conditions described within Division 3- Requirements Applicable to Specific Land Uses of the Land Development Code)
Permitted as a Conditional Use Permit, Requiring Approval by City Council
Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment



Z-2022-01 VIEWS OF SUBJECT & ADJACENT PROPERTIES

Subject Property (south of Antiley Rd.)



South View of Fairway Oaks Blvd.



Neighboring Property (north of Antilley)

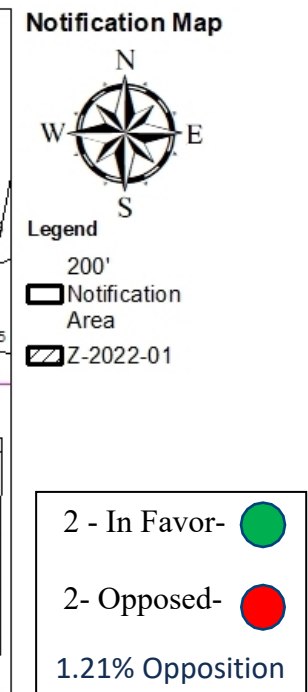


Neighboring Property (north of Antilley)



Neighboring Property (East of Fairway Oaks Blvd.)





- Consistent with the *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: 2/10/2022

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Chief Building Official

SUBJECT: 18. Ordinance (Final Reading) Z-2022-02: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Houston Polasek (represented by Heath Polasek) to change zoning from Agricultural Open Space (AO) to a Residential Single-Family Patio Home (PH) District, on 46.25 acres of existing agricultural land at the southwest corner of Maple and East South 27th Streets in southeast Abilene (Tim Littlejohn)

GENERAL INFORMATION

The request is to rezone from Agricultural Open Space (AO) to a Residential Single-Family Patio Home (PH) District.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

City staff generally recommends approving the proposed PH District, except for at least a 250' x 250' portion from the northeast corner of this subject property, adjacent to the intersection of Maple and South 27th Streets.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval of the applicant's request by a vote of 4-0.

ATTACHMENTS:

1. Z-2022-02 Council ordinance
2. Z-2022-02 Staff Report
3. Z-2022-02 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 27th day of January, 2022.

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 18th day of December, 2021, the same being more than fifteen (15) days prior to a public hearing at the Abilene Public Library's South Branch in the Mall of Abilene at 4310 Buffalo Gap Road in Abilene, Texas, at 8:30 a.m. on the 10th day of February, 2022, 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 in the Charter of the City of Abilene.

PASSED ON FINAL READING THIS 10th day of February, 2022.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

EXHIBIT A

Change the zoning classification of the following described land, from an Agricultural Open Space (AO) to a Residential Single-Family Patio Home (PH) District:

BEING 45.5 acres out of Section 63 in Blind Asylum Lands in the City of Abilene, Taylor County, Texas, and being more particularly described by metes-and-bounds as follows:

BEGINNING at a point at the intersection of the south line of right-of-way for South 27th Street and the west line of right-of-way for Maple Street, for the northeast corner of this tract;

THENCE South 0° 49' 44" West for a distance of 1760.56 feet along the west line of right-of-way for Maple Street, to a point for the southeast corner of this tract;

THENCE North 89° 23' 26" West for a distance of 1646.94 feet, to a point on the east bank of Cedar Creek, to a point for the southwest corner of this tract;

THENCE North 55° 04' 10" East for a distance of 92.26 feet;

THENCE North 53° 17' 34" East for a distance of 73.30 feet;

THENCE North 62° 38' 20" East for a distance of 76.26 feet;

THENCE North 88° 21' 45" East for a distance of 50.39 feet;

THENCE South 83° 17' 19" East for a distance of 114.66 feet;

THENCE North 70° 07' 08" East for a distance of 104.76 feet;

THENCE North 57° 24' 15" East for a distance of 45.81 feet;

THENCE North 35° 55' 16" East for a distance of 113.85 feet;

THENCE North 18° 20' 44" West for a distance of 48.38 feet;

THENCE North 39° 17' 56" West for a distance of 167.74 feet;

THENCE North 26° 35' 21" West for a distance of 110.57 feet;

THENCE North 18° 59' 45" West for a distance of 273.82 feet;

THENCE North 52° 30' 34" West for a distance of 498.29 feet;

THENCE South 88° 54' 29" East for a distance of 986.12 feet, to a point for an interior corner of this tract;

THENCE North 0° 43' 56" East for a distance of 656.45 feet, to a point on the south line of right-of-way for South 27th Street, for the northwest corner of this tract;

THENCE S. 89° 43' 03" East for a distance of 763.17 feet along the south line of right-of-way for South 27th Street, to the **PLACE OF BEGINNING** and containing 45.5 acres of land.

location: 3210 Maple Street



ZONING CASE Z-2022-02

STAFF REPORT



Scheduled Hearings

Planning & Zoning Commission: January 4, 2022

City Council 1st Reading: January 27, 2022

City Council 2nd Reading: February 10, 2022

Applicant

Owner: Houston Polasek

Agent: Heath Polasek

Request

Rezone from Agricultural Open Space (AO) to a Residential Single-Family Patio Home (PH) District.

Location

46¼ acres of agricultural land at southwest corner of Maple and South 27th Streets in southeast Abilene

Background

The subject property of 46¼ acres is composed primarily of agricultural land, in the center of which is an approximately 4700-square-foot residence and an equally as large barn. This property was annexed to the City limits of Abilene in 1963 and has been located in an Agricultural Open Space District (or its predecessor, the Residence-Agriculture District) ever since then.

Along its entire western boundary, the subject property adjoins Maxwell Municipal Golf Course, through which Cedar Creek wends its way northward. The designated floodway for Cedar Creek encroaches onto the westernmost five (5) acres of the subject property's complete 46¼ acres.

The subject property has significant frontage on both Maple and South 27th Streets. Each of these thoroughfares is categorized as a major arterial street, according to Abilene's Thoroughfare Plan.

Nearby Zoning and Land Use (Existing)

The current zoning of properties adjacent to (and in the immediate area of) this proposed zone change are illustrated on a map included with this report:

- As mentioned earlier above, all land located directly west of these 46¼ acres is occupied by Maxwell Municipal Golf Course, in the same AO zoning district as the subject acreage of proposed PH zoning.
- To the south of this subject property (and extending for a distance of at least 450 feet) lies more agricultural land and single-family homes on tracts of at least one acre. This land, too, is located in the same AO District as the subject property of proposed PH zoning.
- To the east of this subject property (across Maple Street) is an area of almost one-half square mile, which has long been viewed as suitable for commercial or industrial use. Land located directly across Maple Street from the proposed PH District includes a combination of Light Industrial (LI), Heavy Commercial (HC) and General Commercial (GC) zoning districts, as well

as remnants of AO zoning. Some of the uses located there include sports facilities for baseball practice and soccer competitions.

- To the north of this subject property is a small (1¼-acre) city block of General Commercial zoning occupied by four single-family home sites as well as a vacant tract. An approximately ten-acre home site (in AO zoning) also lies across South 27th Street from the subject property.

Proposed Zoning and Land Use

The owner of these subject 46¼ acres seeks to change this property's zoning to a Residential Single-Family Patio Home (PH) District. PH zoning is potentially more dense than any of several other local zoning classifications intended primarily for detached, single-family residences:

<u>zone</u>	<u>minimum lot size</u>	<u>minimum lot width</u>	<u>min. separation between houses</u>
PH	4,000 sq. ft.	40 feet	10 feet
MH	5,000 sq. ft.	50 feet	15 feet
RS-6	6,000 sq. ft.	60 feet	12 feet
RS-8	8,000 sq. ft.	70 feet	15 feet
RS-12	12,000 sq. ft.	80 feet	20 feet
RR-1	43,560 sq. ft.	100 feet	50 feet

RS-6 Districts comprise the most extensive single-family residential zoning classification in Abilene. Overall densities of 5.5 dwellings/acre are typical of RS-6 Districts. Meanwhile, overall densities of 6.0 dwellings/acre are typical of PH Districts.

Criteria Assessment

Section 1.4.1.4 of Abilene's Land Development Code states that, in making a determination regarding a requested zoning change, the Planning and Zoning Commission and 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.

A 1986 plan* for future land use and development in southeast Abilene identifies the greater part of this subject property to be most suitable for multi-family residential use. Higher densities of residential use may make an effective transition between open space at Maxwell Municipal Golf Course and future industrial use planned to the east, across Maple Street.

That same 1986 plan also designates approximately 1½ acres of this subject property for future commercial use, directly at the intersection of Maple and South 27th Streets. Retail commercial use is most appropriate at or near intersections of such arterial streets, to maximize exposure of retailers to motorists, while minimizing impacts on nearby residences.

The Future Land Use and Development component of Abilene's most recent Comprehensive Plan designates this intersection of Maple and South 27th Streets to be the focus of a local activity center. Within the text of that 2004 plan document, local activity centers are described as *"containing a mix of shopping, employment, entertainment and civic uses for a number of surrounding neighborhoods."* That same text goes on to state that, *"A local activity center*

* adopted by Abilene's City Council as well as the Planning & Zoning Commission

could contain a supermarket, chain retail/discount stores, specialty shops, churches and mid-size offices. Local activity centers should be surrounded by higher-density housing.”

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

While not multi-family in character, proposed PH zoning is the most potentially intensive of all local zoning classifications intended for detached, single-family residences. Construction of patio homes on this particular property can still provide an effective transition (in the intensity of use) between open space at Maxwell Municipal Golf Course and future industrial activity planned farther east, across Maple Street. The 100-foot width of Maple Street's right-of-way can itself offer some measure of buffering between proposed residences (west of Maple Street) and future industrial use (east of Maple Street).

(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.

This subject property has considerable frontage on two major arterial streets:

- 1700+ feet of frontage on Maple Street,
- 750+ feet of frontage on S. 27th Street.

Neither of these adjacent streets is now fully improved to urban arterial standards; however, each now has at least a 40-foot-wide pavement. The City of Abilene has short-term plans to expand and improve pavement on Maple Street, in front of this subject property and for at least one mile in each direction (north and south). These circumstances assure nearby accessibility of proposed patio home sites to Abilene's arterial street system.

City water and sewer mains (each at least six inches wide) lie within adjoining rights-of-way for both Maple and South 27th Streets. Extensions of these mains may be made to and from future development on this subject property, providing access for new home sites there.

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

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

Staff Recommendation

City staff generally recommends **approving** the proposed PH District, **except** for **at least** a 250' x 250' portion from the northeast corner of this subject property, adjacent to the intersection of Maple and South 27th Streets. This northeast corner of the subject property lies at the intersection of these two arterial streets and is best suited for retail commercial activity.

- As mentioned earlier above, such high-profile locations maximize retailers' exposure, while minimizing impacts on nearby residents.

- Also as mentioned above, Abilene's 2004 Comprehensive Plan recommends a local activity center at this location, "*containing a mix of shopping, employment, entertainment and civic uses.*"
- Such an area reserved for future commercial use should extend at least 250 feet in depth from South 27th Street, to accommodate modern retailers who demand plenty of customer parking and drive-thru service.
- An area reserved for future commercial use should likewise extend at least 250 feet from Maple Street, and, possibly, even the entire approximately 765 feet of this property's frontage on South 27th Street. Even such an extensive area would still remain within the "sphere of commercial attraction" surrounding the intersection of two arterial streets.

Otherwise, proposed patio home development of this subject property will provide an effective transition in the intensity of allowed nearby use. Proposed patio home construction will separate the open environment at Maxwell Municipal Golf Course (to the west) from future industrial use located east of Maple Street.

Notification

Pursuant to Section 1.2.2.2 of Abilene's Land Development Code, City staff mailed personal notices on December 17 of 2021, to the applicant and to other owners of property within a 200-foot radius of this subject property. These property owners are identified in the following Table 1.

TABLE 1

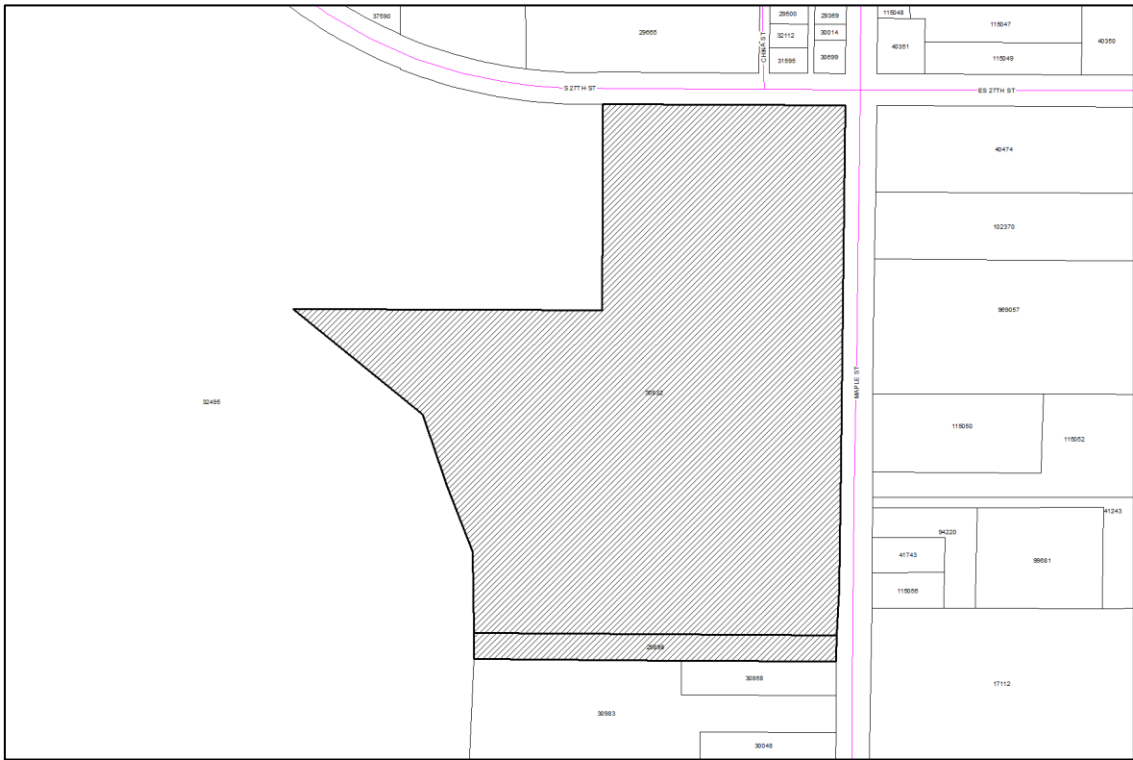
Owner	Parcel ID	Situs	Response
108 REAL ESTATE LLC	115050	3325 MAPLE ST	
108 REAL ESTATE LLC	115052		
ABILENE NATIONAL SOCCER	102370	2717 MAPLE ST	
ABILENE NATIONAL SOCCER	969057	3025 MAPLE ST	
CANO RICHARD	40351	2691 MAPLE ST	
CHAMBERLAIN ERIC DEAN	41243	3359 MAPLE ST	
CITY OF ABILENE	32495	1002 S 32ND ST	
CLARK JAMES ROBERT	30983		
CLARK RUSSELL ANDREW &	30868	3400 MAPLE ST	
DICK L D LF EST	31595	2697 CHINA ST	
HARKINS WARREN	41743		
HARKINS WARREN	94220	3481 MAPLE ST	
HARKINS WARREN	115056	3489 MAPLE ST	
NICHOLS KENNETH R	40474	225 ES 27TH ST	
POLASEK HOUSTON G	29898		
POLASEK HOUSTON G	30832	3210 MAPLE ST	
PRYOR EDWARD	29665	400 S 27TH ST	
SCHOPF WILLIAM & MELISSA	32112	2691 CHINA ST	
TARGET SPORTS INC	17112	3501 MAPLE ST	
VALLEY CREEK HOMES LLC	30699	2698 MAPLE ST	

Attachments

Application

PowerPoint Presentation

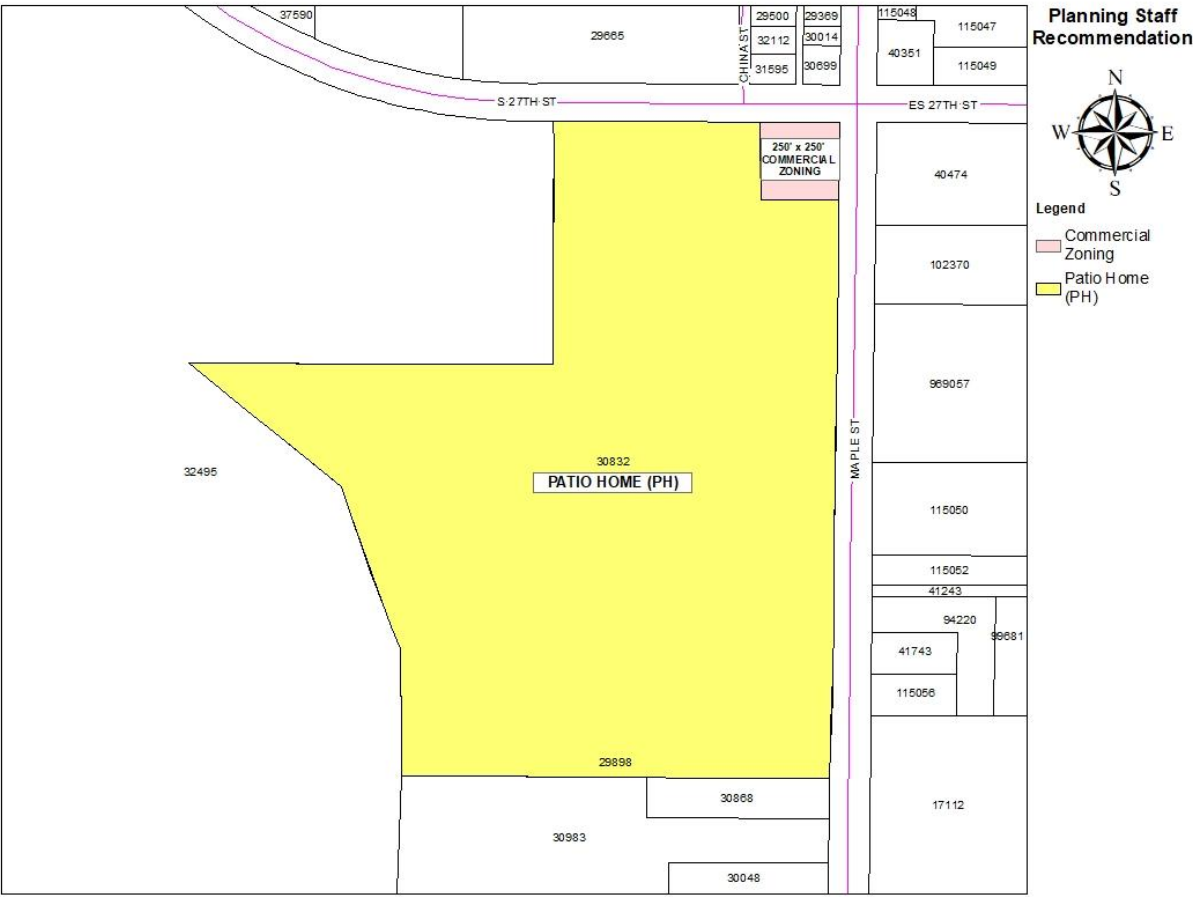
LOCATION MAP



ZONING MAP



PLANNING STAFF RECOMMENDED ZONING MAP





Development Application

Planning

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

Other: _____

Project Name: WATERSIDE @ Cedar Creek

Address: 3210 MAPLE No. of lots: _____ Acreage: _____

Legal Description: _____

Subdivision Name: _____ Block: _____ Lot: _____

Current Zoning: _____ Proposed Zoning (if applicable): PH

OWNER AND AUTHORIZATION

Owner Name: Houston Polasek

Address: 3210 MAPLE

City, State, Zip: Abilene TX 79602 Fax: _____

Phone: 325 439 1856 Email: HEATH @ BCSmetal.net

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

Agent Name: HEATH POLASEK

Address: 1357 FM 1750

City, State, Zip: Abilene TX 79602 Fax: _____

Phone: 325 439 1856 Email: HEATH @ BCSmetal.net

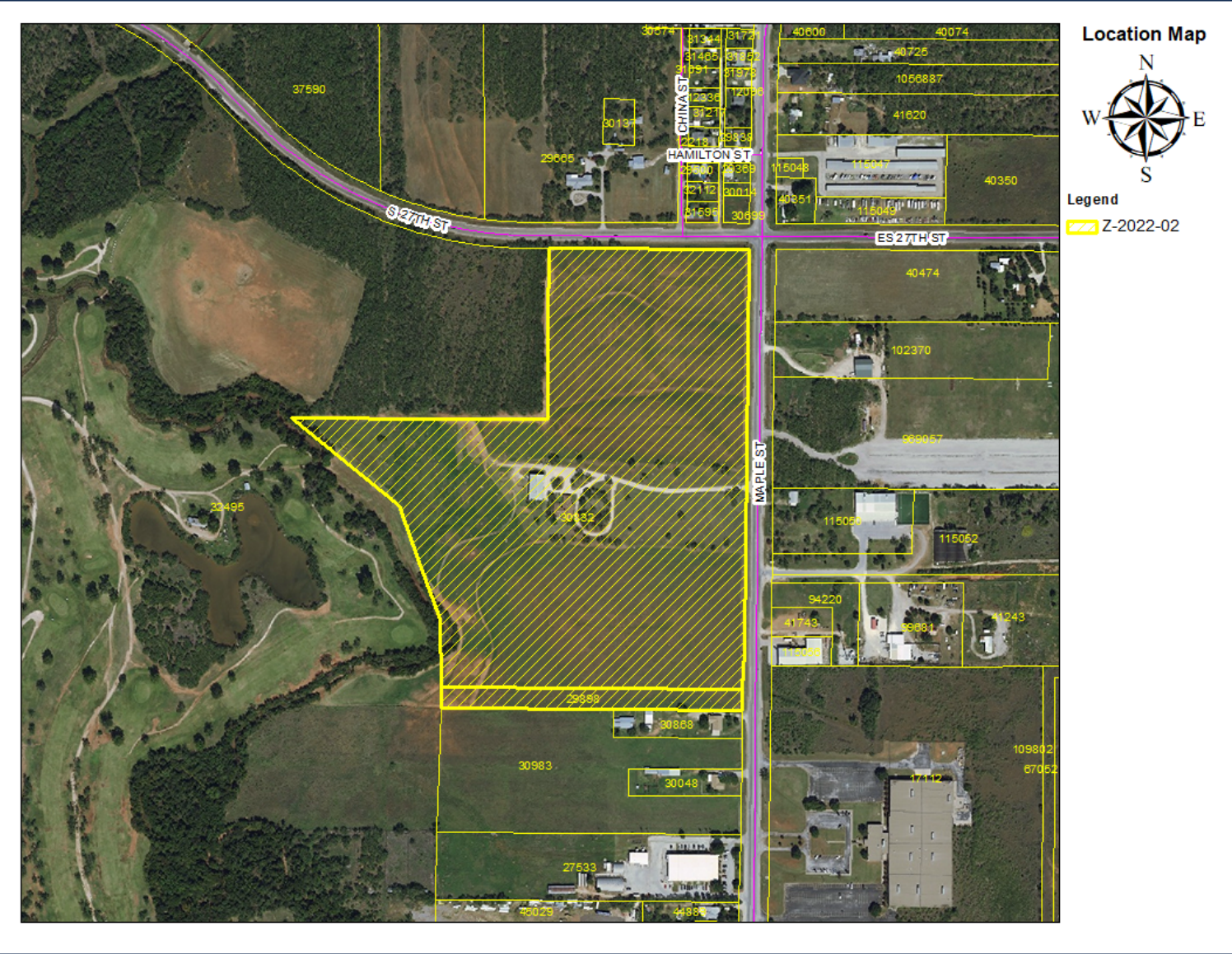
I hereby certify that I am the owner of the property and further certify that the information provided on this development application is true and correct. I hereby designate the aforementioned agent to act on my behalf for submittal, processing, representation, and/or presentation of this development 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: Houston Polasek Date: 5-2-2007

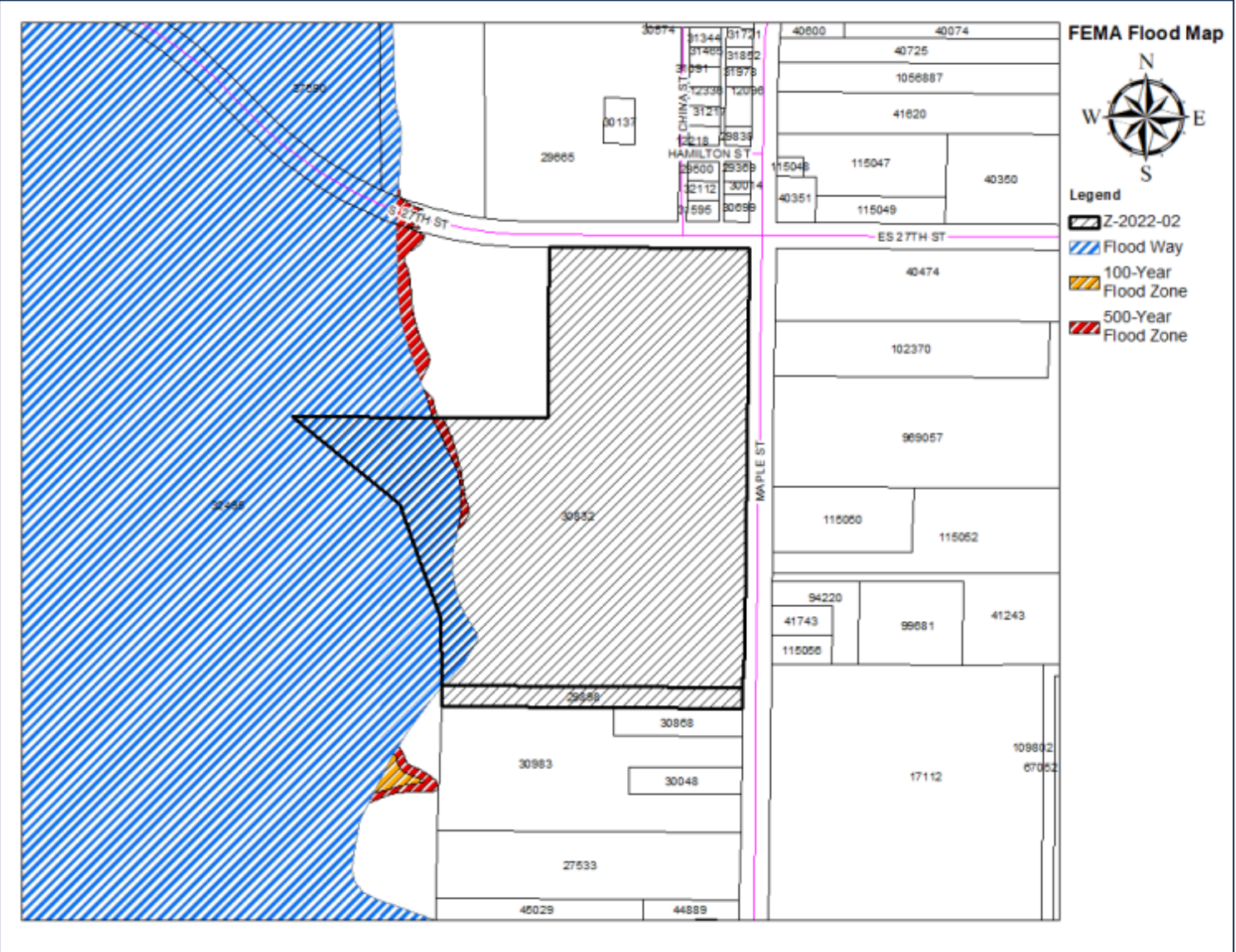
FOR OFFICE USE ONLY

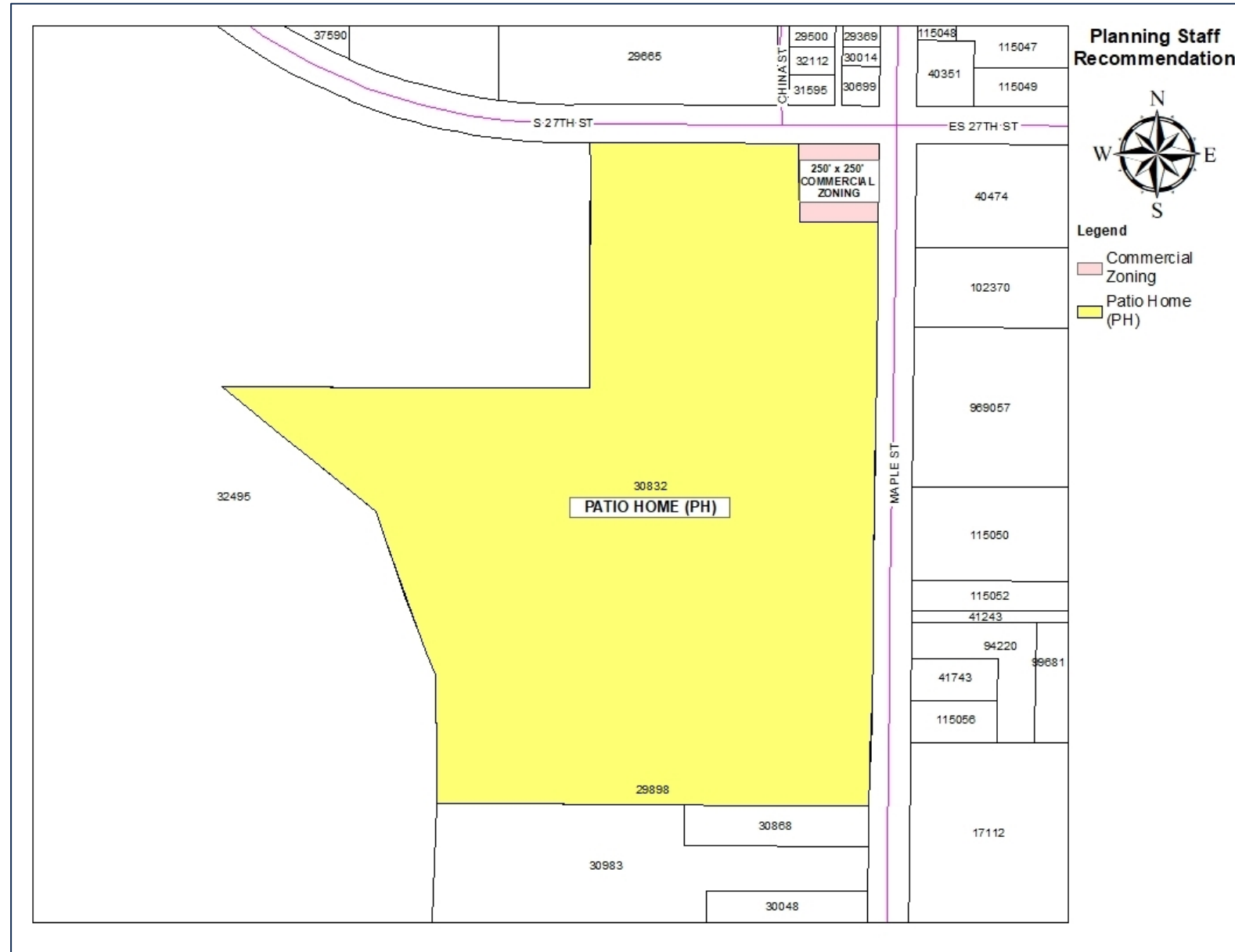
Received: _____ Fee: \$ _____ Receipt No.: _____
 Date: _____ Reviewed By: _____

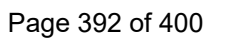
Case:	Z-2022-02
Owner:	Houston Polasek
Agent:	Heath Polasek
Request:	Rezone from Agricultural Open (AO) to Patio Home (PH)
Location:	3210 Maple St.
Notification:	0 in Favor, 0 Opposed
Planning & Zoning:	Approval, January 4, 2022











Permitted Uses in AO Zoning

RESIDENTIAL USES:

- C Bed & Breakfast
- P Dwelling– Industrialized Housing Unit
- P Dwelling – Single-Family Detached
- C Vacation Travel Trailer Park

ACCESSORY AND INCIDENTAL USES:

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P Animal Lot
- P/C Day Care Operation – Home-Based*
- P Dwelling – Accessory*
- TP Field Office or Construction Office (temporary)*
- P Freight Container*
- P Garage Sale
- P Home Occupation
- C Mobile Home (permanent security residence)
- C Mobile Home (temporary security residence)
- TP Subdivision Sales Office (temporary)
- P Swimming Pool, Private (accessory to residential use)
- P Tennis Court, Private (accessory to residential use)
- P/SE Wind Energy Conversion Systems*

CULTURAL AND RECREATIONAL USES:

- p Civic, Social, and Fraternal Organization
- P Fairgrounds/Rodeo
- C Motorized Racing
- C Recreation – Outdoors (active)
- P Recreation – Outdoors (passive)
- P Zoo

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Community Home
- C Correction, Detention, or Penal Facilities
- P Fire/Police Station
- C Military and Armed Forces Reserve Center
- C Sanitary Landfill

EDUCATIONAL AND RELIGIOUS USES:

- C Cemetery, Crematorium, and Mausoleum
- P Church or Place of Worship
- P School: Public/Private

SERVICE

- C Kennel (with outdoor pens)
- P Kennel (without outdoor pens)
- P Veterinary Service (all size animals)

TRADE – RETAIL USES

- C Liquor Store (on premises consumption) (Defined under Liquor Store)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- C Airport, Heliport and Flying Field Terminals – Commercial
- C Antenna Tower – Commercial
- P Public Utility Facility
- C Utility Generation, Production, Treatment

RESOURCE PRODUCTION AND EXTRACTION USES:

- P Farming, Ranching & Livestock, Hatchery
- C Mining
- C Petroleum or Gas Well
- P Urban Garden

LEGEND

P
C
TP

Permitted as a Right-of-Use (may be subject to compliance with conditions described within Division 3- Requirements Applicable to Specific Land Uses of the Land Development Code)
Permitted as a Conditional Use Permit, Requiring Approval by City Council
Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment

Permitted Uses in PH Zoning

RESIDENTIAL USES:

- C Bed & Breakfast
- P Dwelling – Industrialized Housing Unit
- P Dwelling – Patio Home
- P Dwelling – Single-Family Detached

ACCESSORY AND INCIDENTAL USES:

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P/C Day Care Operation – Home-Based
- TP Field Office or Construction Office (temporary)
- P Garage Sale
- P Home Occupation
- P Recreation Building, Multipurpose
- P Recreation Equipment, Mobile (storage & parking)
- TP Subdivision Sales Office (temporary)
- P Swimming Pool, Private (accessory to residential use)
- P Tennis Court, Private (accessory to residential use)
- P/SE Wind Energy Conversion Systems

CULTURAL AND RECREATIONAL USES:

- C Recreation – Outdoors (active)
- P Recreation – Outdoors (passive)

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Community Home
- P Fire/Police Station

EDUCATIONAL AND RELIGIOUS USES:

- P Church or Place of Worship
- P School: Public/Private

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- P Public Utility Facility

RESOURCE PRODUCTION AND EXTRACTION USES:

- P Petroleum or Gas Well
- P Urban Garden

LEGEND

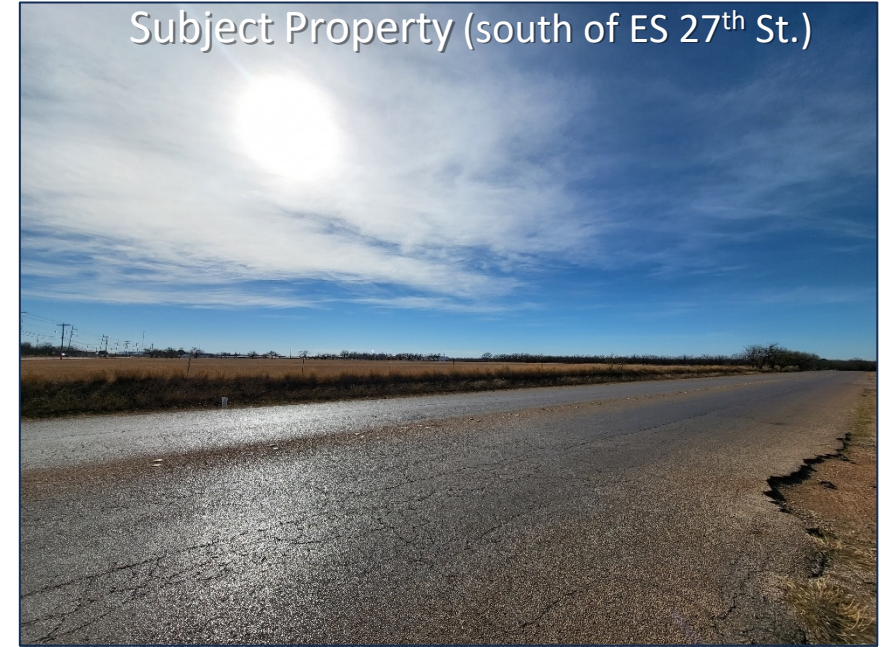
P
C
TP

Permitted as a Right-of-Use (may be subject to compliance with conditions described within Division 3- Requirements Applicable to Specific Land Uses of the Land Development Code)
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Subject Property (West of Maple St.)



Subject Property (south of ES 27th St.)



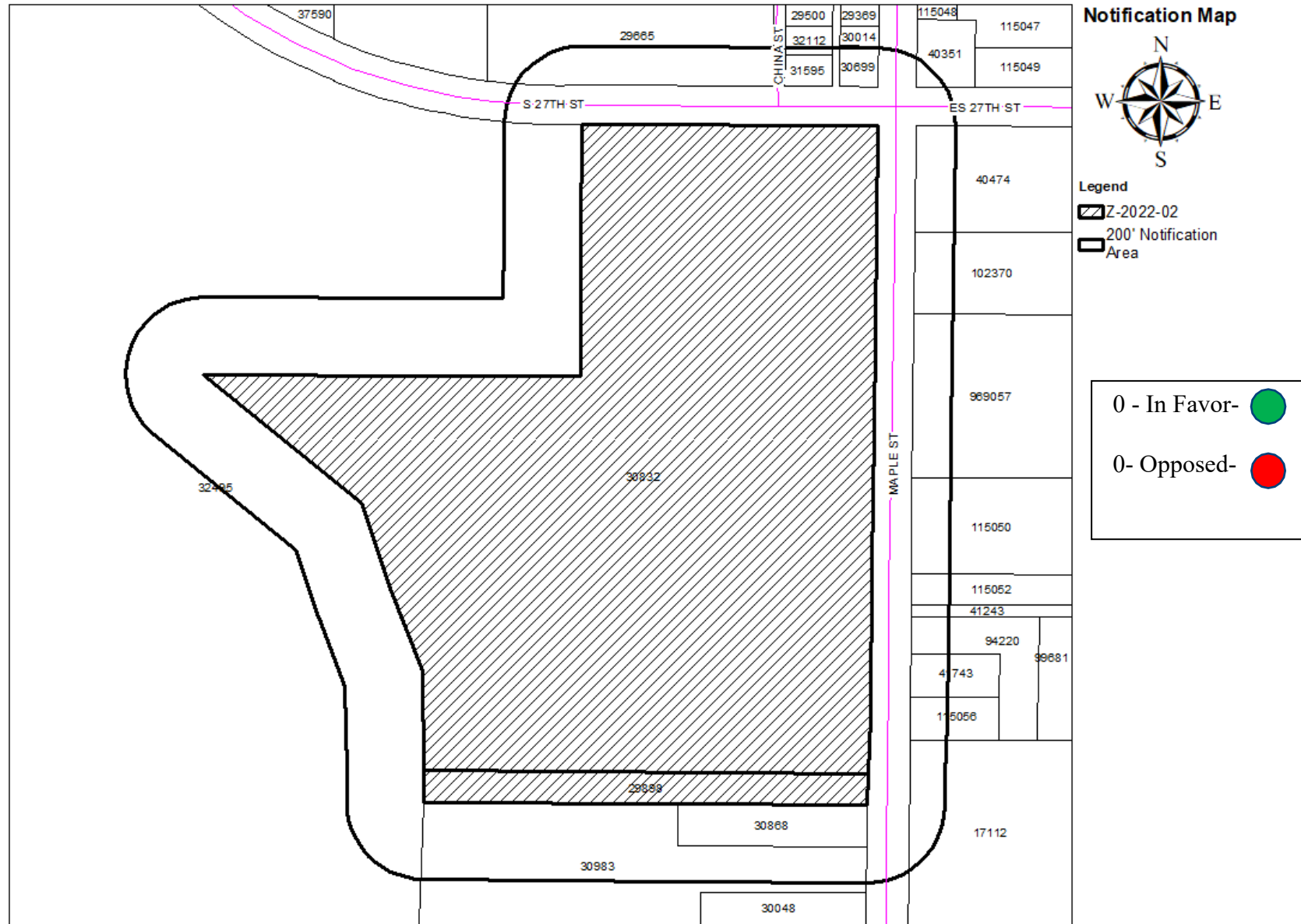
Neighboring Property (north of ES 27th St.)



Neighboring Property (east of Maple St.)



Z-2022-02 NOTIFICATION AREA MAP



- Consistent with the *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 with recommendation of commercial zoning at the Southwest corner of Maple and S.27th Street.
- Planning & Zoning Recommendation: Approval of request by applicant with no commercial dedication.

Questions?



**City Council
Agenda Memo**

City Council Meeting Date: 2/10/2022

TO: Honorable Mayor and City Council Members

FROM: Stanley Smith, City Attorney

SUBJECT: 19. 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. 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
3. 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
4. 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
5. 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
6. Sharra Sampson v. City of Abilene; Cause No. 8144-B, In the 104th Judicial District Court, Taylor County, Texas; filed September 14, 2020
7. 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
8. Natasha Jones v. City of Abilene, Texas; EEOC Charge of Discrimination, 450-2020-06446; filed September 15, 2020
9. Alton H. Smith, Jr. and Alicia Malorie Smith v. City of Abilene, Texas; Cause No. 51055-A, In the 42nd Judicial District Court, Taylor County, Texas; filed March 11, 2021
10. Steve Van Horne, et al. v. City of Abilene, et al.; Cause No. 12530-D, In the 350th Judicial District Court, Taylor County, Texas; filed September 7, 2021
11. Cockrell Investment Partners, L.P. v. Middle Pecos Groundwater Conservation District, et al.; Cause No.

P827783CV, in the 83rd Judicial District Court, Pecos County, Texas; filed September 11, 2020

12. The City of Abilene, Texas v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-21-006299, In the 250th Judicial District Court, Travis County, Texas; filed October 20, 2021

13. James Easley v. City of Abilene, Appeal of Temporary Suspension to Hearing Examiner, filed September 22, 2021

14. Samuel Hightower v. City of Abilene, Appeal of Temporary Suspension to Hearing Examiner, filed December 28, 2021

15. Zach Williams v. City of Abilene, Appeal of Temporary Suspension to Hearing Examiner, filed December 28, 2021

16. Governor's Executive Orders COVID-19

B. 551.072 (Deliberations about Real Property)

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)

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

None