



City of Abilene City Council Agenda

Weldon Hurt, Mayor Pro-tem
Shane Price, Council Member
Lynn Beard, Council Member
Robert Hanna, City Manager

Anthony Williams, Mayor

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

Notice is hereby given of a meeting of the City Council of City of Abilene to be held on January 12, 2023, at 8:30 a.m., at City Hall, 555 Walnut Street, Council Chambers, Abilene, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action. The City Council reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

CALL TO ORDER

INVOCATION

1. Councilmember Shane Price

PLEDGE TO THE UNITED STATES FLAG AND THE TEXAS FLAG

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS AND ANNOUNCEMENTS

2. Service Awards:

- David Cox - 20 Years - Police Department
- Erin Bennett - 20 Years - Police Department

3. Proclamations:

- Community Health Challenge Days

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.

4. **Minutes:** Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on December 15, 2022 **(Shawna Atkinson)**
5. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Appointing Members to Various Boards and Commissions per the City Charter **(Shawna Atkinson)**
 - Abilene-Taylor County Child Advocacy Center Board
 - Board of Building Standards
 - Development Corporation of Abilene
6. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Authorizing Change Order No. 1 to Contract with Weisinger, Inc. for Repair of Grimes Pump #7 **(Rodney Taylor)**
7. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Awarding Bid #2313 Maple Street South Paving & Drainage Improvements to Epic Construction Company **(Max Johnson)**
8. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Awarding Request For Proposals (RFP) for Engineering Services for S 14th Pedestrian Improvements to Enprotec/ Hibbs & Todd **(Max Johnson)**
9. **Ordinance (First Reading):** Receive a Report, Hold a Discussion and Take Action on approving an Ordinance to Amend Chapter 8, "Construction Regulations," Article V, "Advisory Boards," Division 2, "Board of Building Standards" of the Code of Ordinances. **(Tim Littlejohn)**
10. **Ordinance (First Reading) Z-2023-01:** Receive a Report, Hold a Discussion and Take Action on A Request From New Dairy Texas, LLC, Represented by Borden Bluff, to Change the Zoning of Approximately 2.4 Acres Located at 309 South Pioneer Drive from Light Industrial (LI) to Planned Development District 178 (PDD-178) to Allow Multi-Family Residential Uses and Uses Permitted in the General Retail (GR) District, While Retaining the Right for Light Industrial (LI) Uses. **(Tim Littlejohn)**

REGULAR AGENDA - ORDINANCES AND PUBLIC HEARINGS - RESOLUTIONS

11. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Authorizing the Initiation of Condemnation Proceedings Necessary to Complete Construction of Public Access Sidewalks at the Intersections of North 1st Street at Leggett Street and North 1st Street at Pioneer Drive **(Max Johnson)**
12. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action to award a contract to Teinert Construction for Airport Terminal Modernization Phase 1 (CB-2304) **(Don Green)**
13. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action

to approve Change Order 1 to the Terminal Modernization Phase One Contract with Teinert Construction **(Don Green)**

14. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action to approve a Ground Lease and Concession Agreement with Bowie's ABI, LLC. **(Don Green)**
15. **Ordinance (Final Reading) Z-2022-28:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from Buffalo Gap I & E, Represented by Harris Acoustics, to Change the Zoning of Approximately 5.83 Acres Located at 888 Ben Richey Drive from Agricultural Open (AO) to Heavy Commercial (HC). **(Tim Littlejohn)**
16. **Ordinance (Final Reading) CUP-2022-11:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from Hallum, Represented by Art Attack Tattoo, for a Conditional Use Permit of Approximately 0.08 Acres Located at 226 Pine Street Zoned Central Business (CB) to Allow a Tattoo Parlor as a Permitted Use. **(Tim Littlejohn)**
17. **Ordinance (Final Reading):** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on AMENDING CHAPTER 8, ARTICLE VI, "CODES AND OTHER REGULATIONS," DIVISION 1, "GENERALLY;" DIVISION 2, "BUILDING CODE;" DIVISION 3, "ELECTRICAL CODE;" DIVISION 4, "PLUMBING CODE;" DIVISION 5, "MECHANICAL CODE;" DIVISION 7, "RESIDENTIAL CODE;" DIVISION 8, "FUEL GAS CODE;" DIVISION 9, "ENERGY CODE;" DIVISION 10, "EXISTING BUILDING CODE;" ADDING DIVISION 11, "PROPERTY MAINTENANCE CODE;" ADDING DIVISION 12, "SWIMMING POOL AND SPA CODE;" AND DELETING IN ITS ENTIRETY CHAPTER 29.5 "SWIMMING POOLS AND SPAS" of the Code of Ordinances . **(Tim Littlejohn)**

EXECUTIVE SESSION

18. **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. 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
4. 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
5. Sharra Sampson v. City of Abilene; Cause No. 8144-B, In the 104th Judicial District Court, Taylor County, Texas; filed September 14, 2020
6. 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
7. 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
8. 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
9. 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

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

ADJOURNMENT

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

CERTIFICATION

I hereby certify the above meeting notice was posted on the bulletin board at the City Hall of the City of Abilene, Texas, on the 6th day of January, 2023, at 2:50 p.m.

Shawna Atkinson, TRMC, CMC
City Secretary



**City Council
Agenda Memo**

City Council Meeting Date: 1/12/2023

TO: Honorable Mayor & Members of City Council

FROM: Shawna Atkinson, City Secretary

SUBJECT: 4. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on December 15, 2022
(*Shawna Atkinson*)

GENERAL INFORMATION

Approval of the Minutes from the Regular meeting held on December 15, 2022

SPECIAL CONSIDERATIONS

None.

FUNDING/FISCAL IMPACT

None

STAFF RECOMMENDATION

Approval of the Minutes

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 12-15-2022 Minutes - Regular - Morning

**CITY COUNCIL MEETING
December 15, 2022 at 8:30 a.m.**

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

The City Council of the City of Abilene, Texas met in Regular Session on December 15, 2022, at 8:30 a.m. in the Council Chambers, 555 Walnut St. Mayor Anthony Williams was present and presiding, along with Mayor Pro-tem Weldon Hurt, Deputy Mayor Pro-tem Donna Albus, and Councilmembers Shane Price, Lynn Beard, Kyle McAlister and Travis Craver. Also present were City Manager Robert Hanna, City Attorney Stanley Smith, and City Secretary Shawna Atkinson.

Councilmember Lynn Beard delivered the invocation.

Kaden Ballard and Sawyer Booe, 5th graders from Austin Elementary, led the Pledge of Allegiance to the Flag of the United States of America and State of Texas Flag.

PRESENTATION OF CONSENT AGENDA

The Consent Agenda consisted of items 2-14. No items were pulled for individual consideration.

PUBLIC COMMENTS

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

- David Swart – spoke about Abilene’s history and stated that buffalos were not indigenous to North America, and that they are actually bison. He suggested changing everything to bison instead of buffalo.
- Dorothy Clay – spoke about harmful materials in the library for children.
- Ryan Goodwin – stated that we may need to change Buffalo Gap to Bison Gap and then prayed.
- Heather Wargo – spoke about people having the choice to make their own decisions about their own bodies.

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

CONSENT AGENDA

Mayor Pro-tem Hurt moved to approve the consent agenda consisting of items 2-14. Councilmember Craver seconded the motion. Motion carried.

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

Mayor Williams, and Councilmembers Price and McAlister had conflicts of interest on item #7 and abstained from voting on that item. Conflict of Interest Affidavits were filled out before the meeting and filed with the City Secretary’s office. The vote for item 7 alone was:

AYES (4): Mayor Pro-tem Hurt, Deputy Mayor Pro-tem Albus, Councilmembers Beard and Craver
NAYS (0): None
ABSTAIN (3): Mayor Williams, Councilmembers Price and McAlister

2. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on December 1, 2022

3. Receive a Report, Hold a Discussion and Take Action on Appointing Members to Various Boards and Commissions per the City Charter
[ASSIGNED RESOLUTION NO. 217-2022]
4. Resolution: Receive a Report, Hold a Discussion and Take Action on Casting a Vote for the Rolling Plains Central Boll Weevil Eradication Zone Program Board
[ASSIGNED RESOLUTION NO. 218-2022]
5. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving the Google Workspace License Renewal
[ASSIGNED RESOLUTION NO. 219-2022]
6. Resolution: Receive a Report, Hold a Discussion and Take Action on Authorizing the Second Amendment to Services Contract Between the City of Abilene and Smith Pump Company, Inc. for the Repair of the Raw Water Intake Pump #1
[ASSIGNED RESOLUTION NO. 220-2022]
7. Resolution: Receive a Report, Hold a Discussion, and Take Action on Approval of MOUs with Abilene ISD and Abilene Christian University for use of PEG Funds for Capital Expenditures in Support of Creation of Broadcast Content for the City of Abilene Suddenlink/Optimum Cable Channel 2
[ASSIGNED RESOLUTION NO. 221-2022]
8. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving Miscellaneous FY23 Cumulative Purchases Over \$50,000
[ASSIGNED RESOLUTION NO. 222-2022]
9. Resolution: Receive a Report, Hold a Discussion and Take Action on the purchase of three (3) Ford F250 Three-Quarter Ton Pickup Trucks for Solid Waste and Water Department Divisions from local vendor Arrow Ford through Bid CB-2314
[ASSIGNED RESOLUTION NO. 223-2022]
10. Resolution: Receive a Report, Hold a Discussion and Take Action on authorizing the City Manager to enter into a Professional Services Agreement for legislative services with JPC Strategies, LLC.
[ASSIGNED RESOLUTION NO. 224-2022]
11. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving a Professional Services Agreement with BOKA Powell, LLC for design services for the Festival District
[ASSIGNED RESOLUTION NO. 225-2022]
12. Ordinance (First Reading) Z-2022-28: Receive a Report, Hold a Discussion, and Take Action on a Request from Buffalo Gap I & E, Represented by Harris Acoustics, to Change the Zoning of Approximately 5.83 Acres Located at 888 Ben Richey Drive from Agricultural Open (AO) to Heavy Commercial (HC)
13. Ordinance (First Reading) CUP-2022-11: Receive a Report, Hold a Discussion, and Take Action on a Request from Hallum, Represented by Art Attack Tattoo, for a Conditional Use Permit of Approximately 0.08 Acres Located at 226 Pine Street Zoned Central Business (CB) to Allow a Tattoo Parlor as a Permitted Use

14. Ordinance (First Reading): Receive a Report, Hold a Discussion and Take Action on AMENDING CHAPTER 8, ARTICLE VI, "CODES AND OTHER REGULATIONS," DIVISION 1, "GENERALLY;" DIVISION 2, "BUILDING CODE;" DIVISION 3, "ELECTRICAL CODE;" DIVISION 4, "PLUMBING CODE;" DIVISION 5, "MECHANICAL CODE;" DIVISION 7, "RESIDENTIAL CODE;" DIVISION 8, "FUEL GAS CODE;" DIVISION 9, "ENERGY CODE;" DIVISION 10, "EXISTING BUILDING CODE;" ADDING DIVISION 11, "PROPERTY MAINTENANCE CODE;" ADDING DIVISION 12, "SWIMMING POOL AND SPA CODE;" AND DELETING IN ITS ENTIRETY CHAPTER 29.5 "SWIMMING POOLS AND SPAS" of the Code of Ordinances

REGULAR AGENDA

15. Ordinance (Final Reading) Z-2022-24: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approving an Ordinance establishing the 2023 Standards of Care
[ASSIGNED ORDINANCE NO. 66-2022]

Lesli Andrews, Director of Parks & Recreation presented the item. Adoption of this item would approve the 2023 Standards of Care for Youth Programs in the City's Parks & Recreation Department.

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

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

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

16. Ordinance (Final Reading) Z-2022-25: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Certifying the Charter Amendments Approved by Voters on November 8, 2022 and Incorporating the Amendments into a Single Form
[ASSIGNED ORDINANCE NO. 67-2022]

Stanley Smith, City Attorney, presented the item. Adoption of this item would certify the charter amendments approved by voters in a Special Election held on November 8, 2022, and codify them into one single document.

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

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

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

17. Ordinance (Final Reading): Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Amending Chapter 5, "Ambulance Services," Article I, "In General," Abilene Code of Ordinances
[ASSIGNED ORDINANCE NO. 68-2022]

Stanley Smith, City Attorney, presented the item. Adoption of this item would amend chapter 5 of the City Code, Ambulance Services, Article I, to allow for intrafacility transfers between Hendrick's facilities, as that is not currently allowed under the current franchise agreement with AMR Metrocare. Mayor Williams opened the public hearing. With no speakers coming forward, the public hearing was closed.

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

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

NAYS (0): None

18. Ordinance (Final Reading) Z-2022-24: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on A Request From Leticia Leija, Represented By Matthew Muzechenko, To Change The Zoning Of Approximately 5 Acres From Agricultural Open (AO) To Heavy Commercial (HC)
[ASSIGNED ORDINANCE NO. 69-2022]

Randal Anderson, Assistant Director of Planning & Development Services, presented the item. Adoption of the item would rezone the above referenced property from Agricultural Open Space (AP) to Heavy Commercial (HC). Staff recommends General Commercial (GC) for the use, since it will require a CUP, which will allow Council to put more conditions in place.

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

- Matthew Muzechenko, represents the applicant – stated they originally asked for light industrial, which allows for the uses they need and Planning and Zoning stated they preferred Heavy Commercial for this property. His applicant is ok with this type of zoning, but he was not made aware that staff had requested it be lowered to General Commercial.

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

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

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

NAYS (0): None

19. Ordinance (Final Reading) Z-2022-25: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on A Request From Mike And Buffi Awtry, Represented By Matthew Muzechenko, To Change The Zoning Of Approximately 5.27 Acres From Agricultural Open (AO) To Heavy Commercial (HC)
[ASSIGNED ORDINANCE NO. 70-2022]

Mayor Williams, and Councilmembers Price and McAlister had conflicts of interest on this item and abstained from voting. Conflict of Interest Affidavits were filled out before the meeting and filed with the City Secretary's office.

Randal Anderson, Assistant Director of Planning & Development Services, presented the item. Adoption of the item would rezone the above reference property from Agricultural Open Space (AO) to Heavy Commercial (HC). This piece is the companion piece to the previous item, so the same

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

- Matthew Muzechenko, represents the applicant – stated they had to have both pieces rezoned to make this project work. They are wanting the facility to look similar to John Deer or Warren Cat, where they park their vehicles they lease out. They are not wanting to go back to P&Z to do a conditional use permit, as it will just put them behind schedule.

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

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

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

NAYS (0): None

ABSTAIN (3): Mayor Williams, and Councilmembers Price and McAlister

20. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action Establishing Rules and Regulations for the Abilene Public Library Strictly Prohibiting Obscene and Harmful Material and Performance, and **Discussion** of Progress of Implementing Prior Council Direction Regarding the Library's Collection Policy
[ASSIGNED RESOLUTION NO. 226-2022]

Robert Hanna, City Manager, and Julee Hatton, Library Director, presented the item. Ms. Hatton went over the upcoming changes to the library, including the kids catalogue, the order review process, and restricted access juvenile library cards. Mr. Hanna then presented the resolution up for approval. Adoption of the resolution would prohibit the display or promotion of obscene or harmful materials to minors in the Abilene Public Library.

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

- Pam Caraza – spoke in support of the resolution.
- Kayla Lemons – spoke in support of the resolution.
- Mandy Rhodes – spoke in support of the resolution.
- Christy Compton – did not wish to speak, but is in support of the resolution.
- Louisa Marie Parson – spoke in support of the resolution.
- Rebecca Lee – spoke in support of the resolution.
- Amy Boone – spoke in support of the resolution.
- Hanna O'Shields – spoke in support of the resolution.
- David Swart – spoke in support of the resolution.
- Callie Elliott – spoke in support of the resolution.
- Elizabeth Powell – spoke in support of the resolution.
- Raven Cook – spoke in support of the resolution.
- Jason Hernandez – spoke in support of the resolution, and thanked the Council for his time serving on the Library Advisory Board.
- Elizabeth Dougherty – spoke in support of the resolution.
- Ryan Goodwin – spoke in opposition to the resolution and gave Council a copy of an ordinance his group is proposing instead that is written by the same individual that wrote the sanctuary city for the unborn ordinance.
- Brandt Fisher – spoke in opposition to the resolution.

- Tammy Fogle – spoke in opposition to the resolution, and in support of the ordinance that was handed out.
- Rhiannon Mathis – spoke in support of the resolution.
- Francisca Rodriguez – spoke in opposition to the resolution, and in support of the ordinance that was handed out.
- Erica Batten – spoke in opposition to the resolution.
- Rebecca Gingrich – spoke in opposition to the resolution, and in support of the ordinance that was handed out.
- Eric Bengs – spoke in opposition to the resolution.
- Scottie Shelton – spoke in support of the resolution and is against the ordinance that was suggested by other citizens.
- Patrick Batten – spoke in opposition to this item and is for creating an ordinance.
- Gavin Hardigree – spoke in support of the resolution.
- Martha McGee – spoke in support of the resolution.
- Tim Palmer – spoke in support of the resolution and is against the ordinance that was suggested by other citizens.
- Liz Casepickens – spoke in support of the resolution.
- James Sargent – spoke in opposition to the resolution.
- Carlos Quinonez – spoke about community standards.
- Johnathan Brokaw – spoke in support of the resolution.
- Thomas Englemeyer – spoke in opposition to the resolution, and in support of the ordinance that was handed out.

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

Councilmember Beard moved to approve the item as presented. Councilmember Price seconded the motion; motion carried.

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

NAYS (0): None

EXECUTIVE SESSION

Mayor Williams recessed into Executive Session at 11:10 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:

- 21. A. 551.071 (Consultation with Attorney)
 - 1. Easement on Burger King Property located at 3901 N 1st Street
- 21. B. 551.072 (Deliberations about Real Property)
 - 1. Easement on Burger King Property located at 3901 N 1st Street
- 21. F. 551.087 (Business Prospect/Economic Development)
 - 1. DCOA Project Little Giant (Agenda Item #22)
 - 2. DCOA Project Fox Hill (Agenda Item #23)
 - 3. Chapter 380 Agreement with Rainy Creek LP (Agenda item #24)

Mayor Williams left the meeting at the conclusion of Executive Session. Mayor Pro-tem Hurt presided over the remainder of the meeting.

The Executive Session ended at 11:46 a.m. and reconvened to Open Session. Mayor Pro-tem Hurt reported no votes or action were taken in Executive Session.

REGULAR AGENDA

22. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving DCOA Project Little Giant
[ASSIGNED RESOLUTION NO. 227-2022]

Earlier in the meeting, under Section 551.087 (Business Prospect/Economic Development) of the Open Meetings Act, the item was discussed during the Executive Session, which started at 11:10 a.m., and ended at 11:46 a.m. No votes or actions were taken at that time.

Misty Mayo, CEO of the Development Corporation of Abilene, presented the item. Adoption of this item would approve Project Little Giant, for a deal with Tige Boats.

Mayor Pro-tem Hurt opened the public hearing. With no speakers coming forward, the public hearing was closed.

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

AYES (6): Mayor Pro-tem Hurt, Deputy Mayor Pro-tem Albus, and Councilmembers Price Beard, McAlister and Craver
NAYS (0): None
ABSENT (1): Mayor Williams

23. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving DCOA Project Fox Hill
[ASSIGNED RESOLUTION NO. 228-2022]

Earlier in the meeting, under Section 551.087 (Business Prospect/Economic Development) of the Open Meetings Act, the item was discussed during the Executive Session, which started at 11:10 a.m., and ended at 11:46 a.m. No votes or actions were taken at that time.

Misty Mayo, CEO of the Development Corporation of Abilene, presented the item. Adoption of this item would approve Project Fox Hill, which the name of the business will remain confidential on due to ongoing real estate negotiations.

Mayor Pro-tem Hurt opened the public hearing. With no speakers coming forward, the public hearing was closed.

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

AYES (6): Mayor Pro-tem Hurt, Deputy Mayor Pro-tem Albus, and Councilmembers Price Beard, McAlister and Craver
NAYS (0): None
ABSENT (1): Mayor Williams

24. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Authorizing the City Manager to Enter into a Chapter 380 Economic Development Agreement with Rainy Creek Abilene LP, a Texas Limited Partnership
[ASSIGNED RESOLUTION NO. 229-2022]

Earlier in the meeting, under Section 551.087 (Business Prospect/Economic Development) of the Open Meetings Act, the item was discussed during the Executive Session, which started at 11:10 a.m., and ended at 11:46 a.m. No votes or actions were taken at that time.

Robert Hanna, City Manager, presented the item. Adoption of this item would approve a Chapter 380 Economic Development Agreement with Rainy Creek Abilene, LP, for a multi-family and mixed use retail development.

Mayor Pro-tem Hurt opened the public hearing. With no speakers coming forward, the public hearing was closed.

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

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

NAYS (0): None

ABSENT (1): Mayor Williams

ADJOURNMENT

There being no further business, the meeting adjourned at 12:01 p.m.

Shawna Atkinson
City Secretary

Anthony Williams
Mayor

Minutes approved on: _____



**City Council
Agenda Memo**

City Council Meeting Date: 1/12/2023

TO: Honorable Mayor & Members of City Council

FROM: Shawna Atkinson, City Secretary

SUBJECT: 5.

**Resolution: Receive a Report, Hold a Discussion and Take Action on
Appointing Members to Various Boards and Commissions per the City Charter
(Shawna Atkinson)**

- **Abilene-Taylor County Child Advocacy Center Board**
- **Board of Building Standards**
- **Development Corporation of Abilene**

GENERAL INFORMATION

The item provides for reappointment of new members as well as new members to certain boards and commissions.

SPECIAL CONSIDERATIONS

Member terms vary per board and commission and are outlined in Exhibit A of the resolution.

FUNDING/FISCAL IMPACT

No cost consideration to the city.

STAFF RECOMMENDATION

(Re)Appointment

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. B&C Resolution
2. Exhibit A
3. B&C Presentation Slide

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, APPOINTING MEMBERS TO VARIOUS BOARDS AND COMMISSIONS AS REQUIRED BY THE CHARTER OF THE CITY OF ABILENE AND STATUTES OF THE STATE OF TEXAS

WHEREAS, the Charter of the City of Abilene and the Statutes of the State of Texas require that certain Boards and Commissions be established with a portion of the memberships thereof to be filled by appointment each year; and

WHEREAS, the City Council is of the opinion that the following members should be appointed to the designated Boards and Commissions, and has requested the Mayor to appoint same with the approval of the Council.

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

PART 1: That the list of Members is attached hereto as Exhibit A, shall be in all things, approved.

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

PASSED this 12th day of January, 2023.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

RESOLUTION NO. _____
EXHIBIT "A"

Board	Term End Date
<i>Abilene-Taylor County Child Advocacy Center Advisory Board</i>	
Debra McCracken	December 2025
<i>Board of Building Standards</i>	
Delbert Allred [Regular] [Reappointment]	November 2024
<i>Development Corporation of Abilene</i>	
Tracey Howle	December 2023



Resolution: Appointing Member(s) to various Boards and Commissions per the City Charter

- Abilene-Taylor County Child Advocacy Center Board
- Board of Building Standards
- Development Corporation of Abilene





City Council Agenda Memo

City Council Meeting Date: 1/12/2023

TO: Robert Hanna, City Manager

FROM: Rodney Taylor, Director

SUBJECT: 6. Resolution: Receive a Report, Hold a Discussion and Take Action on Authorizing Change Order No. 1 to Contract with Weisinger, Inc. for Repair of Grimes Pump #7 (Rodney Taylor)

GENERAL INFORMATION

Water Utilities staff is recommending that the Abilene City Council authorize Change Order No. 1 to the Contract with Weisinger, Incorporated for the repair of Grimes Water Treatment Plant High Service Pump #7. The Change Order provides for additional repairs not included in the original scope of work, and which was identified after the pump was pulled and disassembled at the Weisinger repair shop. The additional repairs include sandblasting and recoating of major components, and buildup, coating, and rebalancing of excessively worn impellers. The work of this Change Order is necessary to restore the pump to near like-new condition. The total increase in the price paid to Contractor pursuant to this Change Order is \$16,702.00. The revised contract price for the total repair is now \$64,463.00, which exceeds the \$50,000 purchasing limit requiring City Council approval.

Competitive bidding requirements do not apply to an expenditure for a procurement necessary because of unforeseen damage to public machinery or equipment. Additionally, competitive bidding requirements do not apply to an expenditure for a procurement necessary to preserve or protect the public health or safety of the city's residents. This Change Order No. 1 for repairs falls within both of these exemptions to competitive bidding.

SPECIAL CONSIDERATIONS

The Grimes Water Treatment has four operable High Service Pumps. Pumps #1 and #5 are horizontal split case pumps located in the original basement pump room of the plant. Pumps #6 and #7 are located outdoors immediately south of the plant operations building. Pump #7 is currently disassembled in the repair shop of Weisinger, Inc. The pump repair is necessary due to excessive vibration and noise, and reduced pumping capacity related to worn internal parts. The original contract provides for Pump #7 to be pulled, repairs including replacement of normal wear parts, reinstalled, and tested to verify performance for \$47,761.00. The Change Order No. 1 is for work and/or parts not included in the original scope of work and list of normal wear parts.

FUNDING/FISCAL IMPACT

Funding will come from the FY23 Annual Operating Budget of the Water Utilities Department.

STAFF RECOMMENDATION

Staff recommends that the Abilene City Council authorize Change Order No. 1 to the contract with Weisinger, Inc. for the Repair of Grimes Pump #7, which increases the total contract price to \$64,463.00 and now exceeds \$50,000 and requires City Council approval.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. WrittenResolution-WtrDpt-Weisinger-Change Order No 1-GWTP Pump 7 Repair-1-12-2023
2. Contract-Change Order No 1-Weisinger-GWTP HSPS 7-1-12-2023
3. Presentation-Authorize Change Order No 1 to Contract-Weisinger-Repair of GWTP HS P7-1-12-2023

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AUTHORIZING CHANGE ORDER NO. 1 TO CONTRACT WITH WEISINGER INC.
FOR REPAIR OF GRIMES PUMP #7.**

WHEREAS, the City of Abilene (City) owns and operates a Public Water Supply System which includes the Grimes Water Treatment Plant (GWTP); and

WHEREAS, the GWTP includes four high service pumps for transferring treated water into the water distribution system; and

WHEREAS, GWTP high service pump #7 is inoperable and in need of repairs and City staff was able to secure its repair through a contract with Weisinger Inc.; and

WHEREAS, the original contract provided for the removal and disassembly of Pump #7 by the Contractor and the replacement of normal wear parts for \$47,761.00; and

WHEREAS, after Weisinger pulled and disassembled Pump #7 it is apparent that additional repairs including sandblasting of major components and rehabilitating of the excessively worn impellers are necessary to restore the pump to near like-new condition; and

WHEREAS, staff recommends authorizing Change Order No. 1 to the Contract with Weisinger, Inc. for the additional repairs costing \$16,702.00, resulting in the revised contract price of \$64,463.00, which now exceeds \$50,000.00 and requires approval of the City Council; and

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

That the City Manager is authorized to execute Change Order No. 1 to the Contract with Weisinger Inc. for additional repairs to Grimes Water Treatment Plant High Service Pump #7 for \$16,702.00, resulting in the revised contract price of \$64,463.00.

ADOPTED this 12th day of January, 2023.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley E. Smith, City Attorney

CHANGE ORDER



CITY OF ABILENE

CHANGE ORDER NUMBER: 01

1. CONTRACTOR: **Weisinger, Inc.**

2. Change Order Work Limits:

Sta. N/A to Sta. N/A

3. Type of Change: **Minor**

(Major/Minor)

Project: Grimes Pump #7

Street: 209 E Hwy 80

Contract Number: 672-22

4. Reasons: **Additional repair beyond the normal wear of the pump after removal and inspection.**

5. Describe the work being revised: **Pump impellers, discharge head, ID & OD of column pipe and bowl assembly require rebuild beyond normal wear.**

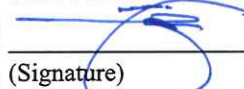
6. New or revised plan sheet(s), sketch(es), and estimates are attached.

Each signatory hereby warrants that each has the authority to execute this Change Order (CO).

The contractor must sign the Change Order and, by doing so, agrees to waive any and all claims for additional compensation due.

THE CONTRACTOR

Date:


(Signature)

Typed/Printed Name:

Typed/Printed Title:

12/09/22
Michael Weisinger
Vice President

The following information must be provided:

Change in contract time:

N/A.

Original contract price:

\$47,761.00.

Existing contract price: *

\$47,761.00

Amount added or subtracted by this CO:

\$16,702.00 added

Revised Contract Price: **\$64,463.00**

* Includes previous COs

RECOMMENDED FOR EXECUTION:

Inspection Services Manager

Date

City Engineer

Date

City Manager

Date

City Engineer's Seal:

Authorize Change Order No. 1 to Contract with Weisinger
Inc.
for the Repair of
Grimes Water Treatment Plant High Service Pump #7





- The Grimes Water Treatment Plant has four High Service Pumps for transferring treated water into the water distribution system.
- GWTP High Service Pump #7 is inoperable and in need of repairs.
- Weisinger Inc. contracted for the repair of Pump #7 including the removal, disassembly, machining, repair and/or replacement of normal wear parts, and reinstallation and testing for \$47,761.00.





- After removal and disassembly by Weisinger, it is apparent that additional repairs are needed to return the pump to near like-new condition.
- Change Order No. 1 provides for additional work consisting of sandblasting and coating major components and rehabilitating the excessively worn impellers costing \$16,702.00.
- The cost of Change Order No. 1 results in a revised contract value of \$64,463.00, which exceeds \$50,000 and requires approval of the Abilene City Council.





GRIMES WATER TREATMENT PLANT

HIGH SERVICE PUMPS #6 & #7



Authorize Change Order No. 1 to Contract with Weisinger
Inc.
for the Repair of
Grimes Water Treatment Plant High Service Pump #7

Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 1/12/2023

TO: Robert Hanna, City Manager

FROM: Max Johnson, Director of Public Works

SUBJECT: 7. Resolution: Receive a Report, Hold a Discussion and Take Action on Awarding Bid #2313 Maple Street South Paving & Drainage Improvements to Epic Construction Company (Max Johnson)

GENERAL INFORMATION

This contract involves the total reconstruction of existing Maple Street from Carriage Hills Parkway to the south of Loop 322, construction of a 10-foot-wide concrete hike & bike trail, construction of 3 proposed storm sewer systems, traffic signal installation at the Maple Street and Colony Hill Rd intersection, pavement marking, fencing, and mailbox relocation. The existing roadway will be demolished and removed down to subgrade.

SPECIAL CONSIDERATIONS

This project has a contract completion time of 180 working days (approx. 9 months, weather permitting)

FUNDING/FISCAL IMPACT

Funding for this project is allocated through the 2021 Bond Program.

STAFF RECOMMENDATION

Staff recommends awarding the bid to the best value bidder, Epic Construction Company, with a base bid of \$6,837,216.50.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Maple South resolution
2. Maple Street Contract Signature Revised
3. 3. Bid Tab-ABILENE - 21495 City of Abilene_Maple St KS 11.30.22
4. Maple South - Scope of Project
5. Project Location Map-Model
6. Maple South ppt - 1-5-2023

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AWARDING BID TO EPIC CONSTRUCTION, CO., ABILENE, TEXAS**

WHEREAS, the City of Abilene duly advertised and gave such notice, as required by law, for bids for the reconstruction of Maple Street from Carriage Hills to the south of Loop 322.

WHEREAS, This Contract involves the total reconstruction of existing Maple Street from Carriage Hills Parkway to the south of Loop 322, construction of a 10-foot-wide concrete hike & bike trail, construction of 3 proposed storm sewer systems, traffic signal installation at the Maple Street and Colony Hill Rd intersection, pavement marking, fencing, mailbox relocation, and the demolition of existing roadway down to proposed subgrade.

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

WHEREAS, the following base bids were received and opened on November 29, 2022

Epic Construction Co., Abilene, Texas	\$ 6,837,216.50
Bontke Brothers Construction, Inc., Abilene, Texas	\$ 6,947,370.00
A.L. Helmcamp, Inc., Buffalo, Texas	\$ 10,745,101.20

WHEREAS, Epic Construction Co., Abilene, Texas submitted the lowest and best value total for the base bid and both alternates in the amount of \$6,837,216.50 with the bid meeting specifications. Staff recommends awarding the bid to the lowest and best value bidder, Epic Construction Co., 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 \$ 6,837,216.50.

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

ADOPTED this 12th day of January, 2023.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

CONSTRUCTION CONTRACT

BACKGROUND

THIS CONTRACT, made on the 12th day of January, 20 23, is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and Epic Construction Company 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. The Contractor hereby agrees to commence and complete the construction of Work required in the Contract Documents – incorporated herein by reference – Maple Street South - Paving and Drainage Improvements.

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 **\$6,837,216.50**.

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 executed copies is an original.

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

CONTRACTOR

Name of Contractor:

Business Address: 2701 S. Treadaway Blvd.

Epic Construction Company

Abilene, Texas 79602

Signature

Business Phone No. (325) 695-6283

Federal Tax I.D. # 75-2810409

Name – Typed or Printed

ATTEST: (If Corporation)

Kyle Doby

Title – Typed or Printed

Partner

Corporate Seal
(If none, write "None")

CITY OF ABILENE

Authorized Signature

ATTEST:

APPROVED:

City Secretary

City Attorney

Seal

City of Abilene
Maple Street South - Paving and Drainage Improvements
Bid Date: November 29, 2022 at 2:00 PM
JM Project Number: 21495
Abilene Project Number: CB-2313



Bid Tabulation
Engineer: Jacob & Martin, LLC
Abilene, Texas

				Epic Construction Company		Bontke Brothers Construction		A.L. Helmcamp, Inc.	
				2701 S. Treadaway Blvd.		102 College Ave.		4120 US 79 West	
				Abilene, TX 79602		Abilene, TX 79601		Buffalo, TX 75831	
Item #	SPEC Number & Item Description	Quantity	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total
1	500 MOBILIZATION, BONDS, AND INSURANCE	1	LS	\$ 300,000.00	\$ 300,000.00	\$ 300,000.00	\$ 300,000.00	\$ 1,000,000.00	\$ 1,000,000.00
2	100-1 PREPARE RIGHT OF WAY	81	STA	\$ 500.00	\$ 40,500.00	\$ 500.00	\$ 40,500.00	\$ 4,500.00	\$ 364,500.00
3	100-2 REMOVE EXISTING DRIVEWAYS & CULVERTS	1	LS	\$ 60,000.00	\$ 60,000.00	\$ 30,000.00	\$ 30,000.00	\$ 125,000.00	\$ 125,000.00
4	105 REMOVE & REPLACE EXISTING FENCE (FM 707 TO LOOP 322)	11,604	LF	\$ 6.00	\$ 69,624.00	\$ 7.00	\$ 81,228.00	\$ 7.00	\$ 81,228.00
4A	107 SEEDING FOR EROSION CONTROL (HYDROMULCH)	3.70	AC	\$ 10,800.00	\$ 39,960.00	\$ 14,400.00	\$ 53,280.00	\$ 2,500.00	\$ 9,250.00
5	108-1 REMOVING STABILIZED BASE/ASPHALTIC PAVEMENT	40,671	SY	\$ 1.00	\$ 40,671.00	\$ 5.00	\$ 203,355.00	\$ 10.00	\$ 406,710.00
6	108-2 MILL & OVERLAY EX. ASPHALT APRON	77	SY	\$ 65.00	\$ 5,005.00	\$ 30.00	\$ 2,310.00	\$ 125.00	\$ 9,625.00
7	110 EXCAVATION	24,300	CY	\$ 2.50	\$ 60,750.00	\$ 4.00	\$ 97,200.00	\$ 18.00	\$ 437,400.00
8	132 EMBANKMENT	24,300	CY	\$ 4.00	\$ 97,200.00	\$ 6.00	\$ 145,800.00	\$ 9.00	\$ 218,700.00
9REV	162 SODDING	2,015	SY	\$ 15.00	\$ 30,225.00	\$ 10.00	\$ 20,150.00	\$ 7.00	\$ 14,105.00
9A	169-1 SOIL RETENTION BLANKET (WITH SEED)	4,700	SY	\$ 5.50	\$ 25,850.00	\$ 6.00	\$ 28,200.00	\$ 2.50	\$ 11,750.00
10	260 6" SUBGRADE PREPARATION	47,500	SY	\$ 3.00	\$ 142,500.00	\$ 3.00	\$ 142,500.00	\$ 6.00	\$ 285,000.00
11	247-1 BASE COURSE (8")	8,850	CY	\$ 39.00	\$ 345,150.00	\$ 39.00	\$ 345,150.00	\$ 65.00	\$ 575,250.00
12	247-2 BASE COURSE (6")	1,213	CY	\$ 39.00	\$ 47,307.00	\$ 39.00	\$ 47,307.00	\$ 65.00	\$ 78,845.00
13	310 ASPHALT PRIME COAT	8,931	GAL	\$ 7.00	\$ 62,517.00	\$ 7.00	\$ 62,517.00	\$ 6.00	\$ 53,586.00
14	316-1 ONE COURSE SURFACE TREATMENT (AC-20-5TR)	12,504	GAL	\$ 8.00	\$ 100,032.00	\$ 7.00	\$ 87,528.00	\$ 5.50	\$ 68,772.00
15	316-2 ONE COURSE SURFACE TREATMENT (TY-PB-GR4)	357	CY	\$ 165.00	\$ 58,905.00	\$ 200.00	\$ 71,400.00	\$ 185.00	\$ 66,045.00
16	340-1 4" TYPE "B" HOT MIX ASPHALT	7,860	TON	\$ 120.00	\$ 943,200.00	\$ 115.00	\$ 903,900.00	\$ 145.00	\$ 1,139,700.00
17REV	340-2 2" TYPE "D" HOT MIX ASPHALT	3,930	TON	\$ 120.00	\$ 471,600.00	\$ 115.00	\$ 451,950.00	\$ 145.00	\$ 569,850.00
18	360-1 8" 4000 PSI CONCRETE PAVEMENT #4 BARS @ 12" O.C.E.W.	6,350	SY	\$ 75.00	\$ 476,250.00	\$ 90.00	\$ 571,500.00	\$ 90.00	\$ 571,500.00
19	360-2 8" CLASS P CONCRETE PAVEMENT #4 BARS @ 12" O.C.E.W.	930	SY	\$ 75.00	\$ 69,750.00	\$ 95.00	\$ 88,350.00	\$ 110.00	\$ 102,300.00
20	360-3 6" CLASS A CONCRETE DRIVE	2,900	SY	\$ 70.00	\$ 203,000.00	\$ 88.00	\$ 255,200.00	\$ 135.00	\$ 391,500.00
21	360-4 6" CLASS A CONCRETE VALLEY GUTTERS	47	SY	\$ 72.00	\$ 3,384.00	\$ 95.00	\$ 4,465.00	\$ 220.00	\$ 10,340.00
22	360-5 100' SLOTTED CURB & CONCRETE PARKWAY, COMPLETE IN PLACE	1	LS	\$ 15,000.00	\$ 15,000.00	\$ 3,000.00	\$ 3,000.00	\$ 30,000.00	\$ 30,000.00
23	360-6 10' SLOTTED CURB & FLUME, COMPLETE IN PLACE	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 6,500.00	\$ 6,500.00	\$ 6,000.00	\$ 6,000.00
24REV	420 CONCRETE SLOPED END TREATMENT AT 24" HP STORM	1	EA	\$ 3,000.00	\$ 3,000.00	\$ 1,500.00	\$ 1,500.00	\$ 2,000.00	\$ 2,000.00
25	432 FLEXAMAT PLUS OR APPROVED EQUAL	295	SY	\$ 70.00	\$ 20,650.00	\$ 50.00	\$ 14,750.00	\$ 95.00	\$ 28,025.00
26	462-1 4'X3' REINFORCED CONCRETE BOX CULVERT	225	LF	\$ 800.00	\$ 180,000.00	\$ 350.00	\$ 78,750.00	\$ 650.00	\$ 146,250.00
27	462-2 6'X3' REINFORCED CONCRETE BOX CULVERT	44	LF	\$ 900.00	\$ 39,600.00	\$ 550.00	\$ 24,200.00	\$ 800.00	\$ 35,200.00
28	464 24" REINFORCED CONCRETE PIPE, CONCRETE END TREATMENTS, COMPLETE IN PLACE	108	LF	\$ 120.00	\$ 12,960.00	\$ 120.00	\$ 12,960.00	\$ 185.00	\$ 19,980.00
29	501-1 20' STD CURB INLET (NCTCOG 6020)	12	EA	\$ 16,500.00	\$ 198,000.00	\$ 10,500.00	\$ 126,000.00	\$ 15,000.00	\$ 180,000.00
30	501-2 10' STD CURB INLET (NCTCOG 6020)	1	EA	\$ 12,000.00	\$ 12,000.00	\$ 6,500.00	\$ 6,500.00	\$ 10,000.00	\$ 10,000.00
31REV	502 BARRICADES, SIGN, & TRAFFIC HANDLING	9	MO	\$ 5,000.00	\$ 45,000.00	\$ 7,000.00	\$ 63,000.00	\$ 45,000.00	\$ 405,000.00
32	529-1 CONCRETE CURB & GUTTER	13,330	LF	\$ 16.00	\$ 213,280.00	\$ 18.00	\$ 239,940.00	\$ 50.00	\$ 666,500.00
33	529-2 SLOTTED CURB	120	LF	\$ 25.00	\$ 3,000.00	\$ 20.00	\$ 2,400.00	\$ 100.00	\$ 12,000.00
34	531-1 10' WIDE HIKE/BIKE TRAIL	6,891	SY	\$ 65.00	\$ 447,915.00	\$ 68.00	\$ 468,588.00	\$ 70.00	\$ 482,370.00
35	531-2 5' WIDE SIDEWALK	145	SY	\$ 65.00	\$ 9,425.00	\$ 70.00	\$ 10,150.00	\$ 105.00	\$ 15,225.00
36	531-3 PEDESTRIAN CURB RAMP (PED-18, TYPE 1)	8	EA	\$ 1,000.00	\$ 8,000.00	\$ 1,000.00	\$ 8,000.00	\$ 2,700.00	\$ 21,600.00
37	531-4 PEDESTRIAN CURB RAMP (PED-18, TYPE 7)	13	EA	\$ 1,000.00	\$ 13,000.00	\$ 1,000.00	\$ 13,000.00	\$ 2,700.00	\$ 35,100.00

				Epic Construction Company		Bontke Brothers Construction		A.L. Helmcamp, Inc.	
				2701 S. Treadaway Blvd.		102 College Ave.		4120 US 79 West	
				Abilene, TX 79602		Abilene, TX 79601		Buffalo, TX 75831	
Item #	SPEC Number & Item Description	Quantity	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total
38	540 METAL BEAM GUARD FENCE	72	LF	\$ 300.00	\$ 21,600.00	\$ 100.00	\$ 7,200.00	\$ 110.00	\$ 7,920.00
39	618-1 CONDT (PVC) (SCH 40) (2")	320	LF	\$ 18.00	\$ 5,760.00	\$ 15.40	\$ 4,928.00	\$ 16.00	\$ 5,120.00
40	618-2 CONDT (PVC) (SCH 40) (3")	35	LF	\$ 29.00	\$ 1,015.00	\$ 25.70	\$ 899.50	\$ 27.00	\$ 945.00
41	618-3 CONDT (PVC) (SCH 40) (4")	75	LF	\$ 40.00	\$ 3,000.00	\$ 36.00	\$ 2,700.00	\$ 40.00	\$ 3,000.00
42	618-4 CONDT (PVC) (SCH 40) (4")(BORE)	215	LF	\$ 50.00	\$ 10,750.00	\$ 47.00	\$ 10,105.00	\$ 48.00	\$ 10,320.00
43	620-1 ELEC CONDR (NO.8) BARE	325	LF	\$ 2.50	\$ 812.50	\$ 2.10	\$ 682.50	\$ 2.20	\$ 715.00
44	620-2 ELEC CONDR (NO.6) BARE	320	LF	\$ 2.75	\$ 880.00	\$ 2.30	\$ 736.00	\$ 2.50	\$ 800.00
45	620-3 ELEC CONDR (NO.8) INSULATED	350	LF	\$ 2.50	\$ 875.00	\$ 2.30	\$ 805.00	\$ 2.50	\$ 875.00
46	620-4 ELEC CONDR (NO.6) INSULATED	640	LF	\$ 3.00	\$ 1,920.00	\$ 2.60	\$ 1,664.00	\$ 3.00	\$ 1,920.00
47	624-1 -GROUND BOX TY C W/APRON	4	EA	\$ 1,800.00	\$ 7,200.00	\$ 1,700.00	\$ 6,800.00	\$ 1,800.00	\$ 7,200.00
48	624-2 GROUND BOX TY D W/APRON	1	EA	\$ 2,500.00	\$ 2,500.00	\$ 2,300.00	\$ 2,300.00	\$ 2,500.00	\$ 2,500.00
49	628 ELC SRV TY D 120/240 070(NS)SS(E)PS(U)	1	EA	\$ 12,000.00	\$ 12,000.00	\$ 11,000.00	\$ 11,000.00	\$ 11,000.00	\$ 11,000.00
50REV	637-1 ALUMINUM SIGNS (R3-5L) (LEFT TURN ONLY)	1	EA	\$ 800.00	\$ 800.00	\$ 1,000.00	\$ 1,000.00	\$ 800.00	\$ 800.00
51REV	637-2 ALUMINUM SIGNS (R3-5R) (RIGHT TURN ONLY)	2	EA	\$ 800.00	\$ 1,600.00	\$ 1,000.00	\$ 2,000.00	\$ 800.00	\$ 1,600.00
52	637-3 ALUMINUM SIGNS (R7-1) (NO PARKING ANY TIME)	8	EA	\$ 500.00	\$ 4,000.00	\$ 800.00	\$ 6,400.00	\$ 800.00	\$ 6,400.00
53	637-4 ALUMINUM SIGNS (R1-5) (YIELD HERE TO PEDESTRIANS)	4	EA	\$ 500.00	\$ 2,000.00	\$ 1,000.00	\$ 4,000.00	\$ 800.00	\$ 3,200.00
54	637-5 ALUMINUM SIGNS (D3-1) (MAPLE ST)	1	EA	\$ 900.00	\$ 900.00	\$ 800.00	\$ 800.00	\$ 1,000.00	\$ 1,000.00
55	637-6 ALUMINUM SIGNS (D3-1) (COLONY HILL RD)	2	EA	\$ 900.00	\$ 1,800.00	\$ 800.00	\$ 1,600.00	\$ 1,200.00	\$ 2,400.00
56	637-7 ALUMINUM SIGNS (R10-17T) (LT TURN FYA)	1	EA	\$ 800.00	\$ 800.00	\$ 800.00	\$ 800.00	\$ 800.00	\$ 800.00
57	637-8 ALUMINUM SIGNS (R9-3A) (DON'T WALK)	2	EA	\$ 800.00	\$ 1,600.00	\$ 800.00	\$ 1,600.00	\$ 800.00	\$ 1,600.00
58	637-9 ALUMINUM SIGNS (R3-5L) (LEFT TURN ONLY)	1	EA						
59	637-10 ALUMINUM SIGNS (R3-5a) (THRU ONLY)	1	EA	\$ 800.00	\$ 800.00	\$ 800.00	\$ 800.00	\$ 800.00	\$ 800.00
60	637-11 ALUMINUM SIGNS (R3-5R) (RIGHT TURN ONLY)	2	EA						
61	637-12 ALUMINUM SIGNS (R10-3EL) (PUSH BUTTON LEFT)	1	EA	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 90.00	\$ 90.00
62	637-13 ALUMINUM SIGNS (R10-3EL) (PUSH BUTTON RIGHT)	1	EA	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 90.00	\$ 90.00
62A	637-14 ALUMINUM SIGNS (S4-5)	2	EA	\$ 500.00	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00	\$ 800.00	\$ 1,600.00
62B	637-15 ALUMINUM SIGNS (R2-1)(SPEED LIMIT 40)	2	EA	\$ 500.00	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00	\$ 800.00	\$ 1,600.00
62C	637-16 ALUMINUM SIGNS (S5-2)	2	EA	\$ 500.00	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00	\$ 800.00	\$ 1,600.00
62D	637-17 ALUMINUM SIGNS (R3-7L) (LEFT LANE MUST TURN LEFT)	1	EA	\$ 500.00	\$ 500.00	\$ 1,000.00	\$ 1,000.00	\$ 800.00	\$ 800.00
62E	637-17 ALUMINUM SIGNS (R3-7R) (RIGHT LANE MUST TURN RIGHT)	2	EA	\$ 500.00	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00	\$ 800.00	\$ 1,600.00
63	656-1 RELOCATE EXISTING TRAFFIC SIGNS	1	LS	\$ 500.00	\$ 500.00	\$ 4,000.00	\$ 4,000.00	\$ 5,500.00	\$ 5,500.00
64	656-2 DRILL SHAFT (TRF SIG POLE) (24 IN)	5	LF	\$ 300.00	\$ 1,500.00	\$ 300.00	\$ 1,500.00	\$ 300.00	\$ 1,500.00
65	656-3 DRILL SHAFT (TRF SIG POLE) (30 IN)	42	LF	\$ 700.00	\$ 29,400.00	\$ 700.00	\$ 29,400.00	\$ 800.00	\$ 33,600.00
66	677 ELIMINATE EXISTING PAVEMENT MARKINGS & MARKERS (EDGE LINE, TURN LANE, RAISED PAVEMENT MARKERS)	1	LS	\$ 2,500.00	\$ 2,500.00	\$ 15,000.00	\$ 15,000.00	\$ 17,000.00	\$ 17,000.00
67	680 TRAFFIC CABINET ASSEMBLY	1	EA	\$ 53,000.00	\$ 53,000.00	\$ 52,000.00	\$ 52,000.00	\$ 60,000.00	\$ 60,000.00
68REV	682-1 RECTANGULAR RAPID FLASHING BEACON (RRFD) ASSEMBLY, TO INCLUDE FOUNDATION, POLES, MOUNTING BRACKETS, FLASHERS, & ATTACHED SIGNAGE	4	EA	\$ 19,000.00	\$ 76,000.00	\$ 19,000.00	\$ 76,000.00	\$ 25,000.00	\$ 100,000.00
69	682-2 VEHICULAR SIGNAL HEADS (H4FYA)	1	EA	\$ 1,800.00	\$ 1,800.00	\$ 2,000.00	\$ 2,000.00	\$ 1,800.00	\$ 1,800.00
70	682-3 VEHICULAR SIGNAL HEADS (H3)	5	EA	\$ 1,400.00	\$ 7,000.00	\$ 1,300.00	\$ 6,500.00	\$ 1,500.00	\$ 7,500.00
71	682-4 VEHICULAR SIGNAL HEADS (V3)	2	EA	\$ 1,400.00	\$ 2,800.00	\$ 1,300.00	\$ 2,600.00	\$ 1,500.00	\$ 3,000.00
72	682-5 PEDESTRIAN SIGNAL HEADS (CD)	2	EA	\$ 1,200.00	\$ 2,400.00	\$ 1,100.00	\$ 2,200.00	\$ 1,100.00	\$ 2,200.00

Epic Construction Company					Bontke Brothers Construction				A.L. Helmcamp, Inc.	
2701 S. Treadaway Blvd.					102 College Ave.				4120 US 79 West	
Abilene, TX 79602					Abilene, TX 79601				Buffalo, TX 75831	
Item #	SPEC Number & Item Description	Quantity	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total	
72A	682-6 SCHOOL ZONE FLASHER & SIGN ASSEMBLY, TO INCLUDE FOUNDATION, POLES, MOUNTING BRACKETS, FLASHERS, & ATTACHED SIGNAGE	3	EA	\$ 26,000.00	\$ 78,000.00	\$ 30,000.00	\$ 90,000.00	\$ 26,000.00	\$ 78,000.00	
73REV	684-1 TRF SIG CBL (TY A)(14 AWG)(7 CONDR)	90	LF	\$ 5.00	\$ 450.00	\$ 4.50	\$ 405.00	\$ 4.50	\$ 405.00	
74	684-2 - TRF SIG CBL (TY A)(14 AWG)(20 CONDR)	245	LF	\$ 9.00	\$ 2,205.00	\$ 8.50	\$ 2,082.50	\$ 8.50	\$ 2,082.50	
75	684-3 TRF SIG CBL (TY C)(12 AWG)(2 CONDR)	100	LF	\$ 3.00	\$ 300.00	\$ 3.00	\$ 300.00	\$ 3.00	\$ 300.00	
76	686-1 INS TRF SIG PL AM(S)1 ARM(24")LUM	1	EA	\$ 18,000.00	\$ 18,000.00	\$ 17,000.00	\$ 17,000.00	\$ 18,000.00	\$ 18,000.00	
77	686-2 INS TRF SIG PL AM(S)1 ARM(28")LUM	1	EA	\$ 19,000.00	\$ 19,000.00	\$ 18,000.00	\$ 18,000.00	\$ 19,000.00	\$ 19,000.00	
78	686-3 INS TRF SIG PL AM(S)1 ARM(32")LUM	1	EA	\$ 21,000.00	\$ 21,000.00	\$ 20,000.00	\$ 20,000.00	\$ 21,000.00	\$ 21,000.00	
79	687-1 PED POLE ASSEMBLY	1	EA	\$ 3,500.00	\$ 3,500.00	\$ 3,200.00	\$ 3,200.00	\$ 3,500.00	\$ 3,500.00	
80	688-1 PED DETECT PUSH BUTTON (APS) (POLARA ICCU-S)	2	EA	\$ 900.00	\$ 1,800.00	\$ 800.00	\$ 1,600.00	\$ 800.00	\$ 1,600.00	
81	688-2 PED DETECTOR CONTROLLER UNIT	1	EA	\$ 6,000.00	\$ 6,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,500.00	\$ 5,500.00	
82	6004 ITS COM CABLE (CAT5 ETHERNET) (RADIO)	30	LF	\$ 3.00	\$ 90.00	\$ 2.00	\$ 60.00	\$ 2.50	\$ 75.00	
83	6062 ITS RADIO (INTERIS PEGASUS 5.8GHZ)	1	EA	\$ 4,000.00	\$ 4,000.00	\$ 3,500.00	\$ 3,500.00	\$ 3,800.00	\$ 3,800.00	
84REV	TXDOT 465 6' X 6' AREA INLET (PAZD)(FG), CONCRETE APRON, COMPLETE IN PLACE	1	EA	\$ 9,000.00	\$ 9,000.00	\$ 10,000.00	\$ 10,000.00	\$ 12,000.00	\$ 12,000.00	
85	TXDOT 466 CONCRETE HEADWALL SW-0	2	EA	\$ 9,000.00	\$ 18,000.00	\$ 15,000.00	\$ 30,000.00	\$ 24,000.00	\$ 48,000.00	*
86	TXDOT 506 TEMPORARY EROSION, SEDIMENTAL, AND ENVIRONMENTAL CONTROLS	1	LS	\$ 25,000.00	\$ 25,000.00	\$ 11,000.00	\$ 11,000.00	\$ 225,000.00	\$ 225,000.00	
87	TXDOT 544 GUARDRAIL END TREATMENTS COMPLETE IN PLACE	2	EA	\$ 15,000.00	\$ 30,000.00	\$ 1,800.00	\$ 3,600.00	\$ 6,000.00	\$ 12,000.00	
88	TXDOT 560 REMOVE & REPLACE EXISTING MAILBOXES	17	EA	\$ 1,200.00	\$ 20,400.00	\$ 1,500.00	\$ 25,500.00	\$ 1,500.00	\$ 25,500.00	
89	TXDOT 666-1 PVMT MARKINGS (CENTERLINE) DOUBLE SOLID (YELLOW)(4")(PM(1)-20)	7,980	LF	\$ 1.75	\$ 13,965.00	\$ 2.00	\$ 15,960.00	\$ 0.70	\$ 5,586.00	
90	TXDOT 666-2 PVMT MARKINGS (TURN ONLY LANE) SINGLE SOLID (WHITE)(8")(PM(3)-20)	300	LF	\$ 7.00	\$ 2,100.00	\$ 5.00	\$ 1,500.00	\$ 2.50	\$ 750.00	
91	TXDOT 666-3 PVMT MARKINGS (EDGE LINE) SINGLE SOLID (WHITE)(4")(PM(1)-20)	1,248	LF	\$ 3.50	\$ 4,368.00	\$ 3.00	\$ 3,744.00	\$ 0.70	\$ 873.60	
92	TXDOT 666-4 PVMT MARKINGS (LANE LINE) SINGLE DASHED (WHITE)(4")(PM(1)-20)	14,028	LF	\$ 1.00	\$ 14,028.00	\$ 1.00	\$ 14,028.00	\$ 0.70	\$ 9,819.60	
93	TXDOT 666-5 PVMT MARKINGS (LANE LINE) SINGLE DOTTED (WHITE)(8")(PM(3)-20)	144	LF	\$ 12.00	\$ 1,728.00	\$ 10.00	\$ 1,440.00	\$ 2.50	\$ 360.00	
94	TXDOT 666-6 PVMT MARKINGS DIAGONAL STRIPED MEDIAN (YELLOW)(TYPICAL)	236	SY	\$ 40.00	\$ 9,440.00	\$ 30.00	\$ 7,080.00	\$ 16.00	\$ 3,776.00	
95	TXDOT 666-7 PVMT MARKINGS DIAGONAL STRIPED TRANSITION (WHITE)(TYPICAL)	135	SY	\$ 40.00	\$ 5,400.00	\$ 30.00	\$ 4,050.00	\$ 16.00	\$ 2,160.00	
96REV	TXDOT 666-8 PVMT MARKINGS SOLID WHITE STOP LINE (PM(1)-20)	124	LF	\$ 20.00	\$ 2,480.00	\$ 20.00	\$ 2,480.00	\$ 27.00	\$ 3,348.00	
97	TXDOT 666-9 PVMT MARKINGS 8" SINGLE SOLID (WHITE) ISLAND STRIPING	246	LF	\$ 12.00	\$ 2,952.00	\$ 10.00	\$ 2,460.00	\$ 5.50	\$ 1,353.00	
98	TXDOT 666-10 PVMT MARKINGS 24" PEDESTRIAN CROSSWALK (WHITE)(PM(4)-20)	174	LF	\$ 40.00	\$ 6,960.00	\$ 30.00	\$ 5,220.00	\$ 27.00	\$ 4,698.00	
99	TXDOT 666-11 PVMT MARKINGS SINGLE-DIRECTION TURN ARROWS & "ONLY"	3	EA	\$ 1,200.00	\$ 3,600.00	\$ 1,500.00	\$ 4,500.00	\$ 500.00	\$ 1,500.00	
99A	TXDOT 666-12 PVMT MARKINGS 12" SINGLE SOLID (WHITE) SCHOOL ZONE LINE	89	LF	\$ 20.00	\$ 1,780.00	\$ 30.00	\$ 2,670.00	\$ 5.50	\$ 489.50	
100	TXDOT 672-1 TYPE I REFLECTORS (PM(2)-20)	190	EA	\$ 12.00	\$ 2,280.00	\$ 10.00	\$ 1,900.00	\$ 11.00	\$ 2,090.00	

Epic Construction Company					Bontke Brothers Construction			A.L. Helmcamp, Inc.		
2701 S. Treadaway Blvd.					102 College Ave.			4120 US 79 West		
Abilene, TX 79602					Abilene, TX 79601			Buffalo, TX 75831		
Item #	SPEC Number & Item Description	Quantity	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total	
101	TXDOT 672-2 TYPE II REFLECTORS (PM(2)-20)	399	EA	\$ 12.00	\$ 4,788.00	\$ 10.00	\$ 3,990.00	\$ 11.00	\$ 4,389.00	
102DEL	TXDOT 688 PEDESTRIAN DETECTORS	2	EA							
103	TXDOT 4122-1 THERMOPLASTIC PIPE (POLYPROPYLENE PIPE)(HP STORM)(60")	575	LF	\$ 340.00	\$ 195,500.00	\$ 260.00	\$ 149,500.00	\$ 280.00	\$ 161,000.00	
104	TXDOT 4122-2 THERMOPLASTIC PIPE (POLYPROPYLENE PIPE)(HP STORM)(48")	916	LF	\$ 270.00	\$ 247,320.00	\$ 240.00	\$ 219,840.00	\$ 210.00	\$ 192,360.00	
105	TXDOT 4122-3 THERMOPLASTIC PIPE (POLYPROPYLENE PIPE)(HP STORM)(36")	170	LF	\$ 150.00	\$ 25,500.00	\$ 190.00	\$ 32,300.00	\$ 160.00	\$ 27,200.00	
106	TXDOT 4122-4 THERMOPLASTIC PIPE (POLYPROPYLENE PIPE)(HP STORM)(24")	595	LF	\$ 135.00	\$ 80,325.00	\$ 120.00	\$ 71,400.00	\$ 110.00	\$ 65,450.00	
107	TXDOT 4122-5 THERMOPLASTIC PIPE (POLYPROPYLENE PIPE)(HP STORM)(18")	230	LF	\$ 120.00	\$ 27,600.00	\$ 90.00	\$ 20,700.00	\$ 90.00	\$ 20,700.00	
108	TXDOT 4122-6 THERMOPLASTIC PIPE (POLYPROPYLENE PIPE)(HP STORM)(12"), CONCRETE END TREATMENTS, COMPLETE IN PLACE	60	LF	\$ 70.00	\$ 4,200.00	\$ 50.00	\$ 3,000.00	\$ 110.00	\$ 6,600.00	
109	TXDOT 6306-1 VIVDS PROCESSOR SYSTEM (ITERIS NEXT)	1	EA	\$ 20,000.00	\$ 20,000.00	\$ 17,500.00	\$ 17,500.00	\$ 20,000.00	\$ 20,000.00	
110	TXDOT 6306-2 VIVDS CAMERA ASSEMBLY	3	EA	\$ 4,000.00	\$ 12,000.00	\$ 3,000.00	\$ 9,000.00	\$ 3,500.00	\$ 10,500.00	
111	TXDOT 6306-3 VIVDS COMMUNICATION CABLE (ETHERNET)	245	LF	\$ 3.00	\$ 735.00	\$ 2.50	\$ 612.50	\$ 3.00	\$ 735.00	
112REV	NCTCOG 6010-1 5'X5' CONCRETE STORM SEWER MANHOLE (NCTCOG 6010)	8	EA	\$ 9,000.00	\$ 72,000.00	\$ 10,500.00	\$ 84,000.00	\$ 11,000.00	\$ 88,000.00	
113REV	NCTCOG 6010-2 6'X6' CONCRETE STORM SEWER MANHOLE (NCTCOG 6010)	3	EA	\$ 12,000.00	\$ 36,000.00	\$ 15,000.00	\$ 45,000.00	\$ 13,000.00	\$ 39,000.00	
114	Allowance for work directed and in writing by the City for legitimate Project related issues (Private Property Fencing adjacent to project area)	1	LS	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	
115	Allowance for work directed and in writing by the City for legitimate Project related issues	1	LS	\$ 550,000.00	\$ 550,000.00	\$ 550,000.00	\$ 550,000.00	\$ 550,000.00	\$ 550,000.00	
TOTAL BASE BID (Items 1 - 115)					\$ 6,837,216.50		\$ 6,947,370.00	*	\$ 10,745,101.20	*

(*) - Extension Error

SCOPE OF PROJECT

This contract involves the total reconstruction of existing Maple Street from Carriage Hills Parkway to the south limits of Loop 322. The existing roadway will be demolished and removed down to proposed subgrade. The new roadway section will vary within the project in terms of width, thickness, and materials as shown in the Construction Plans. Once the roadway is reconstructed, new driveways and approaches will be constructed to access the current residents. Access shall be provided to all private property throughout the project during construction and as directed by the City. Roadway connections to existing public roadways will be reconstructed as shown on the Construction Plans.

A 10 foot wide concrete hike & bike trail shall be constructed parallel to Maple from Colony Hill Road to Loop 322 with all associated ramping and grading. The trail shall be installed with 2% maximum cross-slopes to ensure that it meets the requirements of the Americans with Disabilities Act (ADA).

There are 3 proposed storm sewer systems shown in the Construction Plans that utilize a variety of HP Storm pipe, concrete inlets, concrete manholes, as well as end treatments and wingwalls. These systems take stormwater west to Kirby Lake and across City Property throughout the project. All ditches have a maximum side slope of 4:1.

A traffic signal is proposed at the intersection of Maple Street and Colony Hill Road and all infrastructure related to poles, mast arms, signal heads, conduit, and other elements are shown in the Construction Plans.

Pavement markings, to include thermoplastic paint striping and decals, as well as reflective buttons are included in this contract as well. Two locations are proposed with Solar Powered Rapid Flashing Beacon Systems for pedestrian crossings.

Fencing on the west side of Maple Street shall be replaced per the Construction Plans and shall be installed from FM 707 to Loop 322 along Kirby Lake, located entirely on City of Abilene property and as directed in the field by the City.

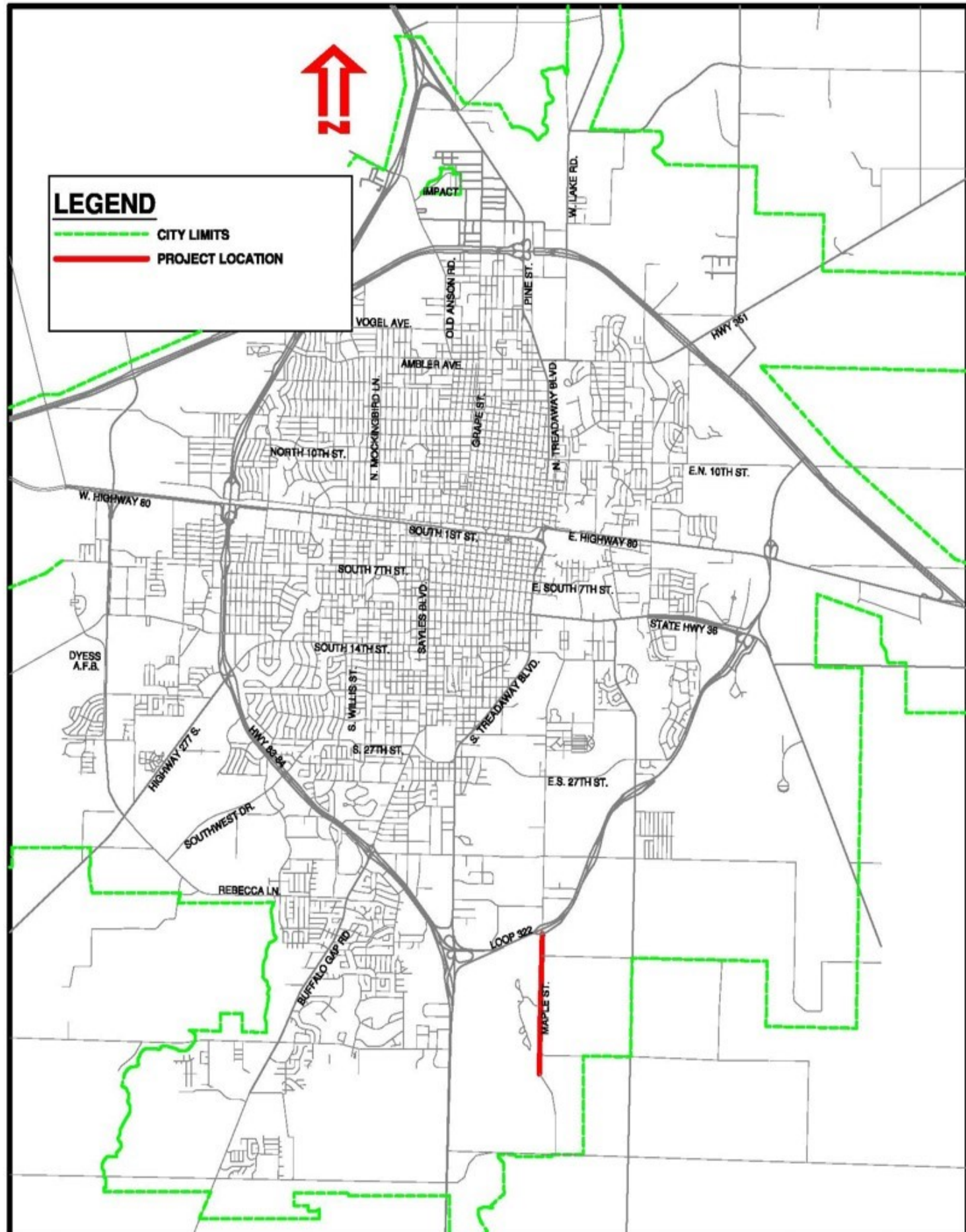
Additional fencing and gates are required at a private property on the North end of the project as shown in the Construction Plans, and the City shall direct improvements associated with this during the project.

Each resident with an existing mailbox within the construction limits of the project will be relocated within the platted right-of-way and reconstructed to existing conditions as closely as possible.



LEGEND

- CITY LIMITS
- PROJECT LOCATION



Sheet 1 of 1	CITY OF ABILENE, TEXAS PUBLIC WORKS DEPARTMENT ENGINEERING DIVISION	MAPLE ST IMPROVEMENTS LOOP 322 TO CARRIAGE HILLS	Designed By: S. CHANDLER	Horizontal Scale: N.T.S.	Computer File Name: PROPOSED 2021 BOND Date: OCTOBER 2021
			Drawn By: T. MATTHEWS	Vertical Scale: N.T.S.	
			Checked By: S. CHANDLER		

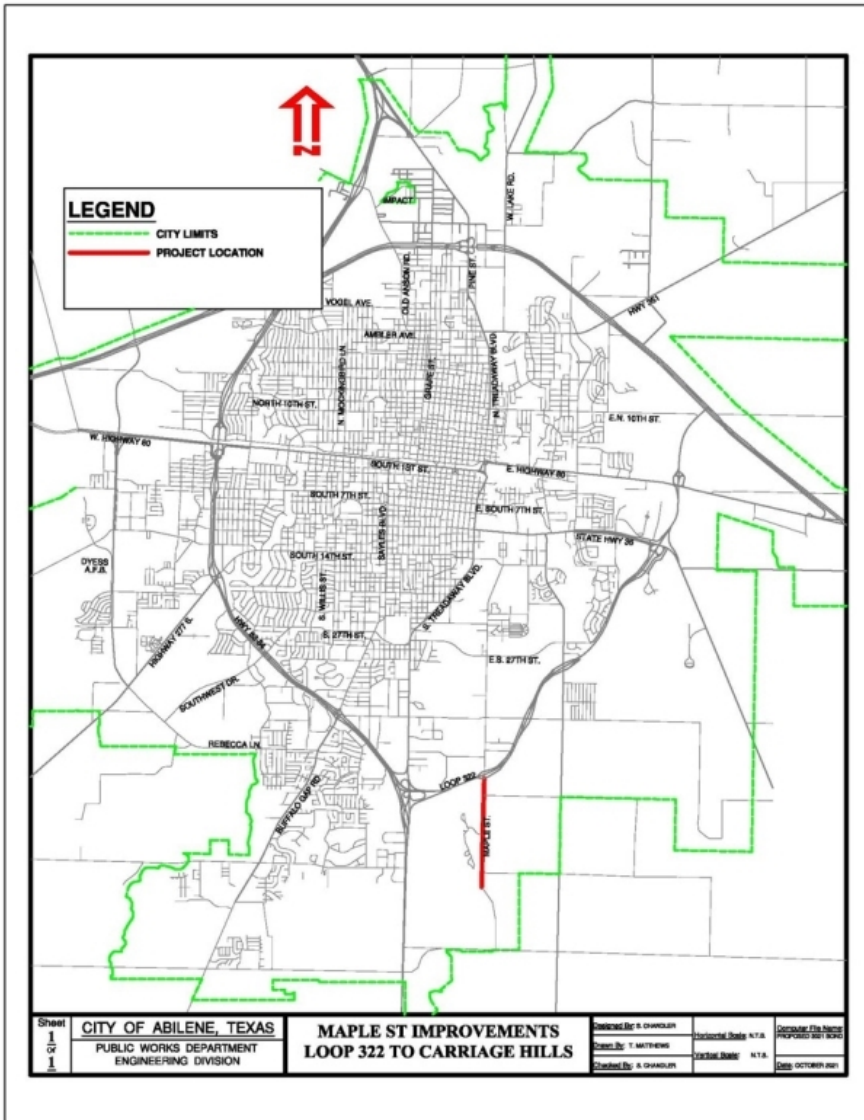
Agenda Item: Maple Street South- Paving and Drainage Improvements

(Max Johnson)





Maple South - Paving and Drainage Improvements



Streets
Maple St

From
Carriage Hills Pkwy

To
Loop 322





Resolution: Bid Award #CB-2313 Maple South-Paving and Drainage Improvements

- Project includes:
 - Reconstruction of existing Maple Street from Carriage Hills Parkway to south of Loop 322
 - Construction of 10-foot-wide concrete hike & bike trail
 - Construction of three proposed storm sewer systems
 - Installation of new traffic signal at Maple Street and Colony Hill Rd intersection
 - Marking of pavement
 - Placing new fencing
 - Relocation of mailboxes in project area
- Project Advertised November 6, 2022 and November 13, 2022; bids opened November 29, 2022
- Three bids received
- Staff recommends awarding the bid to the best value bidder, Epic Construction Company with a base bid of \$6,837,216.50.





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 1/12/2023

TO: Robert Hanna, City Manager

FROM: Max Johnson, Director of Public Works

SUBJECT: 8. Resolution: Receive a Report, Hold a Discussion and Take Action on Awarding Request For Proposals (RFP) for Engineering Services for S 14th Pedestrian Improvements to Enprotec/ Hibbs & Todd (*Max Johnson*)

GENERAL INFORMATION

The scope of the project includes the installation of a sidewalk and pedestrian improvements (crosswalks, signal heads, curb ramps and pedestrian bridges, if necessary) along S14th St from Pioneer Drive to Barrow St.

SPECIAL CONSIDERATIONS

The contract includes: Schematic Design, Construction Documents, Bid Administration, and Construction Administration.

FUNDING/FISCAL IMPACT

Funding for this project is allocated through 2016 GO.

STAFF RECOMMENDATION

Staff recommends awarding the contract to Enprotec / Hibbs & Todd, Inc. is for the fixed fee amount of \$104,000.00

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. S 14th resolution
2. eHT S14th Pedestrian Improvements Contract (signed by ENG)
3. S 14th LOCATION MAP
4. S 14th ppt - 1-2-2023

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH ENPROTEC/
HIBBS & TODD, INC.**

WHEREAS, The City of Abilene desires to install public improvements associated with the portion of S 14th St located between Barrow St and Pioneer Drive; and,

WHEREAS, The City of Abilene has selected Enprotec/ Hibbs & Todd, Inc. for the schematic design, construction documents, bid administration, and construction administration for said project; and,

WHEREAS, The City Council authorizes the City Manager to execute an agreement with Enprotec/ Hibbs & Todd, Inc. in the amount of \$104,000.00 for engineering services associated with the portion of S 14th St located between Barrow St and Pioneer Drive.

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

- PART 1: The City Council authorizes the City Manager to execute an agreement with Enprotec/ Hibbs & Todd, Inc.
- PART 2: That the agreement is in the amount of \$104,000.00 for the design and administration of the public improvements.
- PART 3: That this resolution will take effect immediately from and after passage.

ADOPTED this 12th day of January, 2023.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney



PROFESSIONAL SERVICES CONTRACT

Engineers & Architects

This contract, dated the 12th day of January, 2023, is between the City of Abilene, a home rule municipal corporation of the State of Texas (“City”), and Enprotec/ Hibbs & Todd, a Civil Engineering Firm organized under the laws of the State of Texas (“Consultant”).

The City is engaged in S 14th Pedestrian Improvements 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/certified 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>
X 1.	Workers' Compensation Employer's Liability	Statutory \$100,000 per occurrence
X 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)
X 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)
X 4.	Professional Liability	\$500,000 combined single limit (per occurrence)
___ 5.	See Addendum for Special Coverages and/or revisions	

___ 6. No Insurance Required

XI. VENUE, CHOICE OF LAW AND INTERPRETATION

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

XII. TERMINATION

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

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

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

XIII. PROJECT REPRESENTATION

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

XIV. NOTICE

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

City – ATTN:
Max Johnson
City of Abilene PO Box
60 Abilene, TX 79604

Consultant – ATTN:
Sage Diller, P.E.
Enprotec/ Hibbs & Todd
402 Cedar St, Abilene, Tx 79601

XV. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES

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

XVI. NO INDEBTEDNESS

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

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

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

XVII. EQUAL EMPLOYMENT OPPORTUNITY

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

XVIII. VERIFICATION OF EMPLOYMENT ELIGIBILITY

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

XIX. MINORITY AND WOMEN BUSINESS ENTERPRISES

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

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

XX. SALES TAX

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

XXI. LEGAL CONSTRUCTION

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

XXII. BOYCOTT OF ISRAEL

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

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

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

XXIII. SECTIONS AND OTHER HEADINGS

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

XIV. COUNTERPARTS

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

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

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

CITY OF ABILENE

By: _____

Name: Robert Hanna

Title: City Manager

ATTEST:

City Secretary

APPROVED:

By: _____

City Attorney

PROFESSIONAL

By: 

Name: Sage Diller, P.E.

Title: Associate Vice President

Address: 402 Cedar, Abilene, TX 79601

Phone Number: 325.698.5560

Federal Tax ID#: 75-2258512

ATTEST: (if corporation)


Corporation's Secretary

Corporate Seal (if available)

ATTACHMENT A

Scope of Services

Click or tap here to enter text.

EXHIBIT "A"

SCOPE OF SERVICES S14TH PEDESTRIAN IMPROVEMENTS (BARROW ST TO PIONEER DRIVE)

Consultant shall provide Basic and Additional Services as set forth below to assist City of Abilene (City) with the following:

The City proposes to install a sidewalk and pedestrian improvements (crosswalks, signal heads, curb ramps and pedestrian bridges, if necessary) along S14th St from Pioneer Drive to Barrow St.

Consultant shall develop plans, specifications and bidding documents associated with the Project as outlined below:

I. Basic Services – Preliminary Design Phase

1. Review project parameters with the City and determine proposed route of planned sidewalk and improvements.
2. Advise City if additional reports, data, information, or services of the types not contained in this Agreement are necessary and assist City in obtaining such reports, data, information, or services.
3. Furnish preliminary design drawings for the proposed pedestrian improvement project and review them with the City.
4. Based on the information contained in the Preliminary Design Phase drawings, submit an Opinion of Probable Construction Cost (OPCC) for construction of the proposed pavement rehabilitation project.

II. Basic Services – Final Design Phase

After acceptance by City of the Preliminary Design Phase documents and OPCC as determined in the Preliminary Design Phase, but subject to any City-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, Consultant shall:

1. On the basis of the above acceptance, direction and authorization, prepare final Drawings and Technical Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications will be prepared in general conformance with City standard format.
2. Advise City of any adjustments to the OPCC and any adjustments to Total Project Costs known to Consultant.

3. Furnish the Design Phase documents to and review them with City. Make any final modifications or changes as requested by the City.
4. Submit 6 final (full size) copies and DWG file of the Design Phase Documents and an OPCC to City.

Consultant's Services under the Final Design Phase will be considered complete on the date when the final copies of the Design Phase Documents required above have been delivered.

III. Basic Services - Bidding Phase

- A. After acceptance by City of the final Design Phase Documents and the most recent OPCC as determined in the Final Design Phase, Consultant shall:
 1. Assist City in advertising and obtaining bids for the Work and, if applicable, attend a pre-Bid conference.
 2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 3. Consult with City as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
 4. Attend the Bid opening and assist City in evaluating Bids or proposals.
- B. The Bidding Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

IV. Basic Services - Construction Phase

- A. The City will provide general construction administration of the construction contract. Consultant shall provide support when requested by the City.
- B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the Construction Agreement for either Project or any part thereof and will terminate upon written recommendation by Consultant for final payment to Contractor.
- C. *Limitation of Responsibilities.* Consultant shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. Consultant shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

V. Additional Services

- A. The following Additional Services are authorized as a part of the Project:

1. Topographic Field Surveying necessary to identify existing utilities, apparent rights-of-way, easements and other elements related to project design. Solving of right-of-way conflicts is not included under the base fee, but can be implemented upon request from the City, if desired, and covered under the hourly rate fee schedule.
2. Geotechnical Investigation at the proposed pedestrian bridge locations in order to facilitate the foundation design.

VI. Additional Services Requiring City's Authorization in Advance

- A. If authorized in writing by City, Consultant shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by City.
 1. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Consultant or its design requirements including, but not limited to, changes in size, complexity, City's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Consultant's control.
 2. Furnishing services of Consultant's Consultants for other than Basic and Additional Services identified above.
 3. Services attributable to multiple prime construction contracts, in excess of the one (1) contemplated under this Agreement.
 4. Services during out-of-town travel required of Consultant other than for visits to the Site or City's office, or the Texas Department of Transportation.
 5. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value Consulting, and constructability review requested by City; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
 6. Assistance in connections with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
 7. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.
 8. Preparing to serve or serving as a Consultant or witness for City in any litigation, arbitration or other dispute resolution process related to the Project.
 9. Providing services of a Resident Project Representative during construction.

10. Other services performed or furnished by Consultant not otherwise provided for in this Agreement.

ATTACHMENT B

PAYMENT SCHEDULE

PARTIES TO INITIAL OPTION SELECTED

OPTION 1 ____

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

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 \$104,000.00 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 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 "B"

PAYMENT

Payment will be made on a Lump Sum Basis of \$104,000 payable as outlined below:

Basic Engineering Services (Lump Sum):

Preliminary Design Phase	\$ 15,000
Final Design Phase	\$ 35,000
Bidding Phase	\$ 10,000
Construction Phase	\$ 20,000
Post Construction Phase	\$ 5,000

Additional Services (Lump Sum)

Surveying	\$ 12,500
Geotechnical Investigation	\$ 5,500

Payment for services beyond the original scope will be paid on a time and materials basis per the attached current Schedule of Charges. The Schedule of Charges is updated annually in January. Invoices for payment shall be submitted on a monthly basis and are subject to 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 Engineer 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 Engineer has been notified.

SCHEDULE: See attached Schedule of Charges.

Enprotec / Hibbs & Todd, Inc.
HOURLY CHARGES FOR PROFESSIONAL SERVICES (2022)

Charges include all salaries, salary expense, overhead, and profit.

Principal.....	\$ 230.00 per hour
Senior Project Manager	190.00 per hour
Project Manager	170.00 per hour
Senior Engineer / Geologist.....	150.00 per hour
Project Engineer / Geologist.....	135.00 per hour
Staff Engineer I / Geologist I.....	120.00 per hour
Staff Engineer II / Geologist II.....	105.00 per hour
RPLS I	155.00 per hour
Operations Specialist / Regulatory Compliance Specialist	150.00 per hour
Contract Operator (Certified Class A/B Operator).....	120.00 per hour
Contract Operator (Certified Class C/D Water Operator)	100.00 per hour
Engineering / Field Technician I	135.00 per hour
Engineering / Field Technician II	110.00 per hour
Engineering / Field Technician III.....	85.00 per hour
Survey Tech I	85.00 per hour
Survey Tech II	65.00 per hour
CAD I	130.00 per hour
CAD II	100.00 per hour
CAD III	65.00 per hour
Administrative	70.00 per hour
Survey Party	225.00 per hour - 3 man
.....	200.00 per hour - 2 man
.....	175.00 per hour - 1 man

Expense Items

Consultants, Contractors & Supplies	Cost plus 10%
Travel (out of town only)	Current IRS rate per mile
Lodging and meals (out of town trips).....	Actual cost

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.

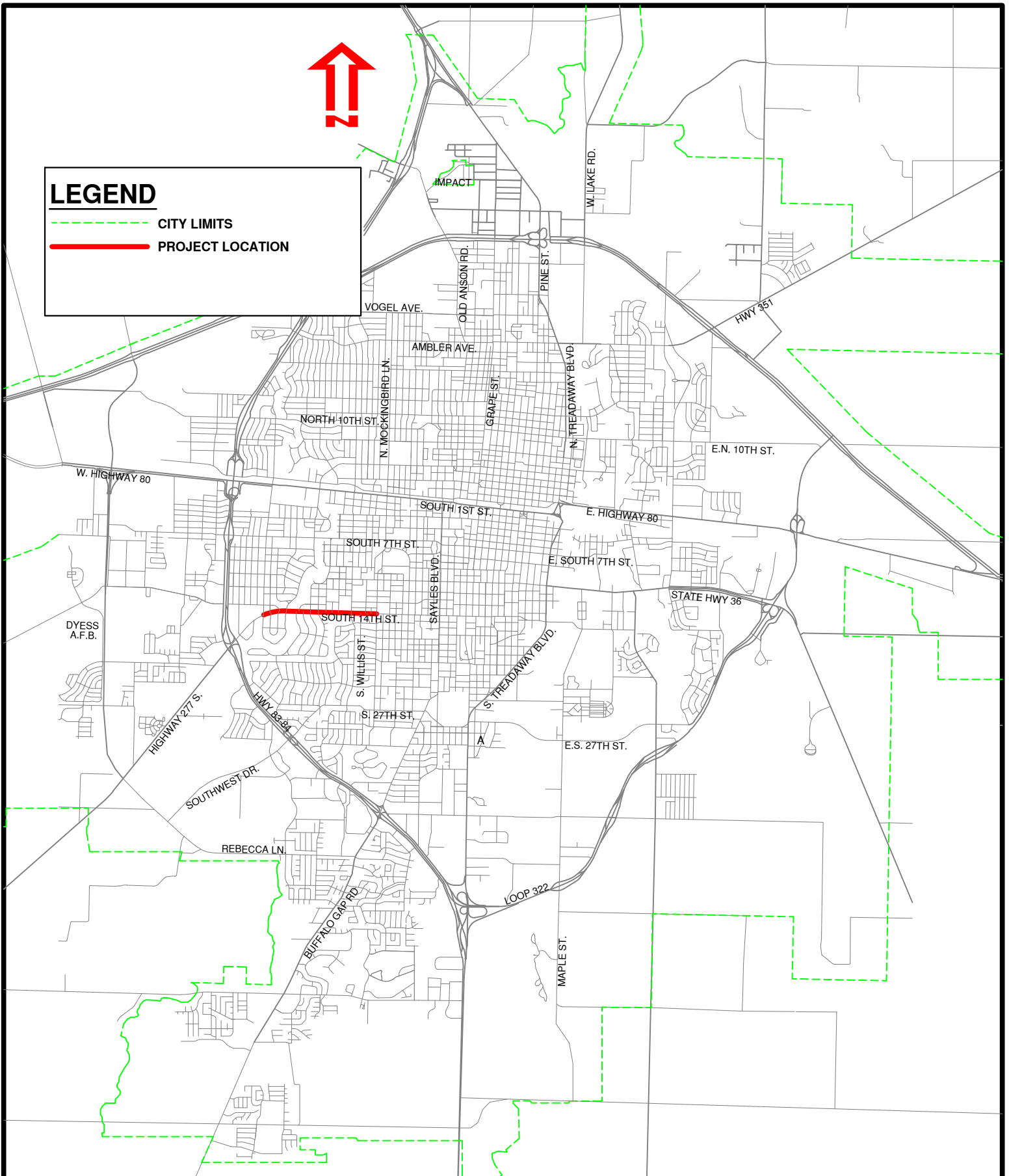
ATTACHMENT E
CHANGE IN SCOPE OF SERVICES

Click or tap here to enter text.



LEGEND

-  CITY LIMITS
-  PROJECT LOCATION



Sheet
1
of
1

CITY OF ABILENE, TEXAS
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION

S14th Walkability

Designed By: S. CHANDLER

Drawn By: W. RATLIFF

Checked By: S. CHANDLER

Horizontal Scale: N.T.S.

Vertical Scale: N.T.S.

Computer File Name:
PROJECT LOCATION

Date: January 2023

Agenda Item:
S14TH Pedestrian Improvements
Barrow Street to Pioneer Drive
(Johnson)





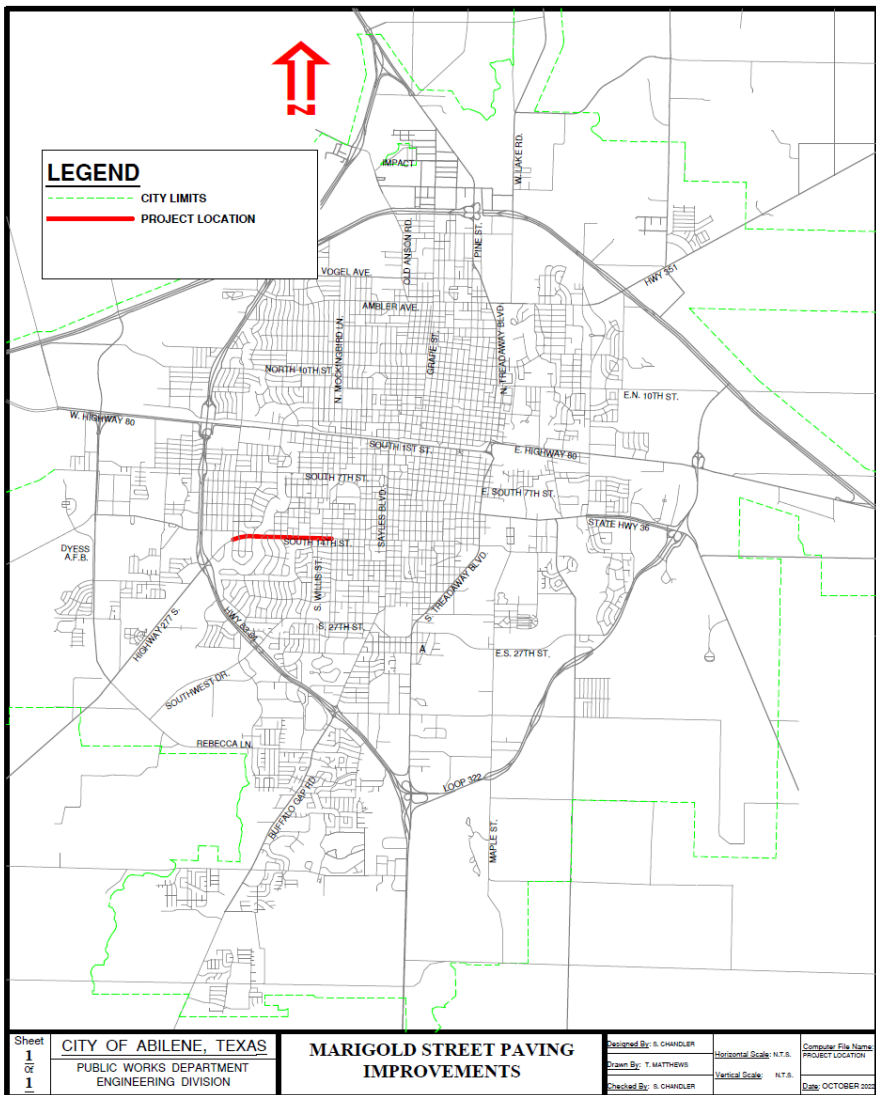
Agenda Item: S14TH Pedestrian Improvements

- Project includes installation of a sidewalk and pedestrian improvements along S14th St from Barrow Street to Pioneer Drive
 - Crosswalks
 - Signal Heads
 - Curb Ramps
 - Pedestrian Bridges (x2)





Agenda Item: S14TH PEDESTRIAN IMPROVEMENTS (BARROW ST TO PIONEER DRIVE)



Streets
S 14th st

From
Pioneer Drive

To
Barrow St



CITY OF
ABILENE
TEXAS



Agenda Item: S14TH PEDESTRIAN IMPROVEMENTS (BARROW ST TO PIONEER DRIVE)

- Staff determined Enprotec/ Hibbs & Todd, Inc. was best proposal for project
- Contract with Enprotec/ Hibbs & Todd, Inc. is a fixed fee amount of \$104,000.00.
- The contract includes:
 - Schematic Design
 - Construction Documents
 - Bid Administration
 - Construction Administration



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 1/12/2023

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: 9. Ordinance (First Reading): Receive a Report, Hold a Discussion and Take Action on approving an Ordinance to Amend Chapter 8, "Construction Regulations," Article V, "Advisory Boards," Division 2, "Board of Building Standards" of the Code of Ordinances. (Tim Littlejohn)

GENERAL INFORMATION

Amend Article V, Division 2 of the Code of Ordinance to change the composition of the Board and add language to allow the Board of Building Standards to hear appeals of the Building Official.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Approval

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 2023 BOBS Enacting Ordinance clean
2. 2023 BOBS Enacting Ordinance redline
3. BOBS presentation

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE AMENDING CHAPTER 8 “CONSTRUCTION REGULATIONS,” ARTICLE V. “ADVISORY BOARDS,” DIVISION 2 “BOARD OF BUILDING STANDARDS” AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.

WHEREAS, Division 2 establishes the membership requirements and authority of the Board of Building Standards; and

WHEREAS, there is a need to amend the board membership requirements and authority of the board in order to have membership that more accurately reflect the type of expertise required to make decisions and improve the efficiency of oversight within the board’s purview.

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

- PART 1:** That Chapter 8, Article V., Division 2 “Board of Building Standards” is hereby amended as set out in Exhibit A, attached and made a part of this ordinance for all purposes.
- PART 2:** That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.
- PART 3:** That any person, firm, or corporation violating the provisions of this Ordinance shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.
- PART 4:** Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective thirty (30) 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 12th day of January, 2023.

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 22nd day of January, 2023, 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 26th day January, 2023, to permit the public to be heard. Said

Ordinance, being a penal ordinance, becomes effective thirty (30) 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 26th day of January, 2023.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

EXHIBIT A

DIVISION 2. - BOARD OF BUILDING STANDARDS

Sec. 8-361. - Established.

There is hereby established a Board of Building Standards in and for the City.

Sec. 8-362. - Composition.

(a) The Board of Building Standards shall be composed of seven (7) members, each of whom shall be a resident of the City, and one ex officio member who shall have no voting privileges.

(b) The seven (7) voting members shall not be employees of the City and shall include the following:

(1) A registered architect who has had at least five (5) years experience in the construction of all types of buildings.

(2) A registered engineer who has had at least five (5) years experience in construction of all types of buildings.

(3) A master electrician who has had at least five (5) years experience in the construction of commercial and/or residential buildings.

(4) A licensed real estate broker who has had at least five (5) years experience in the appraisal of real estate.

(5) A building contractor who has had at least five (5) years experience in the construction of all types of buildings.

(6) A homebuilder who has had at least five (5) years experience in the construction of homes.

(7) A master plumber who has had at least five (5) years experience in the construction of commercial and/or residential buildings.

(c) The ex officio member, whose only function shall be to render advice to the regular members of the board, shall be the City Manager or his or her designee.

Sec. 8-363. - Appointment.

The members of the Board of Building Standards shall be appointed by the Mayor with the approval of the Council.

Sec. 8-364. - Terms.

The members of the Board of Building Standards shall be appointed by the Mayor with the approval of the Council with four (4) of the members appointed for a term of one (1) year and three (3) of the members appointed for a term of two (2) years. Each member of the board thereafter shall be appointed for a term of two (2) years.

Sec. 8-365. - Removal.

Any member of the Board of Building Standards who shall be absent from the regular monthly meeting of the board for three (3) consecutive times shall be removed from the board.

Sec. 8-366. - Filling vacancies.

Vacancies occurring in the membership of the Board of Building Standards shall be filled by appointment for the remainder of the unexpired term.

Sec. 8-367. - Alternate members.

The Mayor, with the approval of the Council, shall also appoint an alternate member for each of the seven (7) voting members of the Board of Building Standards which alternate shall serve in the absence of the designated voting member. Each alternate member shall meet the requirements for appointment that apply to the voting member for whom he or she shall be the alternate and shall be appointed for the same term as that voting member.

Sec. 8-368. - Quorum.

Four (4) voting members of the Board of Building Standards shall constitute a quorum, and the board shall act by a majority vote of those present. Notwithstanding the foregoing, when any person appeals any decision of the Building Official concerning Chapter 8, Article VI "Codes and Other Regulations," but excluding submissions of cases to the board for demolition or the imposition of civil penalties, the board may modify or reverse the decision of the building official only upon the concurring vote of six (6) or more members.

Sec. 8-369. - Chairman.

A Chairman shall be selected by the Board of Building Standards from its membership, who shall preside over its meetings, and have the same voting rights as other members. In the absence of the Chairman, the board shall select an acting Chairman to preside until the return of the regular Chairman.

Sec. 8-370. - Meetings.

The Board of Building Standards shall meet at least once a month at a day and time to be determined by the board and at the call of the Chairman. All meetings of the board shall be open to the public.

Sec. 8-371. - Records.

The Board of Building Standards shall keep minutes of its proceedings, showing the vote of each member upon each question or if absent or failing to vote indicating such fact, and shall also keep a record of its other official actions, all of which shall be public record.

Sec. 8-372. - To hear appeals.

The Board of Building Standards shall hear appeals from any person aggrieved by any decision of the Building Official concerning Chapter 8, Article VI "Codes and Other Regulations." All such appeals shall follow the requirements of Section 8-559. The Board shall also hear all cases, pursuant to Section 8-560, wherein the Building Official has determined that the repair or rehabilitation of a building, residential or nonresidential, is impractical and that such substandard building should be demolished, or the imposition of civil penalties.

Sec. 8-373. - Existing remedies Limitation of Authority.

The Board shall not have the authority to waive requirements of the adopted code or interpret the administration of this code. Nothing in this chapter shall be deemed to abolish or impair existing remedies nor constitute an exclusive remedy for the removal or demolition of any buildings which are deemed a nuisance.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE AMENDING CHAPTER 8 “CONSTRUCTION REGULATIONS,” ARTICLE V. “ADVISORY BOARDS,” DIVISION 2 “BOARD OF BUILDING STANDARDS” AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.

WHEREAS, Division 2 establishes the membership requirements and authority of the Board of Building Standards; and

WHEREAS, there is a need to amend the board membership requirements and authority of the board in order to have membership that more accurately reflect the type of expertise required to make decisions and improve the efficiency of oversight within the board’s purview.

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

- PART 1:** That Chapter 8, Article V., Division 2 “Board of Building Standards” is hereby amended as set out in Exhibit A, attached and made a part of this ordinance for all purposes.
- PART 2:** That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.
- PART 3:** That any person, firm, or corporation violating the provisions of this Ordinance shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.
- PART 4:** Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective thirty (30) 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 12th day of January, 2023.

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 22nd day of January, 2023, 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 26th day January, 2023, to permit the public to be heard. Said

Ordinance, being a penal ordinance, becomes effective thirty (30) 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 26th day of January, 2023.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

EXHIBIT A

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(a) The Board of Building Standards shall be composed of seven (7) members, each of whom shall be a resident of the City, and ~~three (3)~~one ex officio members who shall have no voting privileges.

(b) The seven (7) voting members shall not be employees of the City and shall include the following:

(1) A registered architect who has had at least five (5) years experience in the construction of all types of buildings.

(2) A registered engineer who has had at least five (5) years experience in construction of all types of buildings.

(3) A ~~master electrician who has had mortgage loan banker who has engaged in mortgage loan banking for at least five (5) years experience in the construction of commercial and/or residential buildings.~~

(4) A licensed real estate broker who has had at least five (5) years experience in the appraisal of real estate.

(5) A building contractor who has had at least five (5) years experience in the construction of all types of buildings.

(6) A homebuilder who has had at least five (5) years experience in the construction of homes.

(7) A master plumber ~~person who is engaged in social or welfare work~~ who has had at least five (5) years experience ~~in such work in the construction of commercial and/or residential buildings.~~

(c) The ex officio members, whose only function shall be to render advice to the regular members of the board, shall ~~include~~be the ~~following:~~ City Manager or his or her designee.

~~(1) A representative from the Planning and Zoning Department.~~

~~(2) A representative from the Fire Department.~~

~~(3) A representative from the Health Department.~~

Sec. 8-363. - Appointment.

The members of the Board of Building Standards shall be appointed by the Mayor with the approval of the Council.

Sec. 8-364. - Terms.

The members of the Board of Building Standards shall be appointed by the Mayor with the approval of the Council with four (4) of the members appointed for a term of one (1) year and three (3) of the

members appointed for a term of two (2) years. Each member of the board thereafter shall be appointed for a term of two (2) years.

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Any member of the Board of Building Standards who shall be absent from the regular monthly meeting of the board for three (3) consecutive times shall be removed from the board.

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Vacancies occurring in the membership of the Board of Building Standards shall be filled by appointment for the remainder of the unexpired term.

Sec. 8-367. - Alternate members.

The Mayor, with the approval of the Council, shall also appoint an alternate member for each of the seven (7) voting members of the Board of Building Standards which alternate shall serve in the absence of the designated voting member ~~when requested to do so by the Mayor or the City Manager~~. Each alternate member shall meet the requirements for appointment that apply to the voting member for whom he or she shall be the alternate and shall be appointed for the same term as that voting member.

Sec. 8-368. - Quorum.

Four (4) voting members of the Board of Building Standards shall constitute a quorum, and the board shall act by a majority vote of those present. Notwithstanding the foregoing, when any person appeals any decision of the Building Official concerning Chapter 8, Article VI "Codes and Other Regulations," but excluding submissions of cases to the board for demolition or the imposition of civil penalties, the board may modify or reverse the decision of the building official only upon the concurring vote of six (6) or more members.

Sec. 8-369. - Chairman.

A Chairman shall be selected by the Board of Building Standards from its membership, who shall preside over its meetings, and have the same voting rights as other members. In the absence of the Chairman, the board shall select an acting Chairman to preside until the return of the regular Chairman.

Sec. 8-370. - Meetings.

The Board of Building Standards shall meet at least once a month at a day and time to be determined by the board and at the call of the Chairman. All meetings of the board shall be open to the public.

Sec. 8-371. - Records.

The Board of Building Standards shall keep minutes of its proceedings, showing the vote of each member upon each question or if absent or failing to vote indicating such fact, and shall also keep a record of its other official actions, all of which shall be public record.

Sec. 8-372. - To hear appeals.

The Board of Building Standards shall hear appeals from any person aggrieved by any decision of the Building Official concerning Chapter 8, Article VI "Codes and Other Regulations." All such appeals shall follow the requirements of Section 8-559, the building code and/or the minimum standards for buildings and structures division and The Board shall also hear all cases, pursuant to Section 8-560, wherein the Building Official has determined that the repair or rehabilitation of a building, residential or

nonresidential, is impractical and that such substandard building should be demolished, or the imposition of civil penalties.

Sec. 8-373. - Existing remedies Limitation of Authority.

The Board shall not have the authority to waive requirements of the adopted code or interpret the administration of this code. Nothing in this chapter shall be deemed to abolish or impair existing remedies nor constitute an exclusive remedy for the removal or demolition of any buildings which are deemed a nuisance.

City Council Meeting

01/12/2023





Board of Building Standards Amendment

- Amend Article V Division 2 section of the Code of Ordinance
- Board of Building Standards
- Amending the Composition of the Board by removing the Banker and Social Worker positions and replacing with Master Plumber and Master Electrician to better serve the community by covering all professions of construction
- Amend section to align with the appeals sections of the building codes





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 1/12/2023

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: **10. Ordinance (First Reading) Z-2023-01: Receive a Report, Hold a Discussion and Take Action on A Request From New Dairy Texas, LLC, Represented by Borden Bluff, to Change the Zoning of Approximately 2.4 Acres Located at 309 South Pioneer Drive from Light Industrial (LI) to Planned Development District 178 (PDD-178) to Allow Multi-Family Residential Uses and Uses Permitted in the General Retail (GR) District, While Retaining the Right for Light Industrial (LI) Uses. *(Tim Littlejohn)***

GENERAL INFORMATION

The applicant proposes to retain the existing creamery building and to adapt the interior of the building for senior living. The exterior of the building is not proposed to be materially altered in order to pursue State and Federal grants for historic development. All of the other buildings around the main building would be removed in order to provide area for a smaller 1-story apartment building that would complement the design of the existing building. The applicant provided a proposed Plan of Operation, which is attached with this report.

The proposed PD is structured in a way to establish General Retail (GR) as the base zoning district to allow the uses in that district and to also allow all uses permitted by right in Light Industrial (LI) district, consistent with the historical use of the subject site.

SPECIAL CONSIDERATIONS

Single-family residential development zoned RS-8 and RS-6 are located south and east of the subject site, respectively. Public alleys are located between the subject site and both residential districts. The property to the north is zoned LI and is used for commercial purposes. Property to the west is zoned GR and is used for general retail purposes.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends **approval**, subject to the proposed Concept Plan and the “Proposed Base Zoning District, Land Uses, and Development Standards.”

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval with the conditions included by staff and a height limit of one-story for the proposed new apartment building shaded blue on the Concept Plan by a vote of 6-0.

ATTACHMENTS:

1. Z-2023-01 PD178.Ordinance
2. Z-2023-01 Staff Report
3. Application
4. Abilene Plan of Operation (02)
5. 2023 Elsie's Manor Development Overview Presentation (1)
6. TX_Abilene_S Pioneer Dr_SITE
7. Z-2023-01 Presentation

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING THE "LAND DEVELOPMENT CODE" OF THE ABILENE CITY CODE, CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTY; 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 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 12th day of January, 2023.

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, 2022, the same being more than fifteen (15) days prior to a public hearing held at the Council Chambers of the City Hall at 555 Walnut St. in Abilene, Texas, at 8:30 a.m. on the 12th day of January, 2023, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FINAL READING THIS 26th day of January, 2023.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT A

Change the zoning classification of the following described land, from Light Industrial (LI) to Planned Development District 178 (PD-178) subject to compliance with the “Base Zoning District, Land Uses, and Development Standards” attached hereto as Exhibit B and the Concept Plan attached hereto as Exhibit C:

Elmwood West, Section N, Lot 2, Abilene, Taylor County, Texas

EXHIBIT B

Proposed Base Zoning District, Land Uses, and Development Standards

Base Zoning - General Retail (GR) Base zoning subject to all GR district Standards

Permitted Uses – All uses permitted by right in the Light Industrial District, the General Retail district, and Multi-Family district shall be a permitted.

Setbacks – Building setbacks shall follow the General Retail zoning districts with the following modification:

1. Building setbacks abutting residential shall be 25 feet minimum for buildings up to 35 feet in height. Each additional foot in height above 35 feet shall add one foot of minimum setback.

Parking Standards – Parking standards shall follow the Land Development code with the following modifications:

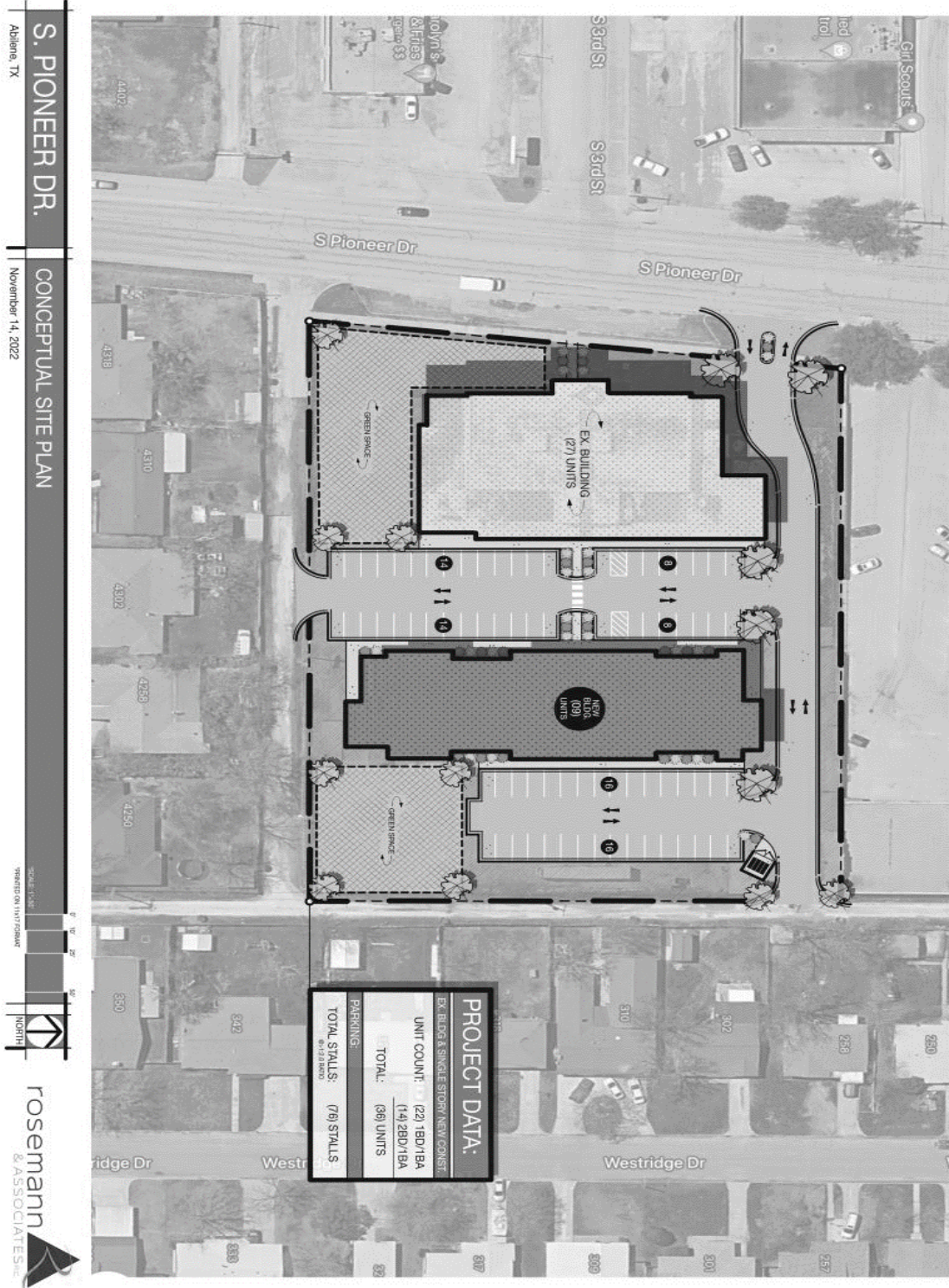
1. The minimum parking ratio for multi-family dwellings shall be 5 spaces for every 4 dwelling units.
2. For all other uses, the standard parking requirements of the LDC shall be applicable.

Additional Standards –

1. Multi-family development shall be generally consistent with the attached concept plan and plan of operation, except where the Plan of Operation is not consistent with the requirements listed herein.
2. The maximum density for multi-family dwellings shall be 24 units per acre.
3. When developed as multi-family residential, the landscape standard will be a minimum of 15% of the area between the front building façade and adjacent street right-of-way shall be landscaped area.
4. A type B buffer shall be required along both adjacent alleys for any new development.
5. If the site is completely redeveloped, all standard landscaping, buffering, and screening requirements shall be applicable. If only a portion of the site is redeveloped, all standard landscaping, buffering, and screening requirements shall be applicable to that portion of the site to be redeveloped.
6. If the use of the site remains as Light Industrial (LI) and all existing site improvements remain “as is” and are not expanded, the requirements listed above shall not be applicable.
7. The height of proposed new apartment building, shaded dark gray on the proposed Concept Plan, shall be limited to one-story.

ORDINANCE NO. _____

EXHIBIT C
Concept Plan



-END-

ZONING CASE Z-2023-01 PD-178

STAFF REPORT

Scheduled Hearings

Planning & Zoning Commission: January 3, 2023

City Council 1st Reading: January 12, 2023

City Council 2nd Reading: January 26, 2023

Applicant

Owner: New Dairy Texas

Agent: JES Dev. Co., Inc., by Mike Ash

Case Manager

Adam Holland

Request

Rezone approximately 2.4 acres from the Light Industrial (LI) zoning district to Planned Development District (PD-178). The applicant proposes to adapt the existing building, and build a smaller second building, for senior living multi-family dwellings, and to retain the right for light industrial use, and for uses permitted in the General Retail (GR) district.

Location

Approximately 2.4 acres of land currently addressed as 309 South Pioneer Drive.

Background

Proposed Use

The applicant proposes to retain the existing creamery building and to adapt the interior of the building for senior living. The exterior of building is not proposed to be materially altered in order pursue State and Federal grants for historic development. All of the other buildings around the main building would be removed in order to provide area for a smaller 1-story apartment building that would complement the design of the existing building. The applicant provided a proposed Plan of Operation, which is attached with this report.

The proposed PD is structured in a way to establish General Retail (GR) as the base zoning district to allow the uses in that district and to also allow all uses permitted by right in Light Industrial district, consistent with the historic use of the subject site.

Surrounding Uses and Zoning

Single-family residential development zoned RS-8 and RS-6 are located south and east of the subject site, respectively. Public alleys are located between the subject site and both residential districts. The property to the north is zoned LI and is used for commercial purposes. Property to the west is zoned GR and is used for general retail purposes.

Buffering, Screening, and Landscaping

The subject property was developed in 1926 and has never had a buffer from the adjoining residential uses. In order to mitigate potential adverse impacts from the use of this site, it would be prudent to apply the screening, buffering, and landscaping requirements of the LDC to the proposed use of this site. Specifically, that a Type "B" buffer would be required for any new development on the property

and a minimum of 15% of the area from the building façade to adjacent right-of-way be landscaped.

Criteria Assessment

Section 1.4.1.4 of the 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 Map designates the subject property as commercial and residential. The proposed PD generally conforms to those designations by allowing development options for both uses.

(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 proposed uses are compatible with the zoning districts surrounding the subject site. Staff is recommending a less intensive base zoning district to encourage more compatible uses adjacent to the single-family residential and to match the zoning of the properties directly across from the site on South Pioneer Drive. The proposed development standards attached below will improve the compatibility between the future use of this site and the adjoining residences.

(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 proposed use of the subject site can be adequately served by the existing streets and utilities surrounding the proposed PD.

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

No other factors are present that would substantially affect public health, safety, morals, or general welfare.

P&Z Recommendation:

The Commission recommends **approval**, subject to:

1. The proposed Concept Plan;
2. The “Proposed Base Zoning District, Land Uses, and Development Standards”; and
3. The height limitation of 1-story for the proposed new apartment building on the eastern half of the subject property.

Attachments

Proposed Development Standards

Proposed Base Zoning District, Land Uses, and Development Standards

Base Zoning - General Retail (GR) Base zoning subject to all GR district Standards

Permitted Uses – All uses permitted by right in the Light Industrial District, the General Retail district, and Multi-Family district shall be a permitted.

Setbacks – Building setbacks shall follow the General Retail zoning districts with the following modification:

1. Building setbacks abutting residential shall be 25 feet minimum for buildings up to 35 feet in height. Each additional foot in height above 35 feet shall add one foot of minimum setback.

Parking Standards – Parking standards shall follow the Land Development code with the following modifications:

1. The minimum parking ratio for multi-family dwellings shall be 5 spaces for every 4 dwelling units.
2. For all other uses, the standard parking requirements of the LDC shall be applicable.

Additional Standards –

1. Multi-family development shall be generally consistent with the attached concept plan and plan of operation, except where the Plan of Operation is not consistent with the requirements listed herein.
2. The maximum density for multi-family dwellings shall be 26 units per acre.
3. When developed as multi-family residential, the landscape standard will be a minimum of 15% of the area between the front building façade and adjacent street right-of-way shall be landscaped area.
4. A Type B buffer shall be required along both adjacent alleys for any new development.
5. If the site is completely redeveloped, all standard landscaping, buffering, and screening requirements shall be applicable. If only a portion of the site is redeveloped, all standard landscaping, buffering, and screening requirements shall be applicable to that portion of the site to be redeveloped.
6. If the use of the site remains as Light Industrial (LI) and all existing site improvements remain “as is” and are not expanded, the requirements listed above shall not be applicable.

Concept Plan



Proposed Plan of Operation

JES Dev Co, Inc. plans to convert the old Borden building at 309 S Pioneer Dr. to multifamily housing while preserving the historic legacy of the building. The development will be financed, in part, using housing tax credits. The tax credits are awarded through a competitive application process and will require a Resolution of Support from the City of Abilene to be successful. To receive a Resolution of Support for Housing Tax Credits from the Abilene City Council, the site needs to be properly zoned prior to receiving that Resolution. The Sellers want to ensure that the zoning will not be left as only Multifamily if the development is not awarded tax credits. Below is an approximate schedule of the timing of the tax credit process:

- Preliminary application submitted to TDHCA: January 6, 2023.
- Date to receive rezoning on the subject property: February 9, 2023.
- Date to receive a Resolution of Support from the Abilene City Council: February 9, 2023, or February 23, 2023.
- Full application submitted to TDHCA: March 1, 2023.
- Tax credit awards announced by TDHCA: July 27, 2023.
- Closing on Property: August 31, 2023.

The proposed development will not mix industrial and multifamily uses. The finished development will be multifamily housing in a preserved and rehabilitated historic building. A second new construction building to be built behind the existing historic building will contain additional residential units and community space and amenities. If the property is not awarded tax credits and ultimately falls out of contract, the Seller wishes to maintain the property's original Light Industrial zoning. The pursuit of the PDD gives the Buyer the ability to rezone the property prior to the full tax credit application being submitted (thus qualifying us to receive the needed Resolution of Support from the Abilene City Council) and gives the Seller the ability to retain Light Industrial zoning if the contract terminates.

Existing Proximate Land Uses

North: Light industrial and then residential

East: Residential

South: Residential

West: General retail and commercial with some residential

Conformance to 2004 Comprehensive Plan

The development furthers the City's housing and preservation strategies laid out in the 2004 Comprehensive Plan.

Residential Use

Employ higher density housing as a supporting residential use for activity center and transition the density to the surrounding residential areas.

This project is considered to be a redevelopment. This development keeps growth in the central city

rather than spreading it outward in a leapfrog pattern. We are adding some density to an area and converting an underutilized building into a more housing options for Abilene residents. We are also preserving a historic building and adding more housing to the Abilene stock.

Preservation

This development will preserve a historic building and part of Abilene’s heritage and culture, meeting Strategies 30 and 31 under the Preservation section of the 2004 Comprehensive Plan. The historic nature of the building will be maintained and the new construction building (which will be built behind the historic building) will complement the façade of the existing structure.

Development Standards for PDD

If the property is developed as multifamily, the base zoning shall be Multi-family with the following exceptions:

- The minimum parking ratio will be 1.25 parking spaces per unit.
- The setbacks for all yards (front, rear, and side) shall be a minimum of five (5) feet.
- Building length shall not exceed 300 feet.
- Density shall be a maximum of 26 units per acre.

All uses permitted under Light Industrial Zoning shall also be allowable and meet all Light Industrial development standards.

If the property is not developed as multifamily, the base zoning shall be Light Industrial, but will still allow for multifamily uses with the conditions stated above.

Notification

Pursuant to Section 1.2.2.2 of Abilene's Land Development Code, City staff mailed personal notices on December 23rd, of 2022, 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

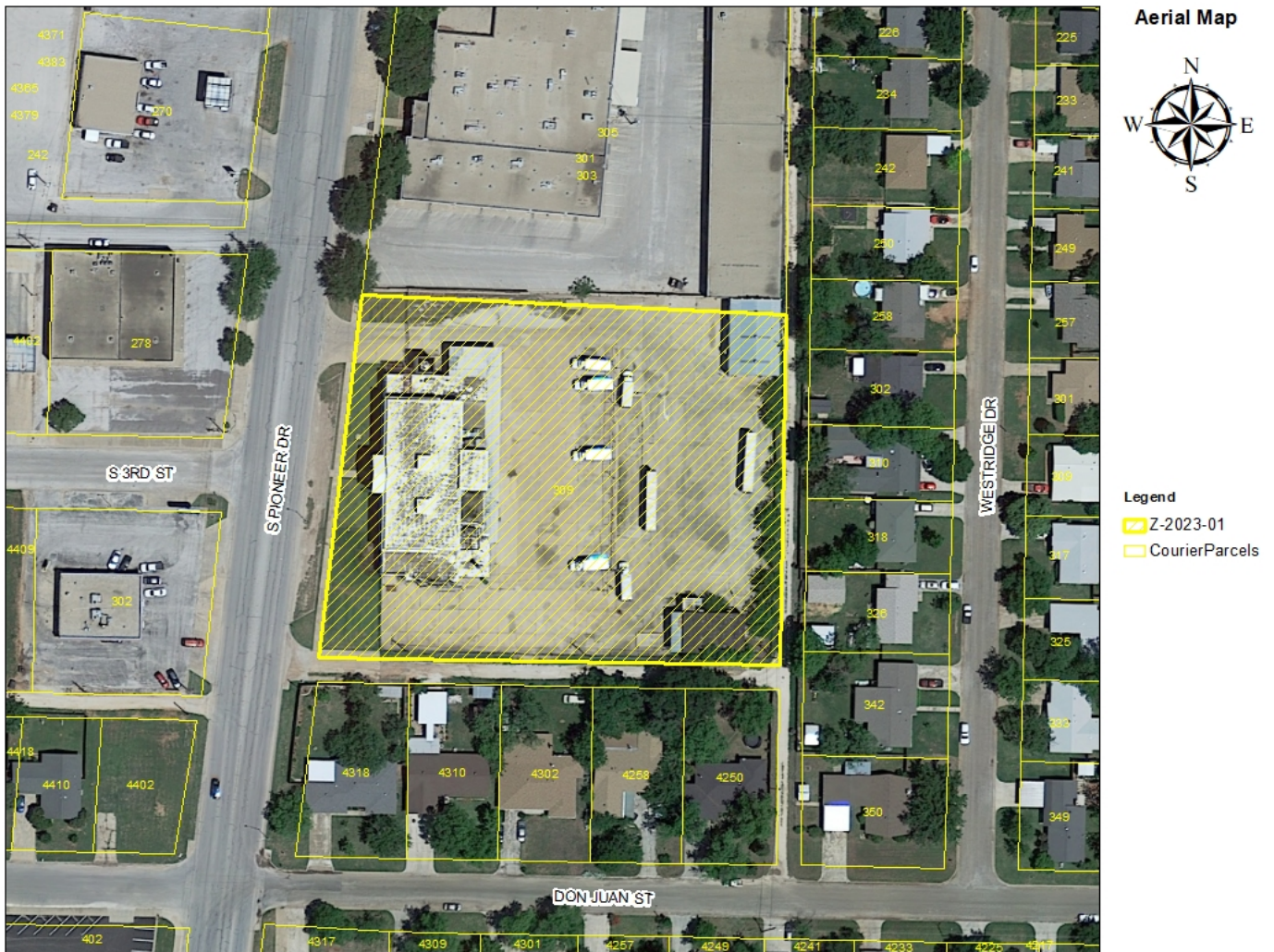
Owner	Property ID	Situs	Response
ACKER PAMELA	12896	258 WESTRIDGE DR	
BURGERS & FRIES INC	55889	302 S PIONEER DR	
CORTINEZ CLEMENTE O	12526	318 WESTRIDGE DR	
ESPARZA ANDY C & ROSEMARY	12655	310 WESTRIDGE DR	
ESTES RENTALS LLC	13023	250 WESTRIDGE DR	
FLEMING COLLEEN	13254	234 WESTRIDGE DR	
FOCO CAPITAL LLC	11444	301 WESTRIDGE DR	
FRY REAL PROPERTY	40827	4302 DON JUAN ST	
GOSWICK WESLEY L & TIFFANY J	12161	350 WESTRIDGE DR	
GRANTHAM KAYLA J	11908	325 WESTRIDGE DR	
HALFORD JAMES L & JEWELL V LF EST	11764	317 WESTRIDGE DR	
HERBERT KEVIN	55511	4410 DON JUAN ST	O
HUTCHESON ERIC & SONIA	12038	333 WESTRIDGE DR	
JOHNSON PAUL	98661	4379 S 1ST ST	O
JOHNSON PAUL	98661	4371 S 1ST ST	O
JOHNSON PAUL	98661	4365 S 1ST ST	O
JOHNSON PAUL	98661	4383 S 1ST ST	O
JOHNSON PAUL	98661	242 S PIONEER DR	O
KELLY LONNIE & PAULA	12762	302 WESTRIDGE DR	
MARTINEZ SYLVIA	40576	4318 DON JUAN ST	
MARTINEZ SYLVIA &	40701	4310 DON JUAN ST	
MICHAEL WESLEY W	13145	242 WESTRIDGE DR	
MILLER LAUREL ANN	40949	4258 DON JUAN ST	O
MOORE ROBERT JOHN & JAMIE PITTS	11172	257 WESTRIDGE DR	
NETZ WESLEY R	12403	326 WESTRIDGE DR	
NEW DAIRY TEXAS LLC	40453	309 S PIONEER DR	
PARRISH LARRY D & TERRY A	11610	309 WESTRIDGE DR	
PIONEER VENTURES LLC	65600	278 S PIONEER DR	
RUTLEDGE CHRISTOPHER D	12282	342 WESTRIDGE DR	
SCAIEF FABIO A &	41070	4250 DON JUAN ST	
SKINNYS INC	98662	270 S PIONEER DR	

T & T OKLAHOMA LLC	1006027	301 S PIONEER DR	
T & T OKLAHOMA LLC	1006027	305 S PIONEER DR	
T & T OKLAHOMA LLC	1006027	303 S PIONEER DR	
WESTGATE CHURCH OF CHRIST	55632	4402 DON JUAN ST	

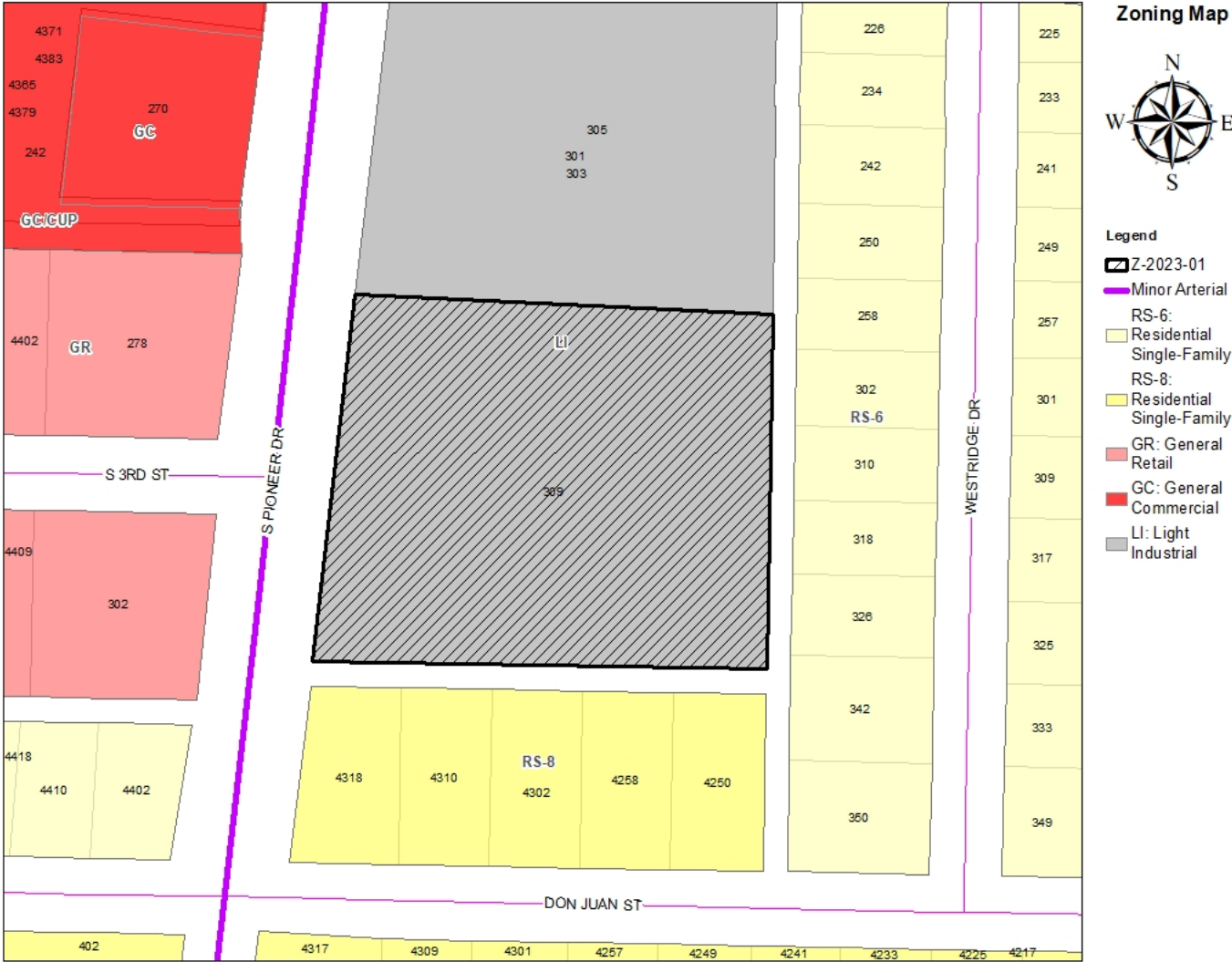
Property ID

Owner	Property ID	Situs	Response
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FLEMING COLLEEN	13254	234 WESTRIDGE DR	
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MARTINEZ SYLVIA	40576	4318 DON JUAN ST	
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BURGERS & FRIES INC	55889	302 S PIONEER DR	
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SKINNYS INC	98662	270 S PIONEER DR	
T & T OKLAHOMA LLC	1006027	301 S PIONEER DR	
T & T OKLAHOMA LLC	1006027	305 S PIONEER DR	
T & T OKLAHOMA LLC	1006027	303 S PIONEER DR	

LOCATION MAP

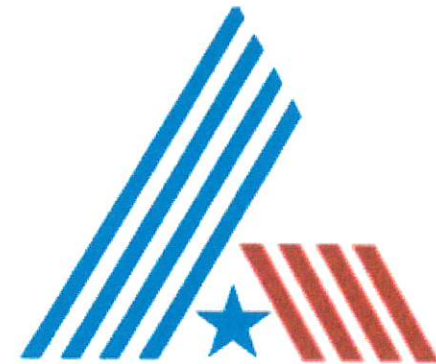


ZONING MAP





2022 Development Application



CITY OF ABILENE

PLANNING AND
DEVELOPMENT SERVICES

- Conditional Use • Rezoning
 - PDD • PDD Amendment
 - Street Name Change
- Thoroughfare Abandonment
 - Easement Release
- Historic Certificate of Appropriateness
 - Historic Project Tax Reduction
 - Plats • Petition for Relief
- Board of Adjustment (Variance)
 - Other



2022 Development Application

DOCUMENTS & MAPS

Reports, Plans, Ordinances, Maps, and other documents are often available on the City's website (<https://www.abilenetx.gov>) no charge. Copies of these will be provided at the reproduction cost, currently 10 cents per page for black and white copies and \$1 per page for color copies. In addition, any other actual materials costs will be assessed.

Requests for the creation of maps or other documents not already existing will only be available based on availability of staff and will be billed at a rate of \$25 per hour, plus the cost of reproduction and/or materials.

NEIGHBORHOOD EMPOWERMENT ZONE INCENTIVE

Projects located within the designated "Neighborhood Empowerment zone" will have fees waived in accordance with the City's Land Development Code. This does not apply to any portion of a fee that is based on actual costs to the City, such as filing plats, photocopies, notifications, etc.

SUBMITTAL INFORMATION

ONLINE SUBMITTALS FOR DEVELOPMENT APPLICATIONS ARE PREFERRED

CTRL & CLICK LINK BELOW

https://public.mygov.us/tx_abilene

- Prior to submittal, we strongly recommend setting up and attending a pre-submittal meeting.
- **INCOMPLETE APPLICATIONS AND SUBMITTALS WILL BE REJECTED** or will be returned; an application may be deemed incomplete after initial staff review.
- Please refer to the Land Development Code online Part III Appendix A for questions or concerns in respect to site development and development standards.
https://library.municode.com/tx/abilene/codes/code_of_ordinances?nodeId=PTIIIAPANDECO
- Plans for Conditional Use, Special Exceptions, Rezoning, Variance and Planned Development District Amendment shall be on 8.5" x 11" paper with one (1) copy.
- Site plans or conceptual site plans, plats, except Engineering Construction Sets, shall be 24" x 36" and folded, with two (2) hard copies. If applicable, please provide survey plat of property. Plats and Engineering plans shall be GEO Referenced and in DWG format.
- PDF copies can be emailed to planning@abilenetx.com.
- If a case is withdrawn or delayed at the request of the applicant after notifications have been sent and/or public notice has been posted, the applicant will be responsible for the cost of re-notifications and re-posting of notice.
- All other questions may be directed to the following:

FOR DEVELOPMENT FEES CTRL & CLICK LINK BELOW AND CHOOSE "Z"

<https://abilenetx.gov/563/Fee-Schedule>

Fees can be paid online with credit card.

See RECORDING FEES for actual filing costs with Taylor County Clerk's Office. Thoroughfare Abandonment Fee 10% of the calculated land value of the ROW area to be abandoned, based on the average square footage value of adjacent properties, per the most recent official Appraisal District valuation. Minimum fee is \$1,500. *Any portion over the minimum fee is refundable if the abandonment is not approved.*

Planning and Development Services Department
555 Walnut Street, Suite 100
325.676.6237
planning@abilenetx.gov

2022 Development Application

PLANNING & ZONING COMMISSION

The members of the Planning & Zoning Commission (also referred to as the Commission) are appointed by the City Council. In making appointments to the Commission, the City Council shall seek to ensure broad representation and expertise among the membership.

According to Section 1.1.3.3. Powers & Duties, of the City of Abilene Land Development Code (LDC), the Planning and Zoning Commission shall:

1. Make recommendations on a Comprehensive Plan or amendments thereto related to the physical development, growth, improvement, and beautification of the City.
2. Make recommendations on other types of City plans that are related to the physical development, growth, improvement, and beautification of the City, including Neighborhood Plans and Corridor Plans.
3. Recommend to the City Council approval or denial of proposed changes in the zoning districts and/or ordinance.
4. Approve or disapprove the platting or subdividing of land within the corporate limits of the City and within adjacent areas as permitted by law.
5. Recommend to the City Council approval or disapproval of requests for street name changes and street closures within the corporate limits of the City.
6. Submit annually to the City Manager, not less than ninety (90) business days prior to the beginning of the budget year, a list of recommended capital improvements, if any, which in the opinion of the Commission, are necessary or desirable during the forthcoming five (5) year period.
7. Recommend to the City Council approval or disapproval of plans for housing clearance, public housing, and urban redevelopment and renewal projects.
8. Perform such additional duties and exercise such additional powers as may be prescribed by ordinance not inconsistent with the provisions of the City Charter.
9. Advise the City Council on applications and petitions for legislative decisions as authorized by the Land Development Code, such as:
 - a. Petition for amending the Comprehensive Plan;
 - b. Petition for a zoning map amendment, including a petition for creation of an overlay district, Conditional Use Permit (CUP), or Planned Development (PD) district;
 - c. Amendments to the text of the Land Development Code (LDC) as authorized by City Charter; and
 - d. Others as assigned by City Council.

The Planning and Zoning Commission shall finally decide appeals filed in accordance with Article 3 of the Land Development Code (Relief Procedures). Also, the Commission shall finally decide the following petitions for relief:

1. The Planning and Zoning Commission shall finally decide any variance petition on an application for a Preliminary Plat, Final Plat or replat, except when such variance is for relief from a dedication or construction requirement, in which case Section 1.1.4.3 shall apply; and
2. The Planning and Zoning Commission shall initially decide any vested rights petition for any decision for which it is the initial decision-maker.



2022 Development Application

*Applications for Historical Overlay designation will first be presented to the Landmark Commission, prior to the Planning Commission, for recommendation.

2022 Planning and Zoning Commission					
PD Application Deadline	Zoning Application Deadline	Planning and Zoning Commission Regular Meeting ***	Planning and Zoning Commission Workshop as Needed ***	CITY COUNCIL (1st Reading)	CITY COUNCIL (2nd Reading) ***
20-Nov-21	07-Dec-21	04-Jan-22	19-Jan-21	27-Jan-22	10-Feb-22
18-Dec-21	04-Jan-22	01-Feb-22	16-Feb-21	24-Feb-22	10-Mar-22
15-Jan-22	01-Feb-22	01-Mar-22	16-Mar-21	24-Mar-22	14-Apr-22
19-Feb-22	08-Mar-22	05-Apr-22	21-Apr-21	28-Apr-22	12-May-22
19-Mar-22	05-Apr-22	03-May-22	18-May-21	26-May-22	09-Jun-22
23-Apr-22	10-May-22	07-Jun-22	15-Jun-21	23-Jun-22	14-Jul-22
21-May-22	07-Jun-22	05-Jul-22	20-Jul-21	28-Jul-22	11-Aug-22
18-Jun-22	05-Jul-22	02-Aug-22	17-Aug-21	25-Aug-22	08-Sep-22
23-Jul-22	09-Aug-22	06-Sep-22	21-Sep-21	22-Sep-22	13-Oct-22
20-Aug-22	06-Sep-22	04-Oct-22	19-Oct-21	27-Oct-22	03-Nov-22
17-Sep-22	04-Oct-22	01-Nov-22	16-Nov-21	17-Nov-22	01-Dec-22
22-Oct-22	08-Nov-22	06-Dec-22	21-Dec-21	15-Dec-22	12-Jan-23

2022 Board of Adjustment Calendar	
Application Deadline	Meeting Date ***
14-Dec-21	11-Jan-22
11-Jan-22	08-Feb-22
08-Feb-22	08-Mar-22
15-Mar-22	12-Apr-22
12-Apr-22	10-May-22
17-May-22	14-Jun-22
14-Jun-22	12-Jul-22
12-Jul-22	09-Aug-22
16-Aug-22	13-Sep-22
13-Sep-22	11-Oct-22
11-Oct-22	08-Nov-22
15-Nov-22	13-Dec-22

***These meetings require public hearings and the applicant or a representative must be present.



Development Application

Zoning Application Page 1 of 3

Planning

- | | | | |
|--|---|---|---|
| ☐ Conditional Use | ☐ Special Exceptions | ☐ Rezoning | ☐ Variance |
| ☒ PDD Amendment | ☐ Street Name Change | ☐ Thoroughfare Abandonment | ☐ Easement Release |
| ☐ Historic Certification of Appropriateness | | ☐ Historic Project Tax Reduction | |

Relief Procedures

- | | | | |
|--|---|---|---------------------------------|
| ☐ Petition for Relief | ☐ Proportionality Appeal | ☐ Vested Rights Petition | ☐ Appeal |
|--|---|---|---------------------------------|
- Other: _____

Project Name: Borden Bluff

Address: 309 S Pioneer Dr No. of lots: 1 Acreage: 2.4

Legal Description: ELMWOOD WEST SEC N, LOT 2

Subdivision Name: Elmwood West Block: Sec N Lot: 2

Current Zoning: Light Industrial Proposed Zoning (if applicable): Planned Development District

OWNER AND AUTHORIZATION

Owner Name: New Dairy Texas, LLC

Address: 250 Fillmore St, Ste 525

City, State, Zip: Denver, CO 80206 Fax: _____

Phone: 303-578-1052 Email: colin.murphy@capitolpeakpartners.com

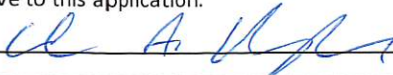
Agent Name: JES Dev Co, Inc. and its employees

Address: 206 Peach Way

City, State, Zip: Columbia, MO 65203 Fax: 573-874-7116

Phone: 573-397-2105 Email: rgarcia@jesholdins.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: 11/21/2022

FOR OFFICE USE ONLY

Received: _____	Fee: \$ _____	Receipt No.: _____
Case No.: _____	Reviewed By: _____	



2022 Development Application

Zoning Application-Page 2 of 3

Existing Zoning

- | | | | |
|--------------------------------|---|--|------------------------------|
| ☐ AO | Agricultural Open Space | ☐ GR | General Retail |
| ☐ RR | Rural Residential RR-5 & RR1 | ☐ MU | Medical Use |
| ☐ RS-12 | Residential Single-Family – 12,000 lots | ☐ CB | Central Business |
| ☐ RS-8 | Residential Single-Family – 8,000 lots | ☐ MX | Mixed Use |
| ☐ RS-6 | Residential Single-Family – 6,000 lots | ☐ GC | General Commercial |
| ☐ PH | Single-Family Residential Patio Home | ☐ HC | Heavy Commercial |
| ☐ TH | Residential Townhouse | ☒ LI | Light Industrial |
| ☐ MD | Residential Medium Density | ☐ HI | Heavy Industrial |
| ☐ MH | Manufactured/Mobile Home | | |
| ☐ CU | College & University | ☐ PD | Planned Development District |
| ☐ NO | Neighborhood Office | | |
| ☐ O | Office | ☐ | Empowerment Overlay |
| ☐ NR | Neighborhood Retail | | |

Reason for Zoning Change

We are requesting a zoning change to be able to convert an existing but under utilized historic industrial building into multifamily housing to better serve the residents of Abilene and better blend with the character of the neighborhood.

Fees

FOR DEVELOPMENT FEES CTRL & CLICK LINK BELOW AND CHOOSE "Z"

<https://abilenetx.gov/563/Fee-Schedule>

Fees can be paid online with credit card.



2022 Development Application

Zoning Application-Page 3 of 3

ZONING IMPACT ANALYSIS

Please answer these questions in order to assist Staff with the processing of your Zoning request.

1. Is 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 proposed amendment furthers the Comprehensive Plan's strategies related to housing and preservation. The proposed multifamily use is more compatible with existing uses in the neighborhood than the existing light industrial use, even though the Future Land Use Plan shows Light Industrial.

2. Is the uses permitted by the proposed change in zoning district classification and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified?

The proposed changes to the Planned Development with underlying multifamily zoning is a more appropriate use for this site than the current light industrial use (even though the Future Land Use Plan shows Light Industrial). Multifamily is a less intense use than light industrial, is more compatible with the surrounding uses, will act as a buffer between Pioneer Drive and residential uses to the east, reduce the likelihood of traffic conflicts between cars and trucks, and will bring more residents to the area to support the commercial and retail uses in the neighborhood all while preserving the historic character of the existing building.

3. Is 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?

There is an existing 10" water line in front of the property and and existing 10" sanitary sewer line on the side of the property that should have sufficient capacity to service the development.

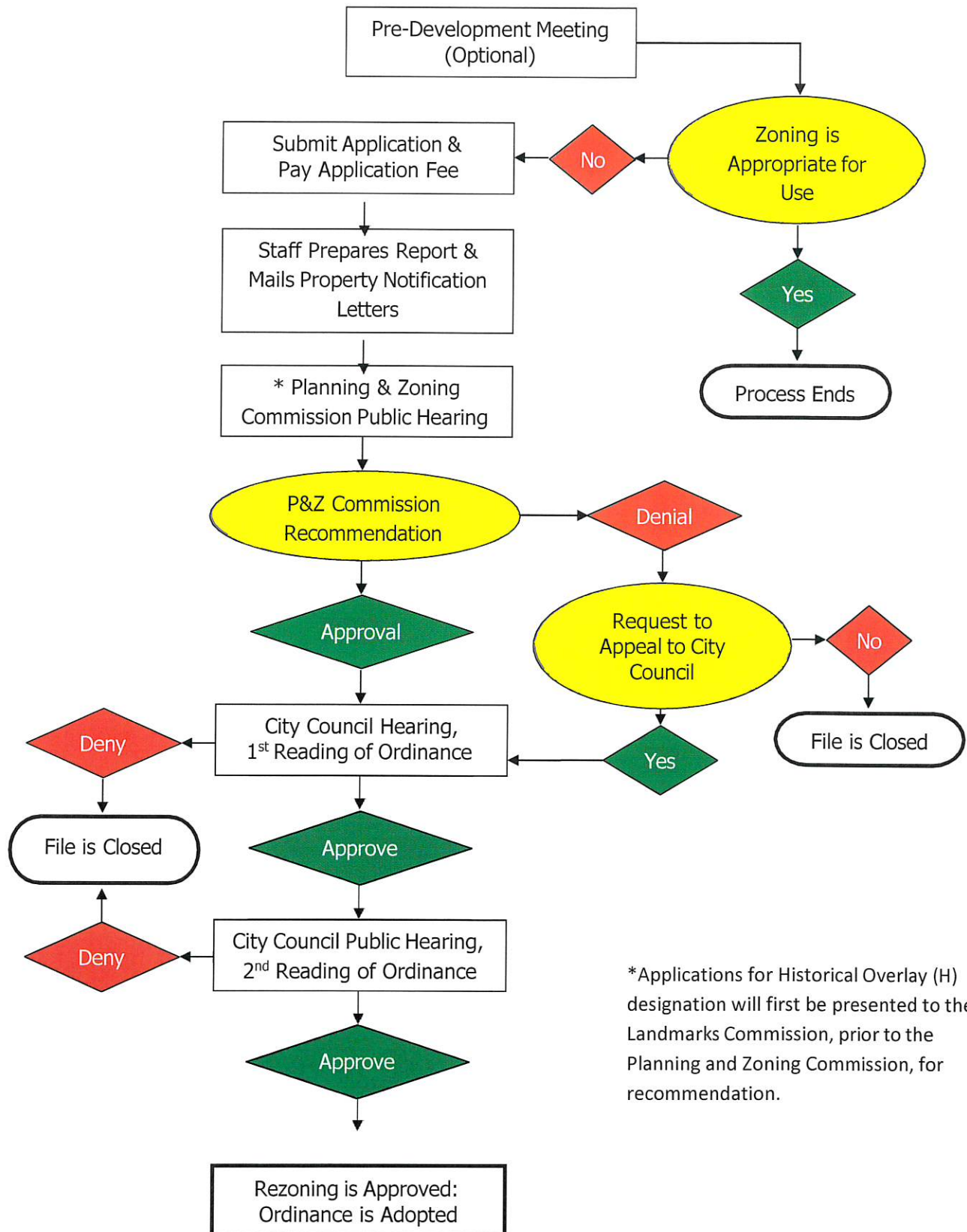
4. Are there other factors which will substantially affect the public health, safety, morals, or general welfare? Yes, this development will add to Abilene's housing stock, preserve a historic building, and convert an underutilized industrial building into a new useful multifamily community.

Other Required Forms – Disclosure of Interest (See Attached)

Please see attached Disclosure of Interest form.

Development Application

Zoning • Conditional Use • PDD Amendment • Street Name Change • Thoroughfare Abandonment
Flowchart





Development Application

Plats and Other submittals Page 1 of 1

Submittal

- | | |
|--|--|
| ☐ Preliminary Plat/Replat | ☐ Civil Plans |
| ☐ Final Plat/Replat | ☐ Site Plan/Revised Site Plan |
| ☐ Combination Preliminary and Final Plat* | ☐ Landscape Plan |
| ☐ Amended Plat | ☐ Tree Preservation |
| ☐ Minor Plat/Replat | ☐ Lighting Plan |
| ☐ Development Plat | ☐ Concept Plan |

**Prior approval required*

Submittal Type

- ☐ Pre-Submittal: all required documents are present excluding fees. I understand that the project information presented to the City at this time is not filed, and therefore the City is not required to approve, approve with conditions, or disapprove the plan(s)/plat(s) within 30 days by the approval authority. This Pre-Submittal will be changed to a Submittal following the receipt of written notice and payment of fees. I am requesting this of my own volition and not at the request of the City of Abilene.
- ☐ Submittal: all required documents are present including fees. I understand that the project information presented to the City at this time is filed and therefore, the City is required to approve, approve with conditions, or disapprove the plat(s) within 30 days by the approval authority.

Acreage

Round decimals up to the nearest whole number.

_____ acre(s)

Fees

FOR DEVELOPMENT FEES CTRL & CLICK LINK BELOW AND CHOOSE "P"

<https://abilenetx.gov/563/Fee-Schedule>

Fees can be paid online with credit card.

The application fee of \$_____, to be paid to the City of Abilene within 5 days of being accepted.

NOTE: Additional costs may accrue during review by City consultants of any facilities agreement and/or civil construction plans.

Submittals

- Site plans or conceptual site plans, plats, except Engineering Construction Sets, shall be 24" x 36" and folded, with two (2) hard copies. If applicable, please provide survey plat of property. Plats and Engineering plans shall be GEO Referenced and in DWG format.

Other required Documents Required are attached (Owner Authorization, and Disclosure of Interest)



Development Application

Owner Authorization and Representative Designation

Property Description

Subdivision: Elmwood West Total Number of Acres: 2.4
 Zoning Classification(s): Light Industrial Total Number of Lots: 1
 Location: 309 S Pioneer Dr.

Property Owner Information & Authorization

Name/Company: New Dairy Texas, LLC
 Address: 250 Fillmore St, Ste 525
 City: Denver State: CO Zip Code: 80206
 Phone: 303-578-1052 Email: colin.murphy@capitalpeakpartners.com

Project Representation (check one):

- ☐ I will represent the application myself; OR
☒ I hereby designate JES Dev Co, Inc. and its employees (name of project representative) to act in the capacity as my agent for submittal, processing, representation, and/or presentation of this request. 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 request.

I hereby certify that I am the property owner of the property and further certify that the information provided on this development application is true and correct. I have selected the above submittal type, representation, and landscape incentive of my own volition and not at the request of the City of Abilene.

Property Owner's Signature: Colin A. Murphy Date: 11/21/2022

STATE OF: Colorado

COUNTY OF: Denver

BEFORE ME, a Notary Public, on this day personally appeared Colin A. Murphy (printed property owner's name) the above signed, who, under oath, stated the following: "I hereby certify that I am the property owner for the purposes of this application; that all information submitted herein is true and correct."

SUBSCRIBED AND SWORN TO before me, this the 21 day of November, 2022

Colin A. Murphy

NOTARY PUBLIC in and for the State of ~~Texas~~ Colorado

Project Representative Information (complete if designated by owner)

Engineer ☐ Purchaser ☐ Tenant ☐ Preparer ☐ Other (specify): _____

Name: _____ Company: _____
 Address: _____ City: _____ State: _____
 Zip Code: _____ home: _____ Email: _____



Development Application

Disclosure of Interest

Every question must be answered. If the question is not applicable, answer with "N/A".

NOTE: If the Project Representative is not the Property Owner, this form must be filled out by **both** the Property Owner and the Project Representative.

Disclosure Questions

- A. Do you believe that a City official* or City employee** may have a conflict of interest in the property or application referenced on the reverse side? Yes ☐ No ☒
- B. If so, state the name of each City official or employee of the City of Abilene known by you that may have a conflict of interest in the property or application referenced on reverse side.

N/A

- C. State all information upon which you base the belief (use additional paper, if necessary).

N/A

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Abilene, Texas, as changes occur.

Name of Certifying Person (print): Colin A. Murphy

Property Owner ☒ Project Representative ☐

Signature of Certifying Person: Colin A. Murphy

*Mayor, City Council members, Planning and Zoning Commission members, and Zoning Board of Adjustment members.

**City Manager, City Secretary, City Attorney, and all department heads

Development Application

BOARD OF ADJUSTMENT

The Board of Adjustment is organized to have all the powers and authority as set forth in the Charter of the City of Abilene, Texas, and as authorized by Chapter 211 of the Texas Local Government Code.

The Board of Adjustment has authority of applications to decide the following types of applications:

1. An application for a Special Exception pursuant to Section 1.4.4.1;
2. An application for a Variance pursuant to Section 1.4.4.2;
3. A sign permit or an interpretation of Sign Regulations related to development within the City limits (refer to Chapter 4, Article 1, Division 3, Section 4.1.3.6 or Chapter 4, Article 2, Division 8, respectively); and
4. An application for a change in the status of a non-conformity pursuant to Section 1.4.4.3.

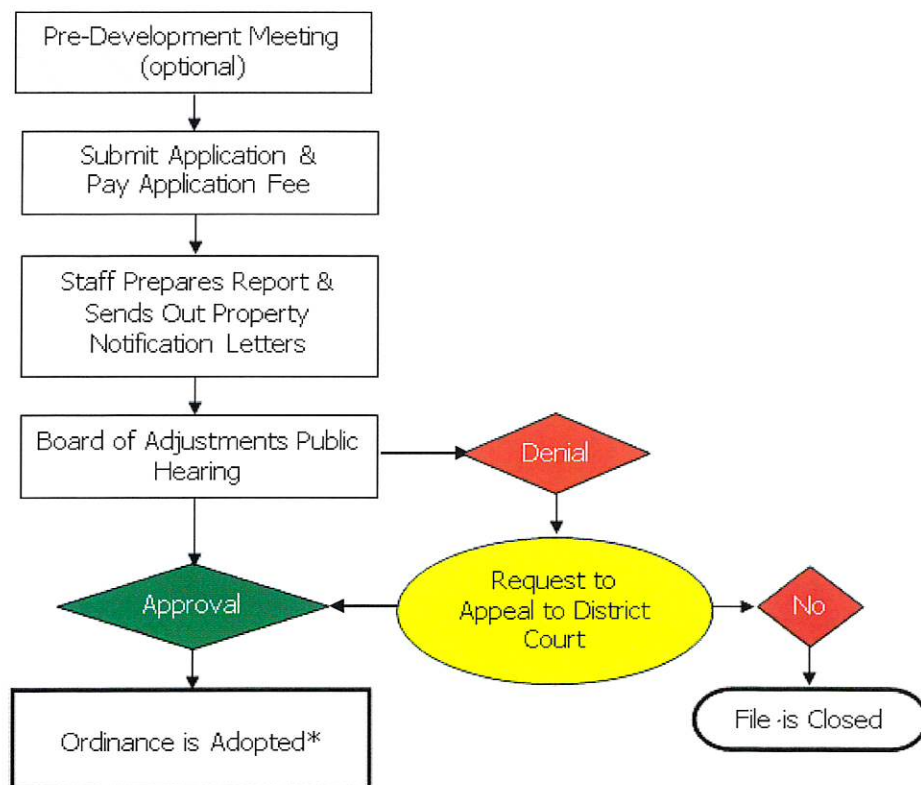
The Board of Adjustment shall finally decide appeals on the following matters of an appeal of any official's interpretation of the requirements of Chapters 2 or 4 of this LDC in which the requirement applies to development within the City limits of Abilene, unless a separate appeals process is otherwise defined within this LDC.

The authority delegated to the Board of Adjustment under this Land Development Code shall not be construed to affect any of the following:

1. Approval of a petition for a zoning map amendment;
2. Approval of a Conditional Use Permit; and
3. Authorization of a use not authorized in the zoning district in which the applicant's property is located, except to the extent necessary to decide a special exception or a petition for a change in status of a non-conformity.

Also, the Board of Adjustment shall not render any decision on an application, appeal or relief petition while a petition for a zoning amendment, application for a Conditional Use Permit, or plat application for the same land is pending and until such petition or application has been finally decided pursuant to procedures in Chapter 1 of the LDC.

Special Exception • Variance Flowchart



*If the request is approved, the owner or agent will have 180 days from the hearing date to obtain a building permit, if one is required.



Development Application

Special Exception • Variance

Please answer these questions in order to assist Staff with the processing of your Special Exception or Variance request. Please use additional sheet(s), if necessary.

1. Fully describe the unique circumstances or peculiarities of the land or improvements in question that do not allow the desired use to conform to the provisions in the Ordinance and the intent.

2. Are there other locations on the property that could accommodate the use while still complying with the Ordinance and, if so, why have you chosen the proposed location?

Development Application

The City Council created the Landmarks Commission in 1983 with the purpose of administering the provisions of the City Code relating to the protection and preservation of structures and lands deemed by the Abilene community to be of unique historical, architectural, and cultural value. The Landmarks Commission has the following powers and duties regarding development applications:

- Review all completed applications for designation of a Historic Overlay zoning district and forward its recommendations to the Planning and Zoning Commission;
- Review and approve or deny all completed applications for Certificates of Appropriateness in accordance with Section 2.3.4.4(f) of the Land Development Code;
- Review and approve or deny all completed applications requesting a Historic Project Tax Reduction in accordance with Section 30-41 of the City Code.

Historic Overlay (H) District

The City of Abilene, Texas, recognizes the importance of historically, architecturally and culturally significant sites and structures to the community. Regulations of the Historic Overlay (H) District are intended for the enhancement, perpetuation and use of areas, sites, structures, buildings, properties, and objects which typify the community's past through recognizable characteristics. The City of Abilene further declares that as a matter of public policy the protection, enhancement, and perpetuation of landmarks or districts of historical and cultural importance and significance is necessary to promote the economic, cultural, educational, and general welfare of the public.

It is recognized that the City of Abilene represents the unique confluence of time and place that shaped the identity of generations of citizens, collectively and individually, and produced significant historic, architectural, and cultural resources that constitute their heritage. It is further recognized that the unapproved demolition of historic resources could constitute a public nuisance.

Certificate of Appropriateness

The Landmarks Commission shall determine, from the data submitted and other pertinent information made available at the public hearing, the appropriateness of all undertakings for which a Certificate of Appropriateness is required. The Landmarks Commission shall have the power to approve or deny an application for Certificate of Appropriateness, or to approve a request with such conditions as the Landmarks Commission deems necessary to carry out the purposes of the Historic Overlay District.

In considering an application for a Certificate of Appropriateness, the Landmarks Commission shall be guided by the *District Standards*, any adopted design guidelines, and where applicable, the Secretary of the Interior's "*Standards for the Rehabilitation of Historic Buildings*." A copy of the *District Standards*, any adopted design guidelines, and the Secretary of the Interior's Standards shall be made available to the property owner(s) of historic landmarks or within a Historic Overlay District upon request.

Historic Project Tax Reduction

The City Council offers a reduction in the city property taxes when a project is done that improve a property in the Historic Overlay (H) zoning district. The historic project tax reduction is a financial incentive for property owners who place their property in (H) zoning and undertake project in accordance with a certificate of appropriateness required by the (H) zoning. For these projects that improve a historic property, the City compensates the property owner for part of the eligible costs by reducing the owner's property taxes for a period of up to a maximum of ten (10) years.

The Landmarks Commission shall determine if the completed project is substantially in compliance with the property proposal or the Certificate of Appropriateness. The Commission may postpone the public hearing on an application if additional information is necessary. The Landmarks Commission shall have the authority to approve or disapprove an application for a project tax reduction, or to approve a request with such conditions as the Commission deems necessary for compliance.



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 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: _____ DATE: _____



Development Application

THE STATE OF TEXAS)

)

COUNTY OF TAYLOR)

Know all men by these presents that the undersigned owner of the real property described on the reverse side hereof, has made, constituted and appointed, and by these presents does make, constitute and appoint, my true and lawful attorney, for me in my name, place and stead, to (1) file an application for a zone change, plat, street closure, alley closure, (appeal to the Board of Adjustment)* concerning such property and (2) appear on my behalf at all necessary meetings of the appropriate board or commission or City Council, as the case may be; and the undersigned further agrees that this power of attorney may be voluntarily revoked only by written revocation filed with the Planning & Development Services Division for the City of Abilene, Texas.

Witness my hand this day of _____, 20_____

*(cross out the inapplicable phrase)

Abilene Plan of Operation

JES Dev Co, Inc. plans to convert the old Borden building at 309 S Pioneer Dr. to multifamily housing while preserving the historic legacy of the building. The development will be financed, in part, using housing tax credits. The tax credits are awarded through a competitive application process and will require a Resolution of Support from the City of Abilene to be successful. To receive a Resolution of Support for Housing Tax Credits from the Abilene City Council, the site needs to be properly zoned prior to receiving that Resolution. The Sellers want to ensure that the zoning will not be left as only Multifamily if the development is not awarded tax credits. Below is an approximate schedule of the timing of the tax credit process:

- Preliminary application submitted to TDHCA: January 6, 2023.
- Date to receive rezoning on the subject property: February 9, 2023.
- Date to receive a Resolution of Support from the Abilene City Council: February 9, 2023, or February 23, 2023.
- Full application submitted to TDHCA: March 1, 2023.
- Tax credit awards announced by TDHCA: July 27, 2023.
- Closing on Property: August 31, 2023.

The proposed development will not mix industrial and multifamily uses. The finished development will be multifamily housing in a preserved and rehabilitated historic building. A second new construction building to be built behind the existing historic building will contain additional residential units and community space and amenities. If the property is not awarded tax credits and ultimately falls out of contract, the Seller wishes to maintain the property's original Light Industrial zoning. The pursuit of the PDD gives the Buyer the ability to rezone the property prior to the full tax credit application being submitted (thus qualifying us to receive the needed Resolution of Support from the Abilene City Council) and gives the Seller the ability to retain Light Industrial zoning if the contract terminates.

Existing Proximate Land Uses

North: Light industrial and then residential

East: Residential

South: Residential

West: General retail and commercial with some residential

Conformance to 2004 Comprehensive Plan

The development furthers the City's housing and preservation strategies laid out in the 2004 Comprehensive Plan.

Residential Use

Strategy 12: Employ higher density housing as a supporting residential use for activity center and transition the density to the surrounding residential areas (page 20 of 107).

This project should be considered a redevelopment (page 22 of 107). This development keeps growth in the central city rather than spreading growth outward in a leapfrog pattern. We are adding some density to an area and converting an underutilized building into a more housing options for Abilene residents. We are also preserving a historic building and adding more housing to the Abilene stock.

Preservation

This development will preserve a historic building and part of Abilene's heritage and culture, meeting Strategies 30 and 31 under the Preservation section of the 2004 Comprehensive Plan (page 50 of 107). The historic nature of the building will be maintained and the new construction building (which will be built behind the historic building) will complement the façade of the existing structure.

Development Standards for PDD

If the property is developed as multifamily, the base zoning shall be Multifamily with the following variances:

- The minimum parking ratio will be 1.25 parking spaces per unit.
- The setbacks for all yards (front, rear, and side) shall be a minimum of five (5) feet.
- Building length shall not exceed 300 feet.
- Density shall be a maximum of 26 units per acre.

All uses permitted under Light Industrial Zoning shall also be allowable and meet all Light Industrial development standards.

If the property is not developed as multifamily, the base zoning shall be Light Industrial, but will still allow for multifamily uses with the conditions stated above.

ELSIE'S MANOR

A 36-UNIT SENIOR DEVELOPMENT

Abilene, TX



JES HOLDINGS, LLC

COMPANY OVERVIEW

JES HOLDINGS, LLC

DEVELOP

BUILD

MANAGE

INVEST



QUALITY HOUSING WHERE **OUR FAMILIES**
WOULD BE PROUD TO LIVE.

DEVELOPER



- 29 years experience developing affordable multi-family housing
- Developed 150 apartment communities with over 6,000 residential units
- Fifteen communities built or under development in Texas

GENERAL CONTRACTOR



Fairway Construction Co., Inc.

- 38 years experience
- Over 200 apartment communities and over 8,200 apartment units built nationwide
- Over \$2 billion in construction value

PROPERTY MANAGER



- Almost 30 years of experience
- Currently manages over 12,200 apartment units throughout the nation
- 250 apartment communities under management
- Overall portfolio occupancy of 97.5%

SYNDICATOR



Affordable Equity Partners, Inc.

- Syndicated over \$4 billion in Federal and State Tax Credits
- More than 500 tax credit developments syndicated in 16 states and 250 cities without a foreclosure or credit recapture
- Provides a full range of services for developers and investors in the Section 42 LIHTC Program.

Texas Communities



**Settlement Estates,
Bastrop**

70 Cottage-Style Senior Units
(32) One Bedroom Units
– 651 Sq. Ft.
(38) Two Bedroom Units
– 859 Sq. Ft.



**Riverwood
Commons I and II,
Bastrop**

36 Senior Units Located
in Elevared Building
(11) One Bedroom Units
– 725 Sq. Ft.
(25) Two Bedroom Units
– 935 Sq. Ft.



**Hidden Glen,
Salado**

50 Cottage-Style Senior Units
(15) One Bedroom Units – 700 Sq. Ft.
(35) Two Bedroom Units – 850 Sq. Ft.



**Bluff View
Senior Village,
Crandall**

48 Senior Units in
Elevared Building
(15) One Bedroom Units
– 710 Sq. Ft.
(33) Two Bedroom Units
– 893 to 925 Sq. Ft.



**Highlander
Senior Village,
Bulverde**

66 Cottage-Style Senior Units
(20) One Bedroom Units
– 740 Sq. Ft.
(46) Two Bedroom Units – 850 Sq. Ft.

Texas Communities



**Maple Park Senior,
Lockhart**

**56 Cottage-Style Senior
Units**
(14) One Bedroom Units
– 767-789 Sq. Ft.
(42) Two Bedroom Units
– 882 Sq. Ft.



**Paige Estates,
Waco**

**64 Senior Units in
Elevated Building**
(20) One Bedroom Units
– 750 Sq. Ft.
(44) Two Bedroom Units
– 880 Sq. Ft.



**Parkside on
Carrier,
Grand Prairie**

**38 Senior Units in
Elevated Building**
(13) One Bedroom
Units – 750 Sq. Ft.
(25) Two Bedroom
Units – 880 Sq. Ft.



**Sweetwater
Station,
Sweetwater**

**52 Senior Units in
Elevated Building**
(16) One Bedroom Units
– 750 Sq. Ft.
(36) Two Bedroom Units
– 880 Sq. Ft.



**Pebblebrook
Parkside,
Denton**

**216 Family Units in
Walk-up and Elevated
Buildings**
(54) One Bedroom Units
– 746 Sq. Ft.
(108) Two Bedroom
Units – 988-1,075 Sq. Ft.
(54) Three Bedroom
Units – 1,082 Sq. Ft.

Texas Communities



**Estacado Estates,
Amarillo**

46 Senior Units in
Elevated Building
(14) One Bedroom Units
– 750 Sq. Ft.
(32) Two Bedroom Units
– 880 Sq. Ft.



**Riverside Manor,
Kerrville**

36 Senior Units in
Elevated Building
(11) One Bedroom
Units – 750 Sq. Ft.
(25) Two Bedroom
Units – 880 Sq. Ft.



**Trailside Estates,
Tyler**

74 Senior Units in
Elevated Building
(24) One Bedroom Units
– 750 Sq. Ft.
(50) Two Bedroom Units
– 880 Sq. Ft.



**Blanco Basin,
San Marcos**

200 Senior Units in
Elevated Buildings
(100) One Bedroom
Units – 746 Sq. Ft.
(100) Two Bedroom
Units – 988-1,075 Sq. Ft.

RIVERWOOD COMMONS

BASTROP, TX



HIDDEN GLEN

SALADO, TX



BLUFF VIEW SENIOR VILLAGE

CRANDALL, TX



DA HOLMES SENIOR HOUSING

KANSAS CITY, MO



LOFTS AT LANDMARK

ST JOSEPH, MO

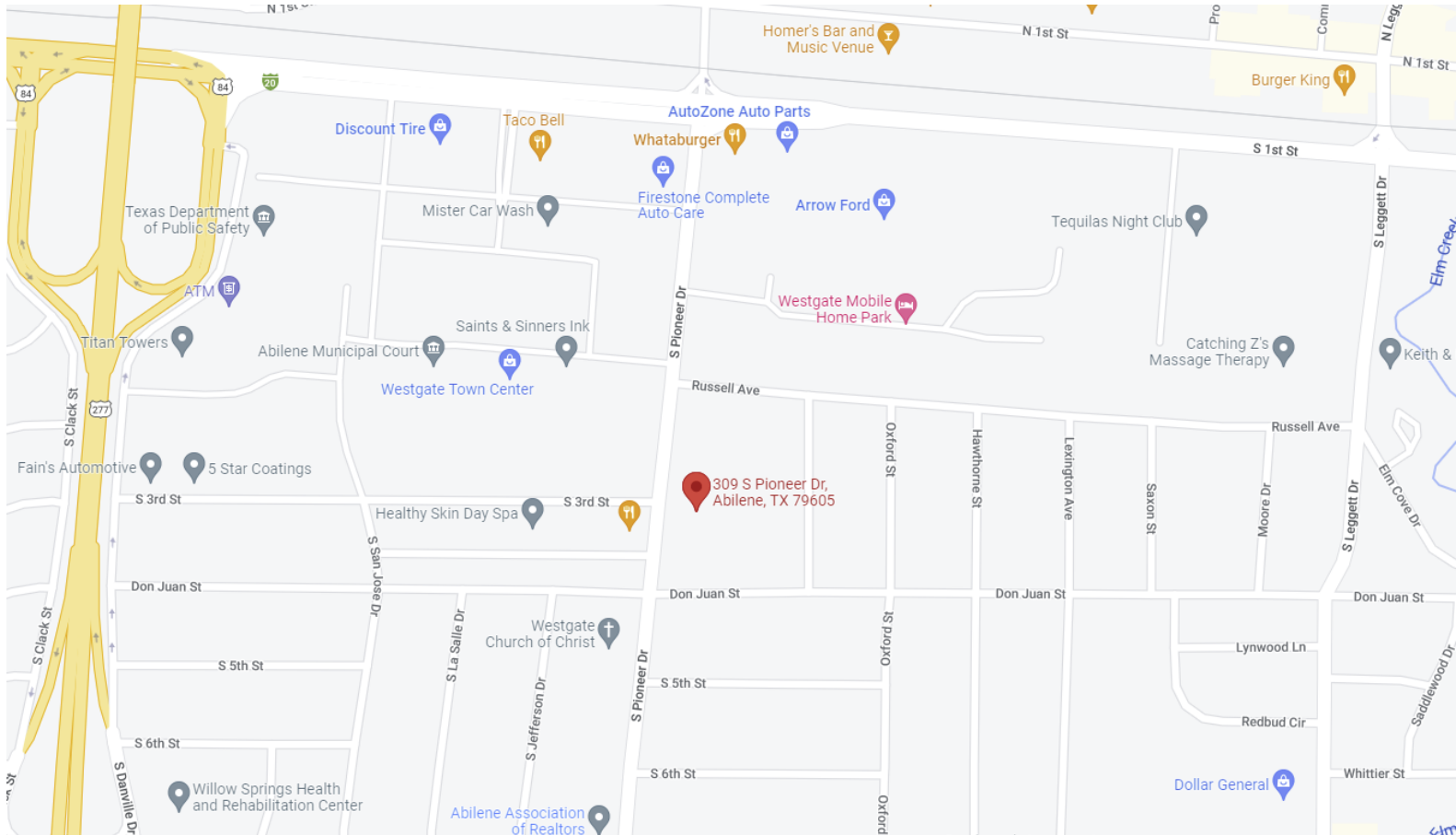


MARY LEILA LOFTS

GREENSBORO, GA



SITE INFORMATION



SITE AERIAL



SITE LAYOUT

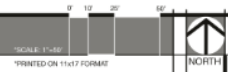


S. PIONEER DR.

Abilene, TX

CONCEPTUAL SITE PLAN

November 14, 2022



rosemann
& ASSOCIATES

COMMUNITY FEATURES

COMMUNITY FEATURES

- Leasing office
- Community lounge
- Community kitchen
- Fitness room
- Business center
- Game/reading room
- Outdoor amenities



UNIT FEATURES & RESIDENT PROFILE

RESIDENTIAL UNIT FEATURES



Unit Mix and Rents

- 21 one-bedroom units (roughly 650-750 square feet)
- 15 two-bedroom units (roughly 850-880 square feet)

Unit Features

- Full kitchen with energy-star appliances
- In Unit Washer/Dryer Carpet and vinyl flooring



RESIDENT PROFILE



Age and Income Requirements

- Age restricted 55 +
- 24 units for residents at \$30K - \$34K
- 8 units for residents at \$25K - \$28
- 4 units for residents at \$15K - \$17K



- 24 units rent for \$798 - \$958
- 8 units rent for \$665 - \$798
- 4 units rent for \$399 - \$479

RESIDENT SERVICES

PROPOSED RESIDENT SERVICES

- Weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement)
- Weekly exercise classes
- Twice monthly arts, crafts, and other recreational activities
- Twice monthly on-site social events
- Food pantry
- Annual health fair provided by a health care professional
- Partnership with local law enforcement or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents
- Notary Services during regular business hours
- Outreach to nonprofit service providers in community

CONTACT

Michael Ash, Development Manager

- 737-228-4962
- mash@aepartners.com

Ryan Garcia, Development Manager

- 573-397-2105
- rgarcia@jesholdings.com



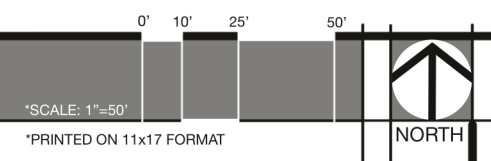
PROJECT DATA:	
EX. BLDG & SINGLE STORY NEW CONST.	
UNIT COUNT:	(22) 1BD/1BA (14) 2BD/1BA
TOTAL:	(36) UNITS
PARKING:	
TOTAL STALLS:	(76) STALLS
@>1:2.0 RATIO	

S. PIONEER DR.

CONCEPTUAL SITE PLAN

Abilene, TX

November 14, 2022





REZONE REQUEST

Case: Z-2023-01

Owner: New Dairy Texas, LLC

Agent: JES Dev. Co., Inc., by Mike Ash

Request: Rezoning from LI to PDD

Location: 309 South Pioneer Drive

Notification: 0 in Favor, 7 Opposed (3.27% opposed)

Planning & Zoning: January 3, 2023

City Council Hearing: January 26, 2023
February 9, 2023

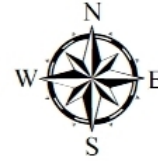




Z-2023-01 LOCATION MAP



Aerial Map



Legend

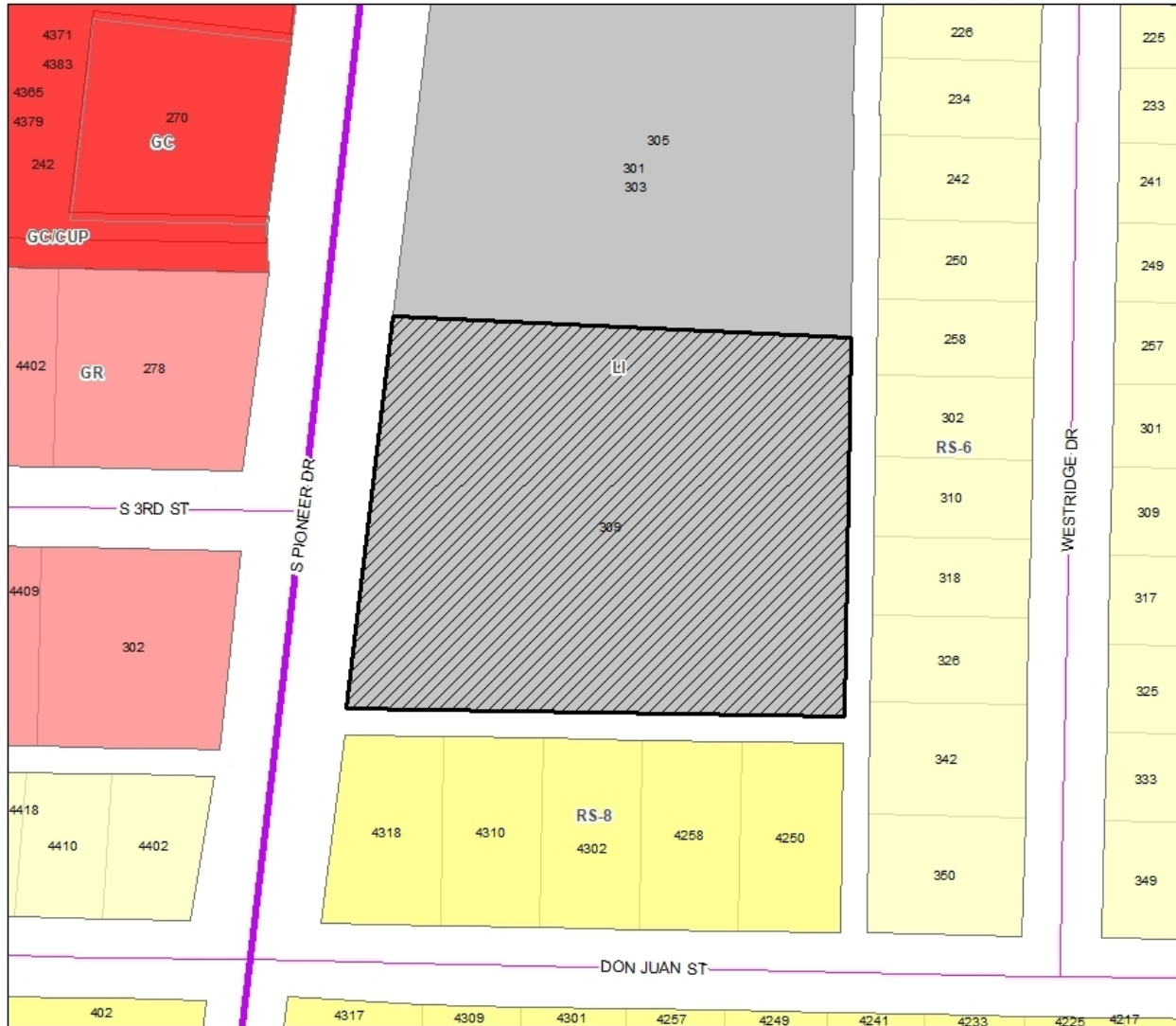
- Z-2023-01
- CourierParcels



CITY OF
ABILENE
TEXAS



Z-2023-01 ZONING MAP



Zoning Map



Legend

- Z-2023-01
- Minor Arterial
- RS-6:
Residential
Single-Family
- RS-8:
Residential
Single-Family
- GR: General
Retail
- GC: General
Commercial
- LI: Light
Industrial



CITY OF
ABILENE
TEXAS



Permitted Uses in LI Zoning

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 Drive-Through Facility
- TP Field Office or Construction Office (temporary)
- P Freight Container
- P Fuel Sales
- TP Itinerant Business
- P Manufacturing (incidental)
- C Mobile Home (permanent security residence)
- TP Mobile Home (temporary security residence)
- P Mobile Home or Temporary Building (office for sales and service)
- P Recreation Building, Multipurpose
- P Recycling Collection Point
- P/SE Wind Energy Conversion Systems

CULTURAL AND RECREATIONAL USES:

- P Adult Entertainment Enterprise
- C Cultural Facilities
- P Drive-in Theater
- C Motorized Racing
- P Recreation – Outdoors (passive)

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Ambulance Service
- P Correction, Detention, or Penal Facilities
- P Fire/Police Station
- P Homeless/Emergency Shelter
- P Medical/Dental Laboratory
- P Military and Armed Forces Reserve Center
- P Post Office
- C Sanitary Landfill

EDUCATIONAL AND RELIGIOUS USES:

- C Cemetery, Crematorium, and Mausoleum
- P Church or Place of Worship
- P Educational and Scientific Research
- P School: Public/Private
- P Trade/Business School

SERVICE

- P/C Automobile Wash
- P Contractor Services
- P Funeral Home/ Mortuary/Morgue
- P Kennel (With Outdoor Pens)
- P Kennel (Without Outdoor Pens)
- P Laundry, Dry Cleaning, Dyeing, and Linen Service (no retail customers)
- P Laundry/Dry Cleaning Services & Facilities
- P Office (general, professional, financial)
- P Printing, Copying, Reproduction, Publishing
- P Recycling Collection and Processing Center
- P Repair and Maintenance Services - Automobile/Small Truck (major)
- P Repair and Maintenance Services - Automobile/Small Truck (minor)
- P Repair and Maintenance Services (indoor)
- P Repair and Maintenance Services (outdoors)
- P Repair and Maintenance Services (truck and other large vehicles)
- P Scales (public)
- P Storage - Self-Service Units
- P Tattoo Parlor
- P Taxidermist
- P Veterinary Service (all size animals)
- P Veterinary Service (small animals)
- P Wrecker/Towing

TRADE – RETAIL USES

- P Aircraft and Accessories
- P ATM's, Self-Serve Kiosks, and Similar Facilities
- P Fuel Sales
- P Head Shop
- P Liquor Store (Off Premises Consumption) (*Defined under Liquor Store*)
- P Liquor Store (On Premises Consumption) (*Defined under Liquor Store*)
- P Retail Sales/Rental (automobile/small truck)
- P Retail Sales/Rental (indoor)
- P Retail Sales/Rental (outdoors, non-vehicle)
- P Retail Sales/Rental (trucks and other large vehicles and equipment)

TRADE – WHOLESALE USES

- P Liquor, Wholesale/Distribution
- C Livestock – Wholesale or Auction
- P Wholesaling and Storage (indoor)
- P Wholesaling and Storage (outdoors)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- P Airport, Heliport and Flying Field Terminals - Commercial (passenger and freight)
- P Antenna Tower - Commercial
- P Automobile Parking Lot or Structure - Commercial
- P Broadcast Studio
- P Passenger Ground Transportation Terminal
- P Pressure Control Station
- P Public Utility Facility
- P Railroad Switching and Marshaling Yard
- P Utility Generation, Production, Treatment

RESOURCE PRODUCTION AND EXTRACTION USES:

- C Mining
- P Petroleum or Gas Well
- P Liquor
- P Manufacturing (light)
- P Urban Garden



LEGEND

- P 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)
- C Permitted as a Conditional Use Permit, Requiring Approval by City Council
- TP 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 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)
- C Permitted as a Conditional Use Permit, Requiring Approval by City Council
- TP Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment





Z-2023-01 VIEWS OF SUBJECT & NEIGHBORING PROPERTIES



West Neighboring Property

Southwest Neighboring Property



Subject Property

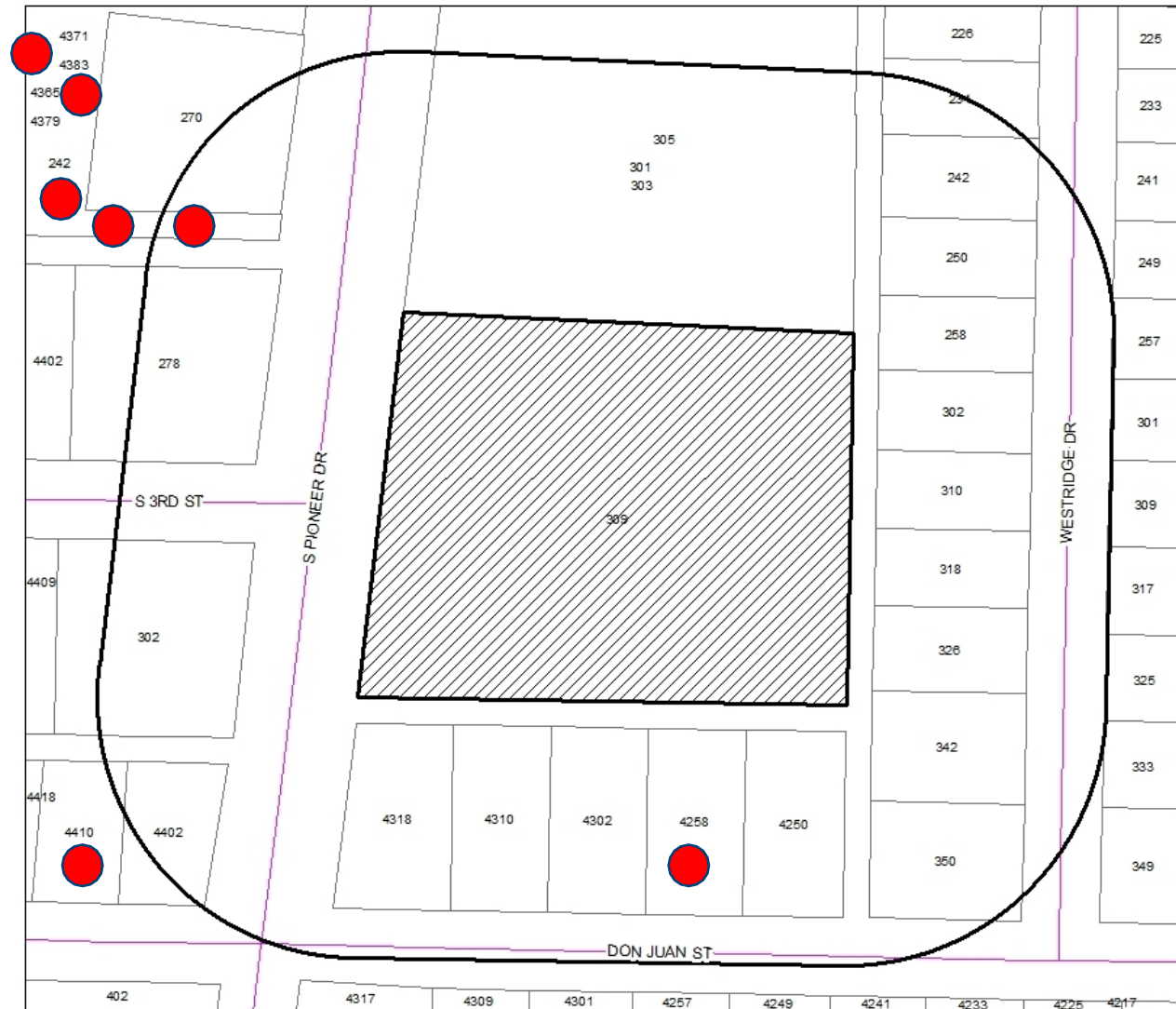


North Neighboring Property

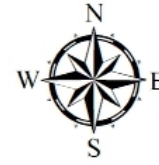




Z-2023-01 NOTIFICATION AREA MAP



Notification Map



Legend

- 200' Buffer
- Z-2023-01

0- In Favor- 
7- Opposed- 
3.27% Opposition



CITY OF
ABILENE
TEXAS



Proposed Concept Plan



S. PIONEER DR.

CONCEPTUAL SITE PLAN

Abilene, TX November 14, 2022

SCALE: 1"=40'
PRINTED ON 11x17 FORMAT



rosemann
& ASSOCIATES, INC.



CITY OF
ABILENE
TEXAS



FINDINGS AND RECOMMENDATIONS

The proposed request is *consistent* with:

- The surrounding uses and zoning;
- The spirit and intent of the Comprehensive Plan;
- Generally accepted planning principals; and
- The Criteria for Approval in the LDC.

P&Z Recommendation: **Approval** subject to:

1. The proposed Concept Plan;
2. The “Proposed Base Zoning District, Land Uses, and Development Standards”; and
3. A height limit of 1-story for the proposed new apartment building shaded blue on the Concept Plan.





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 1/12/2023

TO: Robert Hanna, City Manager

FROM: Michael Rice, Assistant City Manager

SUBJECT: 11. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Authorizing the Initiation of Condemnation Proceedings Necessary to Complete Construction of Public Access Sidewalks at the Intersections of North 1st Street at Leggett Street and North 1st Street at Pioneer Drive (Max Johnson)

GENERAL INFORMATION

The Texas Department of Transportation (TXDOT) is making vehicular and pedestrian improvements at the intersections along North 1st Street and South 1st Street that are adjacent to the Union Pacific railroad. As part of the improvements, easements are required to improve the public access sidewalks at these intersections for the safety and mobility of the pedestrians using the sidewalks at these busy intersections.

North 1st Street is a city street, and therefore obtaining the necessary easements to make the public access sidewalk improvements falls upon the City of Abilene. Although most easements have been obtained with the consent of the landowners, some easements required for this public improvement project remain unresolved. Therefore, because the intersection improvements being made by TXDOT, which includes improvements to the public access sidewalks, is a public purpose, and because the sidewalk improvements are for the safety and mobility of the public, staff is requesting that the Council authorize the initiation of condemnation proceedings necessary to complete the public improvement project.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the initiation of condemnation proceedings necessary for the completion of the public access sidewalk improvements at the intersections of North 1st and Leggett and North 1st and Pioneer Drive.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 2023 Resolution authorizing N 1st condemnation
2. N 1st Sidewalk Condemnation Resolution Exhibit A
3. Initiation of Condemnation Proceedings for Construction of Sidewalk Access

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AUTHORIZING THE USE OF THE POWER OF EMINENT DOMAIN TO ACQUIRE EASEMENTS NECESSARY FOR THE COMPLETION OF PUBLIC PEDESTRIAN ACCESS SIDEWALKS ALONG NORTH 1ST STREET.

WHEREAS, eminent domain proceedings in the State of Texas are governed by Chapter 21 of the Texas Property Code; and

WHEREAS, under that code a governmental entity exercising the power of eminent domain must first authorize the initiation of the condemnation proceeding at a public meeting by a record vote adopting a resolution, ordinance, or order; and

WHEREAS, the Texas Department of Transportation is making improvements to portions of North and South 1st Streets intersections, Abilene, Taylor County, Texas, that are adjacent to the Union Pacific railroad; and

WHEREAS, improved public pedestrian access sidewalks will be installed in either existing public right-of-way or in new permanent easements which will be owned by the City of Abilene; and

WHEREAS, the proposed easements which are the subject of the condemnation are located in Taylor County and will generally be located at North 1st and Leggett streets intersection, and North 1st street and Pioneer Drive intersection; and

WHEREAS, to facilitate the completion of the construction of the sidewalk improvements, a temporary construction easement will also be obtained adjacent to the permanent easements on Leggett street to provide the Contractor with adequate space for construction activities; and

WHEREAS, because this project is in response to public vehicular and pedestrian improvements along North and South 1st Streets and the Union Pacific railroad, the City of Abilene finds it necessary to begin the eminent domain process to condemn the temporary and permanent easements for access to the necessary properties for the placement of the sidewalk improvements.

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

That the City of Abilene, Texas is hereby authorized to use of the power of eminent domain to acquire permanent and temporary easements as depicted in “Exhibit A” for the public purpose of construction of public pedestrian access sidewalks along North 1st Street in Taylor County.

ADOPTED this 12th day of January, 2023.

APPROVED:

Anthony Williams, Mayor

ATTEST:

City Secretary

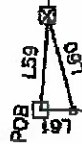
APPROVED AS TO FORM:

City Attorney

EXHIBIT "A"

LOT 202, SECTION 2, COMMERCE HEIGHTS ADDITION

NORTH 1ST (80' ROW)



Leggett (80' ROW)

Proposed Corner Clip out of Lot 202, Sect 2,
COMMERCE HEIGHTS ADDITION
to City of Abilene, Taylor County
Plat 4 Side 268

PAK Ham's Enterprises, Ltd
Special Warranty Deed
Doc No. 2016-00007533

LINE	BEARING	DISTANCE
L59	S 84°28'07" E	30.10'
L60	S 74°52'28" W	31.40'
L61	N 01°48'49" E	11.10'

TEXAS TRAILS COUNCIL, Inc
to City of Abilene, Taylor County
Plat 4 Side 268
Lot 203, Sect 2, COMMERCE HEIGHTS

UNION PACIFIC RR VOLUME 2379 PAGE 825

SEE ATTACHED METES AND BOUND DESCRIPTION
NOTE: BEARINGS AND DISTANCES ARE
GIVEN IN DECIMALS OF A DEGREE

SHEPPARD SURVEYING CO. INC. 1013 ENERGY DRIVE ABILENE TX 79602
PHONE 325-644-4427 FAX 325-644-4427

- ☐ RECOVERED 'X' IN CONCRETE
- ☒ SET 'X' IN CONCRETE
- ☐ RECOVERED IRON ROD
- ☒ SET PK NAIL WITH WASHER "SHEPPARD SURVEY MARK 3697"
- ☐ SET 3/8 IRON ROD WITH EASEMENT CAP

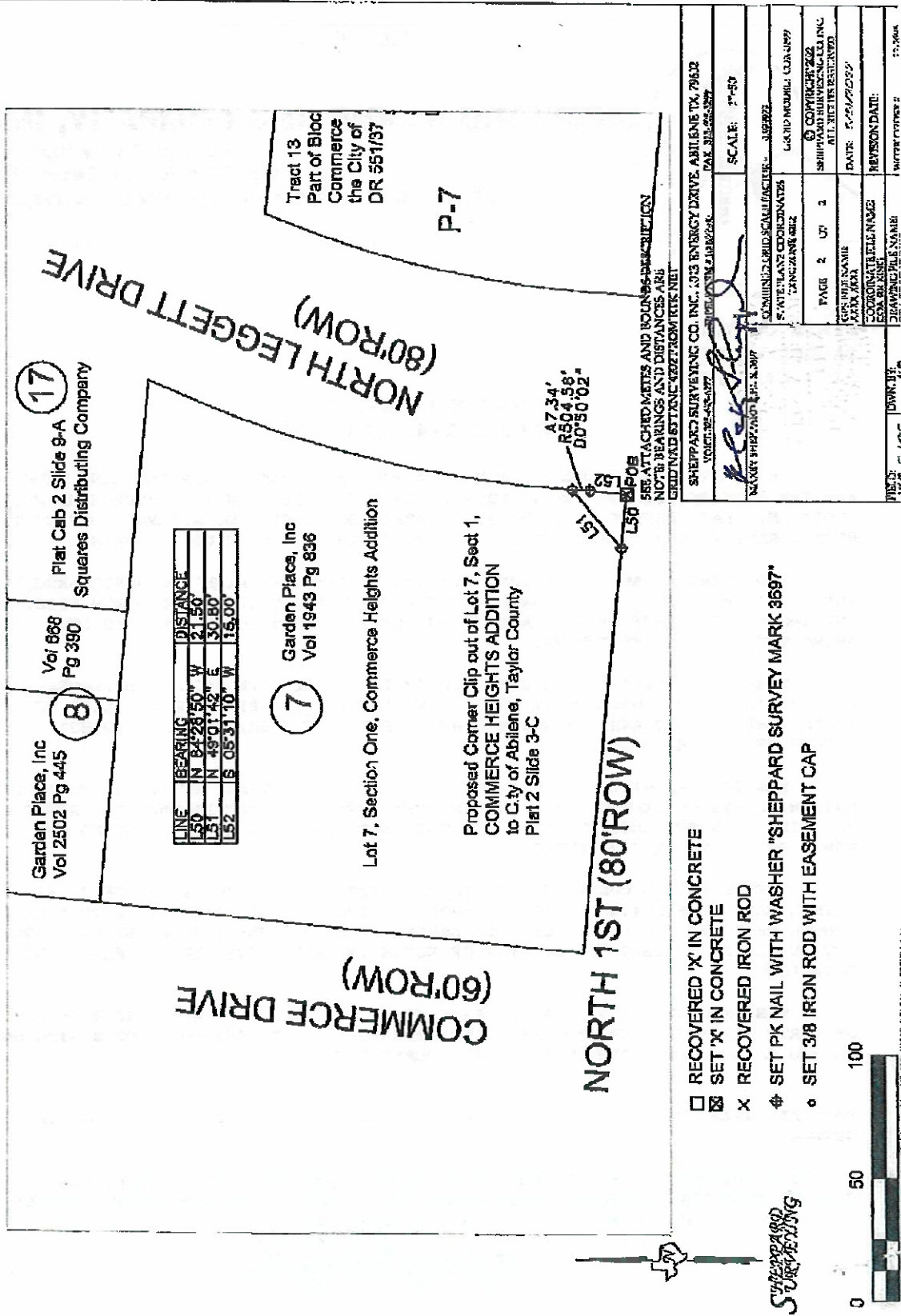
SHEPPARD
SURVEYING



DATE	11-15-2016	SCALE	1"=50'
BY	Sheppard Surveying	PROJECT	COMMERCE HEIGHTS ADDITION
CHECKED	Sheppard Surveying	DATE	11-15-2016
DATE	11-15-2016	REVISION	DATE
COORDINATE FILE NAME	COMMERCE HEIGHTS ADDITION	DRAWING FILE NAME	COMMERCE HEIGHTS ADDITION

EXHIBIT "A"

BLOCK R, THIRD CONTINUATION OF SECTION 2, PARK PLAZA ADDITION



LOT 202, SECTION 2, COMMERCE HEIGHTS ADDITION

NORTH 1ST (80' ROW)

Leggett (80' ROW)

PAK Harris Enterprises, Ltd
Proposed Construction Easement out of Lot
Special Warranty Deed
202, Sect 2, COMMERCE HEIGHTS
Doc No. 2018-00007533
ADDITION

to City of Abilene, Taylor County
Plat 4 Silde 268

LINE	BEARING	DISTANCE
L62	N 01°48'49" E	50.60'
L63	S 84°30'15" E	11.50'
L64	S 01°48'49" W	50.60'
L65	N 84°30'15" W	11.50'

TEXAS TRAILS COUNCIL, the
 ADDITION, Sec'd 2, COMMERCIAL HEIGHTS
 to City of Addicks, Taylor County
 Plat 4 Slide 288

POC RECOVERED IRON ROD

UNION PACIFIC RR VOLUME 2379 PAGE 825

- ☐ RECOVERED 'X' IN CONCRETE
☒ SET 'X' IN CONCRETE
 x RECOVERED IRON ROD
 ⬤ SET PK NAIL WITH WASHER "S"
 • SET 3/8 IRON ROD WITH EASEN



Page 2 of 2

THE ATTACHMENT AND HEIGHTS DESCRIPTION
NOT: BEARINGS AND DISTANCES ARE
GIVEN FROM THE POINT OF ATTACHMENT

STEPPARD SURVEYING CO. INC. 1013 ENERGY DRIVE, ABILENE TX 79602
 817-335-2222 FAX 817-335-2222
 817-335-2222

of

145 115-48-37

२५

“**REALITY**”

-21-

13

ACKNOWLEDGMENTS

142071

4. (H.A.) 100

2011

ALL RIGHTS

1

1111

1

**Regular Agenda Item:
Initiation of Condemnation Proceedings for
Public Access Sidewalk Construction on North
1st Street
(Johnson)**





Condemnation Proceedings for Construction of Sidewalks on North 1st Street

- Union Pacific Railroad and TxDOT making improvements to multiple railroad crossings and associated intersections between North and South 1st Streets as well as T&P Lane
- Included in this project is supporting sidewalks and ramps at numerous intersections adjacent to the railroad crossings
- To date, Staff has acquired 19 permanent and 9 temporary construction easements at intersections along North and South 1st Streets and T&P Lane
- Four (4) easements remain to be acquired to allow start of project





Condemnation Proceedings for Construction of Sidewalks on North 1st Street

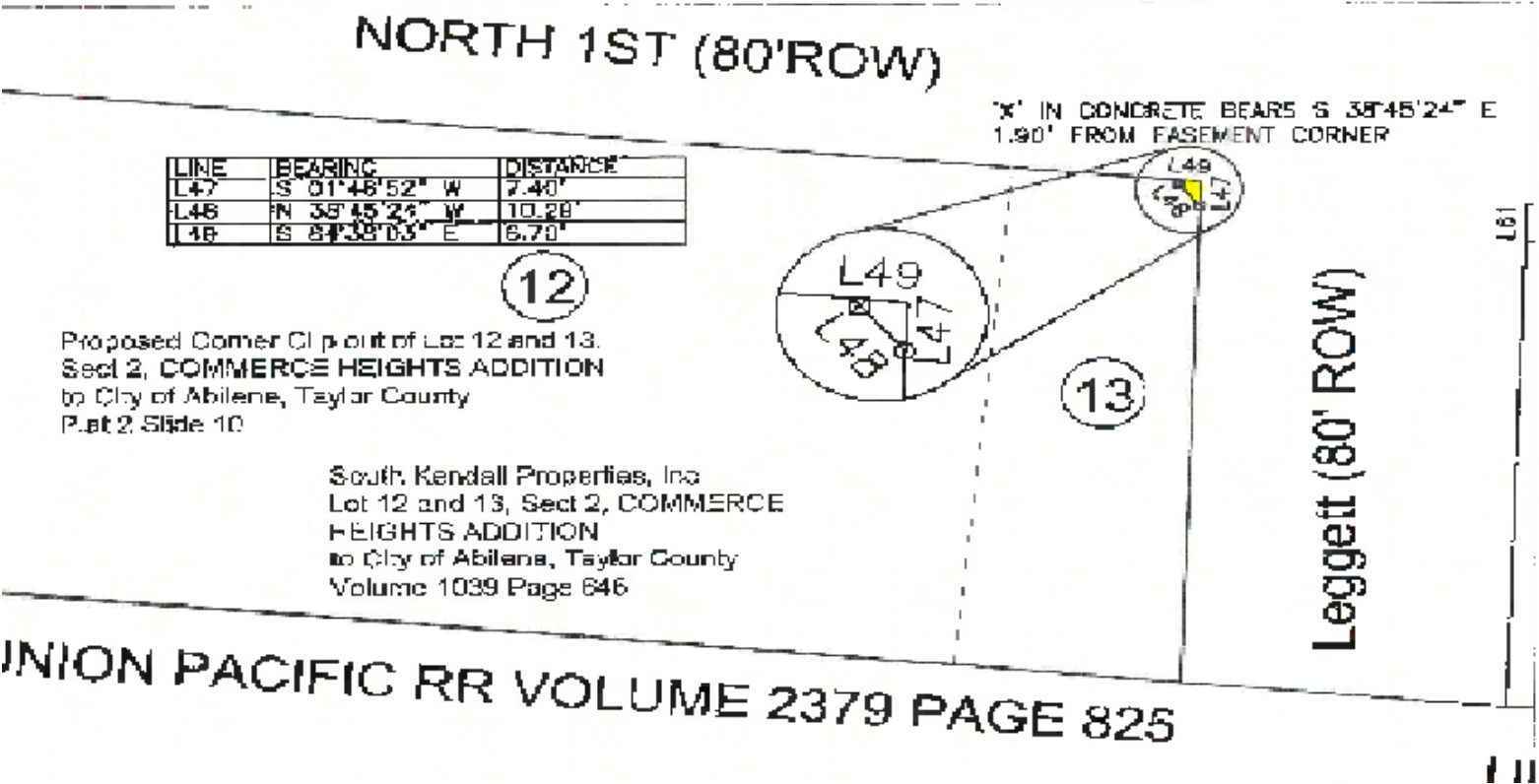
- City requires small easement acquisitions at the following intersections:
 - North 1st Street and Leggett (3 easements)
 - North 1st Street and Pioneer (1 easement)
- North 1st Street and Leggett requirements
 - South Kendall Properties, LLC (Burger King) – 24 sq feet (perm)
 - Garden Place Inc – 242 sq feet (perm)
 - 3W Brands LLC (Golden Chick) – 166 sq feet (perm)/580 sq feet (temp construction)





South Kendall Properties, Inc. (Burger King)

24 sq feet (permanent easement)



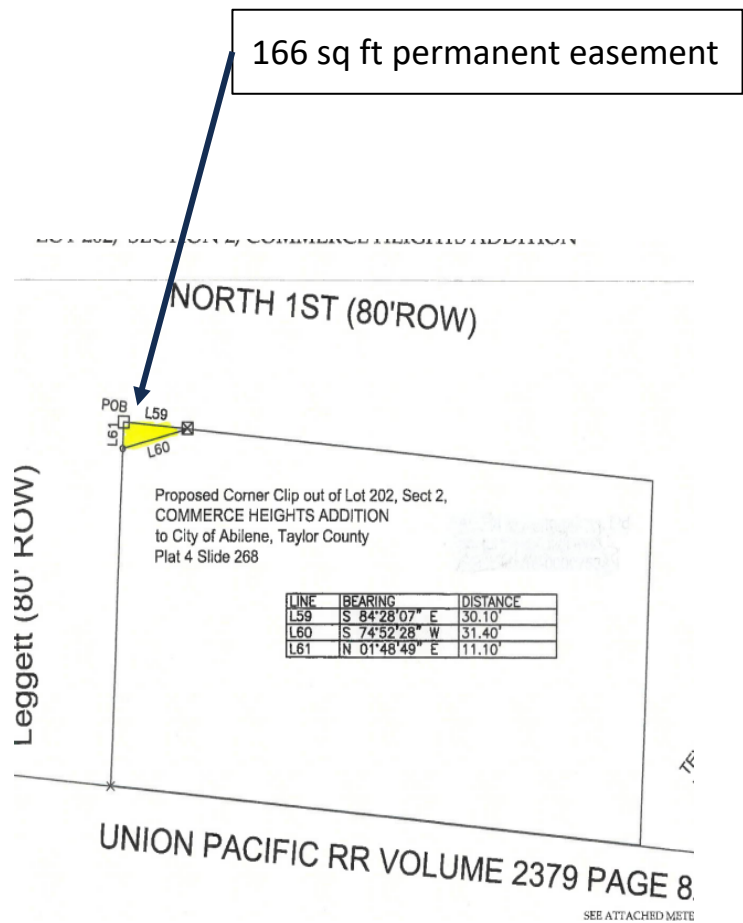
CITY OF
ABILENE
TEXAS



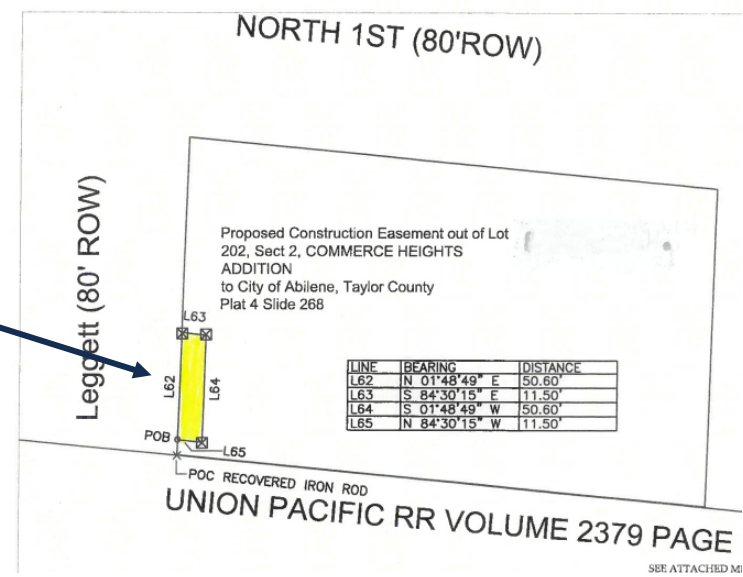


3W Brands, LLC (Golden Chick)

166 sq ft (permanent) and 580 sq ft (temp construction)



580 sq ft temporary construction easement



CITY OF
ABILENE
TEXAS



Condemnation Proceedings for Construction of Sidewalks on North 1st Street

- Approval of this item allows City to begin condemnation proceedings for the four (4) presented easements
- Staff recommends approval to proceed with condemnation proceedings



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 1/12/2023

TO: Robert Hanna, City Manager

FROM: Don Green, Director

SUBJECT: 12. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to award a contract to Teinert Construction for Airport Terminal Modernization Phase 1 (CB-2304) (Don Green)

GENERAL INFORMATION

The city of Abilene/Abilene Regional Airport bid this project (CB-2304) in November, 2022. One bid was received from Teinert Construction in the amount of \$2,660,000.00 for the base bid, plus \$44,500.00 for Add Alternate 1 that is for painting areas not eligible for FAA grant funding. The total contract price will be \$2,704,500.00.

This project will repaint the entire interior of the Airport Terminal to give it a brighter, more modern look, and renovate the Lower Level Restrooms and add a Family/Assisted Restroom.

SPECIAL CONSIDERATIONS

Teinert's bid exceeded the funding available for this project, but Teinert, Airport staff, and our architect firm, Corgan, conducted negotiations to reduce the project cost and still attain the intended goals of the project. This contract award will be followed by the request to approve Change Order One to reduce the contract price to the negotiated amount.

FUNDING/FISCAL IMPACT

This project is funded by two Federal Aviation Administration Grants: 55 and 56, which were both accepted by Council on August 11th. These grants each require a 10% Local Match which is funded from the remaining 2015 General Obligation Bond Proposition 9 funds. Additionally, there is \$44,500.00 of identified work included in the project scope that is ineligible for FAA Grant funding. The grant ineligible work is for painting in office/leased areas that are visible to

the public, therefore critical to the completeness of this project. The grant-ineligible amount will be funded 100% by the GO Bond funds.

STAFF RECOMMENDATION

Staff recommends approval of this contract.

BOARD OR COMMISSION RECOMMENDATION

The Airport Development Board approved its recommendation at its December 14, 2022 meeting. Add Alternate 1 will be considered by the Airport Development Board at its January 11, 2023 meeting.

ATTACHMENTS:

1. Teinert Contract Award Resolution (1-12-23)
2. Teinert Construction Contract Presentation

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING
A CONTRACT AWARD TO TEINERT CONSTRUCTION FOR CONSTRUCTION OF THE
TERMINAL MODERNIZATION PHASE ONE PROJECT AT ABILENE REGIONAL AIRPORT.**

WHEREAS, the City of Abilene (City) owns and operates Abilene Regional Airport; and

WHEREAS, the Airport Terminal has a need to undergo substantial improvements to maintain functional efficiency and update the aesthetics for passengers and tenants; and

WHEREAS, the City conducted a Request for Bids (CB-2304) and received one bid; and

WHEREAS, Teinert Construction submitted a base bid of \$2,660,000.00 and Add Alternate 1 of \$44,500.00; and

WHEREAS, this project is funded by Airport Improvement Grant 55, Airport Infrastructure Grant 56, and Proposition 9 funds from the 2015 General Obligation Bond; and

WHEREAS, the Airport Development Board approved its recommendation at its December 14, 2022 meeting.

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

1. That the City Manager is authorized to enter into the contract with Teinert Construction for construction of Airport Terminal Modernization Phase One for \$2,704,500.00.
2. That this resolution takes effect immediately upon Council approval.

ADOPTED this 12th day of January 2023.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

City Council Meeting

January 12, 2022



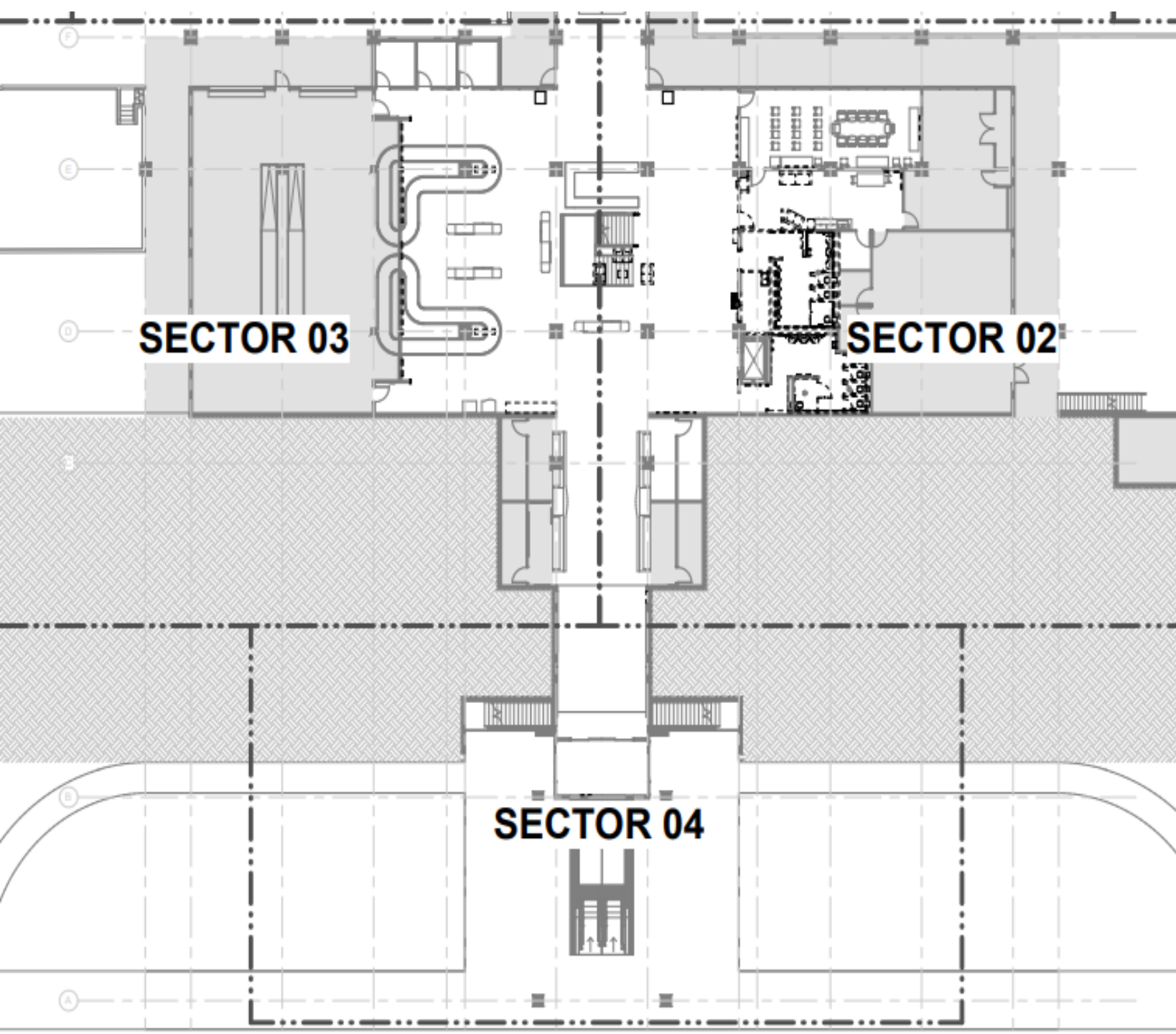


Airport Terminal Modernization – Phase 1

- The City conducted a Request for Bids (CB-2304) to make improvements in the Airport Terminal.
- The improvements include: Lower level Restrooms Renovation, Adding an Assisted/Family Restroom, Painting the Interior of the Terminal, and Removing the Gift Shop.
- Teinert Construction was the sole bidder.
- This project is funded by two grants from the FAA and 2015 GO Bond Proposition 9 funds.
- The bid price was \$2,660,000.00, plus \$44,500.00 for Add Alternate 1. Total contract is \$2,704,500.







CITY OF
ABILENE
TEXAS





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 1/12/2023

TO: Robert Hanna, City Manager

FROM: Don Green, Director

SUBJECT: 13. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to approve Change Order 1 to the Terminal Modernization Phase One Contract with Teinert Construction (Don Green)

GENERAL INFORMATION

The bid price from Teinert Construction for this project (CB-2304) exceeded the budgeted amount. Therefore, the airport's staff, architect, and Teinert representatives discussed options to reduce this contract price and still preserve the overall impact of this project. Teinert proposed multiple cost savings and the total of those changes selected by Airport staff resulted in a cost reduction of \$937,276.00. This change order brings the total contract value from \$2,704,500.00 to \$1,767,224.00.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff has reviewed all of the proposed reductions and selected those items that reduced the contract price to an acceptable level and still maintained the intentions of the project.

BOARD OR COMMISSION RECOMMENDATION

The Airport Development Board approved its recommendation to accept Change Order 1 at its

December 14, 2022 meeting.

ATTACHMENTS:

1. Teinert Contract Change Order 1 Resolution (1-12-23)
2. ABI VE Log 12.8.22
3. Teinert Construction Contract Change Order 1 Presentation

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING CHANGE ORDER ONE TO THE CONTRACT WITH TEINERT CONSTRUCTION FOR CONSTRUCTION OF THE TERMINAL MODERNIZATION PHASE ONE PROJECT AT ABILENE REGIONAL AIRPORT.

WHEREAS, the City of Abilene (City) owns and operates Abilene Regional Airport; and

WHEREAS, the City awarded the contract for construction of the Airport Terminal Modernization Phase One project to Teinert Construction for \$2,704,500.00; and

WHEREAS, the City, its architect, and Teinert Construction agreed to changes that reduced the cost of the contract by \$937,276.00 through Change Order 1; and

WHEREAS, Change Order One reduces the contract amount to \$1,767,224.00; and

WHEREAS, the Airport Development Board approved its recommendation at its December 14, 2022 meeting.

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

1. That the City Manager is authorized to execute Change Order One to the contract with Teinert Construction for construction of Airport Terminal Modernization Phase One for a reduction of \$937,276.00.
2. That the new contract price is \$1,767,224.00.
3. That this resolution takes effect immediately upon Council approval.

ADOPTED this 12th day of January 2023.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

STATUS KEY:
A = Accepted
P = Pending
R = Rejected

12/8/2022



VALUE ENGINEERING LOG

Item No.	Description	Anticipated Cost Reduction*	Status	Notes / Comments
1	Remove WC and Tape, Bed, Paint, ILO Replacing WC	(\$33,500)	A	
2	Delete Prepare & Painting of Existing Handrail/Guardrail	(\$6,800)	A	
3	Exclude lath, and Direct Adhere to Existing Aggregate Panel	(\$20,059)	R	Installed had luck at KPMG's Lobby at 717 Harwood, Dallas, and at DFW Airport Terminal D
4	Delete MC-1 & Replace with Standard Grid & Tile	(\$14,000)	R	
5	Delete Replacement of Switches and Receptacles	(\$12,400)	R	
6	Delete Acoustical Insulation Scope, Provide Painted Ceilings.	(\$285,900)	A	
7	Owner Remove & Rehang Signage	(\$36,248)	A	
8	Lay Tile on Top of Terrazzo	(\$42,500)	A	
9	Delete Nursing Mothers Room	(\$24,605)	A	
10	Delete Steel Unit Cost	(\$13,962)	A	
11	Use Hannex Solid Surface	(\$10,000)	R	
12	Paint the Exposed Aggregate with 1 Coat Kel-Bond and 2 Coats DuraPoxy HP	(\$384,348)	A	Cannot be accepted with Item 3.
13	Bradley Sinks ILO Splash Lab Sinks	(\$43,360)	R	Cannot be accepted with Item 15.
14	Delete Lining of Sewer Pipe	(\$65,000)	A	
15	Custom Fabricated Sink ILO Splash Lab	(\$44,413)	A	Cannot be accepted with Item 13.

TOTAL OFFERED REDUCTIONS:	(\$1,037,095)
TOTAL ACCEPTED REDUCTIONS:	(\$937,276)
TOTAL PENDING REDUCTIONS:	\$0
TOTAL REJECTED REDUCTIONS:	(\$99,819)
TOTAL BASE BID W/ NO VE	\$2,660,000
TOTAL WITH ACCEPTED VE OPTIONS	\$1,722,724

City Council Meeting

January 12, 2022





Teinert Construction Contract Change Order 1

- The City conducted a Request for Bids (CB-2304) to make improvements in the Airport Terminal.
- The improvements include: Lower level Restrooms Renovation, Adding an Assisted/Family Restroom, Painting the Interior of the Terminal, and Removing the Gift Shop.
- Teinert Construction was awarded the contract for \$2,704,500.00.
- Airport staff, the architect and Teinert representatives discussed ways to reduce the cost to better fit the budget.
- Change Order 1 reduces the contract by \$937,276.00
- The new contract price is \$1,767,224.00.



STATUS KEY:

A = Accepted
P = Pending
R = Rejected

12/8/2022


VALUE ENGINEERING LOG

Item No.	Description	Anticipated Cost Reduction*	Status	Notes / Comments
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TOTAL OFFERED REDUCTIONS: (\$1,037,095)

TOTAL ACCEPTED REDUCTIONS: (\$937,276)

TOTAL PENDING REDUCTIONS: \$0

TOTAL REJECTED REDUCTIONS: (\$99,819)

TOTAL BASE BID W/ NO VE \$2,660,000

TOTAL WITH ACCEPTED VE OPTIONS \$1,722,724



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 1/12/2023

TO: Robert Hanna, City Manager

FROM: Don Green, Director

SUBJECT: 14. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to approve a Ground Lease and Concession Agreement with Bowie's ABI, LLC. (Don Green)

GENERAL INFORMATION

Airport staff was approached by individuals with Bowie's ABI, LLC to construct and operate a retail fuel station, convenience store and restaurant on City/Airport property along Hwy 36. The specific area wanted for this development was identified in the Airport's Land Use Plan Area B along Hwy 36 just south of the FM 18 intersection. This site gives good public visibility and will have good access with a road to be constructed by Bowie's ABI to the site.

Due to the investment in improvements to be built by Bowie's ABI, the ground lease will be for 40 years, which is the maximum term allowed by the State of Texas for a municipality.

Construction of these improvements, including the road, will start no later than one year after the effective date of this lease.

SPECIAL CONSIDERATIONS

In consideration of Bowie's construction of the access road and turning over ownership of it to the City upon completion, the City agrees not to enter a lease agreement for a retail fuel and convenience store on City or Airport property within a one mile radius of the Bowie's site during the term of this agreement.

A survey and legal description of the leased premises will replace the current Exhibit 1 when it is completed.

FUNDING/FISCAL IMPACT

In accordance with Article 4 of the Agreement, the Airport will receive ground rent from Bowie's ABI, LLC after the access road construction cost has been amortized for 10 years. Additionally, the Airport will receive a concession fee as a percentage of all gross sales on the leased premises effective upon opening for business.

STAFF RECOMMENDATION

Staff recommends approval of this agreement.

BOARD OR COMMISSION RECOMMENDATION

The Airport Development Board is expected to approve its recommendation for Council approval at its January 11th meeting. If the board does not approve, this item will be pulled from Council consideration.

ATTACHMENTS:

1. Bowies Lease Resolution
2. Signed - Airport_Bowies ABI LLC Ground Lease and Concession Agreement 01.2023 (1)
3. Bowies Lease Presentation (1-12-22)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TO ENTER INTO A GROUND LEASE AND OPERATING AGREEMENT WITH BOWIE'S ABI, LLC FOR A RETAIL FUEL STATION, CONVENIENCE STORE AND RESTAURANT ON ABILENE REGIONAL AIRPORT PROPERTY

WHEREAS, the City of Abilene (City) owns and operates Abilene Regional Airport (ABI); and

WHEREAS, certain Airport property has been identified for various commercial uses; and

WHEREAS, Bowie's ABI, LLC has agreed to lease approximately 9.5 acres of land to develop a retail fuel station, convenience store and restaurant; and

WHEREAS, Bowie's ABI, LLC will construct an access road from Highway 36 to the leased premises to the City's specifications and convey ownership of the access road to the City upon completion; and

WHEREAS, the City will lease the land to Bowie's ABI, LLC for forty (40) years for and in consideration of payments to the City as detailed in the lease; and

WHEREAS, in consideration of the access road being constructed and conveyed to the City, the City will not lease City-owned land to another retail fuel station and convenience store within one-mile radius of the leased premises for the duration of the lease; and

WHEREAS, the Airport Development Board approved its recommendation at its January 11, 2023 meeting.

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

1. That the City Manager is authorized to enter into the Ground Lease and Operating Agreement with Bowie's ABI, LLC.
2. That this Resolution takes effect immediately upon Council approval.

ADOPTED this 12th day of January 2023.

ATTEST:

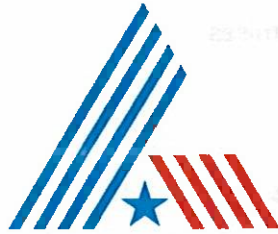
Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

INDEX



**ABILENE
REGIONAL AIRPORT
CITY OF ABILENE TEXAS**

**LEASE AND CONCESSION AGREEMENT FOR
OPERATION OF
RETAIL FUEL STATION, CONVENIENCE STORE, AND RESTAURANT**

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ABILENE REGIONAL AIRPORT LEASE AND CONCESSION AGREEMENT

This Abilene Regional Airport Lease and Concession Agreement (hereinafter "Agreement") is entered into by and between the **City of Abilene** ("Lessor"), a Texas home-rule municipal corporation, acting by and through its City Council, and **Bowie's ABI, LLC**, a Texas Limited Liability Company ("Lessee"), acting by and through its duly authorized officer.

WHEREAS, Abilene Regional Airport (the "Airport") and the traveling public will benefit from a retail fuel station, convenience store, and restaurant on the Airport premises; and

WHEREAS, Lessee hereby agrees to construct such retail fuel station, convenience store, and restaurant on the Leased Premises defined herein in accordance with the terms of this Agreement at Lessee's sole cost; and

WHEREAS, Lessor and Lessee have agreed to enter into this Agreement for the purpose of allowing Lessee to construct the retail fuel station, convenience store, and restaurant and for the other purposes set forth herein.

NOW THEREFORE:

Lessor and Lessee for and in consideration of the mutual covenants and promises herein expressed do hereby agree as follows:

ARTICLE 1. DEFINITIONS

As used herein, the following words and phrases shall have the meanings set forth below:

- 1.1 "Access Road" is the road to be constructed at the sole cost of Lessee from Highway 36 to the Leased Premises for use by the public and further described in **Article 14 – Construction (Leased Premises Improvements and Access Road)**
- 1.2 Affiliate. "Affiliate" means any corporation or other entity which directly or indirectly controls or is directly or indirectly controlled by or is under common control with Lessee; "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.
- 1.3 "Airport" means Abilene Regional Airport.
- 1.4 "Appraisal Process" is defined in **Article 28 - Holding Over**.
- 1.5 "Director" means the Director of Transportation Services for the City of Abilene or his/her designee.
- 1.6 "Capital Improvements" mean any item that enhances the value of the Leased Premises having a net cost in excess of one hundred thousand dollars (\$100,000.00) and a useful life in excess of ten (10) years,

constructed to expand facilities, improve or develop the Leased Premises, as well as any extraordinary or substantial expenditure whose object is to preserve, enhance or protect the Leased Premises, the construction of which is commenced after the Effective Date of this Agreement. Capital Improvements, as used in this Agreement, are improvements to the real estate. Capital Improvement does not include trade fixtures, items that can be removed from the Leased Premises without damaging the Leased Premises, or personal property.

- 1.7 "City" means City of Abilene.
- 1.8 "Effective Date" is defined in **Article 3 - Term**.
- 1.9 "Contractual Charges" is defined in **Article 4 - Rent**.
- 1.10 "Day" means calendar day and not business day.
- 1.11 "DOT" means the United States Department of Transportation, and any federal agency succeeding to its jurisdiction.
- 1.12 "FAA" means the Federal Aviation Administration of the United States government, and any federal agency succeeding to its jurisdiction.
- 1.13 "Fuel Facilities" is defined in **Section 19.1**.
- 1.14 "Fuel Facilities Operations Manual" is defined in **Section 19.5**.
- 1.15 "Gross Receipts" is defined in **Article 4 - Rent**.
- 1.16 "Guaranteed Rent" means the Minimum Annual Guaranteed Rent ("**MAG**") more fully described in **Article 4**.
- 1.17 "Improvements" is defined in **Section 17.1**. Improvements include "Project Improvements" as well as all additional improvements constructed by Lessee at any time during the Primary Term and lease extensions.
- 1.18 "Initial Construction Period" is defined in **Section 4.1.1**.

"Lease Operating Year" means any successive twelve (12) month period commencing on the first day of the month following the Retail Fuel Station and Convenience Store opening for business.
- 1.19 "Leased Premises" means those certain premises at Airport more particularly described in **Article 2 – Description of Leased Premises**.
- 1.20 "Project Improvements" is defined in **Article 14 – Construction by Lessee**.
- 1.21 "Retail Fuel Station, Convenience Store, and Restaurant" means the fuel station and convenience store, with a restaurant, to be constructed by Lessee at its sole cost, as more particularly described in **Article 14 - Construction by Lessee**.

- 1.22 "Sign" means any advertising sign, billboard, identification sign or symbol, or other similar device, regardless of content.
- 1.23 "Subsidiary" means any corporation or other entity not less than fifty percent (50%) of whose outstanding stock (or other form of equity ownership) shall, at the time, be owned directly or indirectly by Lessee or the entity owning directly or indirectly 50% or more of Lessee, as applicable.

ARTICLE 2. DESCRIPTION OF LEASED PREMISES

- 2.1 Lessor, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by Lessee, does hereby lease unto Lessee, and Lessee does hereby accept from Lessor, the following described property (collectively referred to as "Leased Premises"):

Approximately 9.5 acres of land at the northeastern corner of the Development Area B, at the Abilene Regional Airport, Abilene, Taylor County, Texas, as more particularly described in **Exhibit 1** ("Ground Space").

The survey and metes and bounds description of the Ground Space are attached hereto as **Exhibit 1**, and incorporated into this Agreement, as the controlling description of the Ground Space.

- 2.2 Lessor and Lessee acknowledge that the Leased Premises is subject to an Aviation Easement over the Leased Premises, as reflected in **Exhibit 2**.

ARTICLE 3. LEASE TERM

- 3.1 Term.

The term of this Agreement shall be forty (40) years and shall commence on the date of the adoption or passage of a Resolution by the City Council of Abilene approving this Agreement ("**Effective Date**"), and shall terminate (unless earlier terminated in accordance with this Agreement) at 11:59 pm of the last day of said forty (40) years. In addition, the parties may agree to voluntarily terminate this Agreement in the event Lessee transfers ownership of the Retail Fuel Station, Convenience Store and Restaurant to a third-party, in which case Lessee shall notify Lessor of such ownership transfer at least 60 days prior to completion of the sale. The Lessor and Buyer may elect to assign the lease to the buyer as stated in Article 29, or negotiate, in good faith, a new lease.

- 3.2 Late Opening.

Except as otherwise provided in **Article 14 – Construction by Lessee**, if Lessee fails to begin construction of the Retail Fuel Station and Convenience Store and Restaurant within 365 days after the Effective Date of this lease, the Lessor may find Lessee in Default and seek remedies as prescribed in Article 27. Furthermore, if Lessee's Retail Fuel and Convenience Store are not open for business within 730 days (approximately 24 months) following the Effective Date, and such failure shall not be due to the fault of Lessor including, but not limited to, obtaining approval from the Lessor of the Lessee's plans and obtaining any permits, certificates, or determinations from the City or Federal Aviation Administration, and not due to delays caused by Lessor for City's failure to timely approve or provide comments to Lessee's plans within 45 days

after submittal by Lessee, that the Lessor may find Lessee in Default and seek remedies as prescribed in Article 27.

ARTICLE 4. RENT

- 4.1 Lessee shall pay Lessor rental as stated in this Article 4, in advance (without notice or demand, both of which are expressly waived) at the times and in the manner hereinafter provided.

4.1.1 Ground Space Rental

During the Initial Construction Period, Lessee shall pay the sum for Ground Space rental set forth in the table below on a monthly basis, with the first payment prorated from the Effective Date to the first day of the following month. The Initial Construction Period shall commence on the Effective Date and continue until the first day of the first Operating Year. After the Initial Construction Period and upon any of the Convenience Store, Fuel Station, and Restaurant being opened for sales, this agreement will enter the first Operating Year. Ground Space Rental shall begin to be paid in Operating Year 11. Ground Space Rent will be paid per the schedule Table 4.1

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Table 4.1

Ground Space	Total Sq. Footage*	Annual Rate Per Sq. Ft.	Annual Rate	Monthly Rental	Bowie's ABI Total Rent Paid during period
Initial Construction Period	413,820	\$ -	\$ -	\$ -	\$ -
Operating Years 1-5	413,820	\$ -	\$ -	\$ -	\$ -
Operating Years 6-10	413,820	\$ -	\$ -	\$ -	\$ -
Operating Years 11-15	413,820	\$ 0.050	\$ 20,691	\$ 1,724	\$ 103,455
Operating Years 16-20	413,820	\$ 0.058	\$ 23,795	\$ 1,983	\$ 118,973
Operating Years 21-25	413,820	\$ 0.066	\$ 27,364	\$ 2,280	\$ 136,819
Operating Years 26-30	413,820	\$ 0.076	\$ 31,468	\$ 2,622	\$ 157,342
Operating Years 31-35	413,820	\$ 0.087	\$ 36,189	\$ 3,016	\$ 180,943
Operating Years 36-40	413,820	\$ 0.101	\$ 41,617	\$ 3,468	\$ 208,085

*Square footage is approximate.

4.1.2 Concession Fee

All references in this Article and all subsequent articles, except references to Ground Space Rental, to Lessee regarding the Minimum Annual Guaranteed Concession Fee (MAG) and Percentage Concession Fee will also apply similarly to any Sub-Lessee operating a separate business with sales transacted as described by Article 4.1.2(c) "Gross Receipts".

From and after the beginning of the second Operating Year, Lessee shall pay monthly to Lessor the greater of the Minimum Annual Guaranteed Concession Fee (MAG) or the Percentage Concession Fee (defined below in this subsection). Lessee shall also pay other charges set forth herein.

Lessee's obligation to pay the MAG shall commence upon the beginning of the second Operating Year. The Percentage Concession Fee shall commence immediately upon any of the Convenience Store, Fuel Station, and Restaurant being opened for sales.

(a) Minimum Annual Guaranteed Concession Fee ("MAG")

- (i) During the first Operating Year, and subject to all applicable provisions of this Agreement, Lessee shall not be required to pay to Lessor a Minimum Annual Guaranteed Concession Fee. Commencing upon the beginning of the second Operating Year and throughout the remainder of this Agreement, Lessee shall pay the MAG in equal consecutive monthly installments in advance, on or before the first day of each month, without prior demand or notice. Should any Operating Year contain less than 12 calendar months, the MAG shall be prorated in a manner determined by the Lessor in accordance with customary business practices.
- (ii) The MAG for the second Operating Year and each succeeding Operating Year shall be equal to 85% of the prior year's Concession Fee payables (consisting of the MAG and Percentage Concession Fee). For example, assuming that the Operating Year begins in January, in order to provide the MAG to the Lessee in December, the MAG would be based on the Fee due for the sales during the prior twelve-month period beginning November 1 through October 31. Notwithstanding the foregoing, the MAG for Operating Year 2 shall be calculated on an annualized basis using the first operating months of data available from the first Operating Year. In no event, however, shall the MAG for any Operating Year be less than 100% of the MAG proposed for the second Operating Year or any prorated portion thereof, unless requested in writing by the Lessee due to an unusual circumstance or emergency situation and subject to approval by the Lessor.

(b) Percentage Concession Fee

- (i) Lessee shall pay to Lessor, for each month of the term, the Percentage Concession Fee for those months in which the year-to-date Percentage Concession Fee exceeds the year-to-date MAG. The Percentage Concession Fee shall be equal to the product of the Percentage Concession Fee Rate, times Lessee's year-to-date Gross Receipts (as defined in Subsection (c) below) minus the sum of the year-to-date MAG amount and Percentage Concession Fee paid year-to-date as set forth below $[\text{Percentage Concession Fee} = (\text{Percentage Concession Fee Rate} \times \text{year-to-date Gross Receipts}) - (\text{year-to-date MAG} + \text{Percentage Concession Fee paid year-to-date})]$. Lessee shall pay Percentage Concession Fee, if any, to Lessor monthly without prior notice or demand within sixty (60) days after the expiration of each calendar month. Percentage Concession Fee shall apply at all times during the term of the Operating Period. Percentage Concession Fee is set forth in the table below, and includes

Fuel sales in addition to the stated percentages for Convenience Store sales, Restaurant sales, and lottery sales and pay-outs:

A Percentage Concession Fee will be established and mutually agreed to by the Lessor and Lessee through an Amendment for Electric Vehicle Charging revenues, when/if such charging stations are added. Lessor and Lessee agree to negotiate an Amendment for Electric Vehicle Charging in good faith. In no event shall the Percentage Fee Rate for Electric/Alternative Fuel result in a fee amount that is less than the Retail fuel sales rate.

Product Category	Percentage Fee Rate
All Convenience Store and Restaurant Gross Receipts	1% of Gross Receipts
Commissions paid to Lessee on Lottery Sales and Pay-outs (winnings)	1% of amount paid to Lessee
Retail fuel sales	\$0.01/gallon
Electric/Alternative Fuel To be addressed in an Amendment when such services are to be offered.	

- (ii) If, at the end of any Operating Year, the total amount of monthly installments of Percentage Concession Fees paid for such Operating Year is less than the total amount of annual Percentage Concession Fees required to be paid for such Operating Year, Lessee shall pay the amount of such deficiency on or before the time Lessee provides Lessee's Annual Audit required under **Article 5 – Records and Sales Reports**. If, at the end of any Operating Year, the total amount of monthly installments of Percentage Concession Fees paid based on Gross Receipts for such Operating Year exceeds the total amount of annual Percentage Concession Fees required to be paid for such Operating Year, as indicated in Lessee's Annual Audit, Lessee shall receive a credit equivalent to such excess, which shall be credited by Lessor to the next monthly payment(s) of Percentage Concession Fees due from Lessee to Lessor hereunder. If at the end of the final Operating Year the total amount of Percentage Concession Fees paid by Lessee exceeds the total amount of annual Percentage Concession Fees required to be paid by Lessee for such final Operating Year (calculated in the same manner provided hereinabove for non-final Operating Years), such excess shall be refunded to Lessee within 60 days after Lessee has vacated the Leased Premises at the termination of this Agreement if (i) the Leased Premises are in the condition required by this Agreement, and (ii) any other sums due Lessor from Lessee under this Agreement have been paid in full. Lessor shall be entitled to deduct such remaining sums due from any such excess.
- (iii) The Percentage Concession Fee is agreed to be a portion of the consideration for Lessor to enter into this Agreement and Lessor expects it to supplement the MAG to provide a fair rental return. If Lessee fails to continuously operate its business, keep the required hours or vacates the Leased Premises prior to the expiration of the Term, Lessor will suffer damages not readily ascertainable. Lessor shall have the right to treat any of such events as a material default and breach by Lessee and

Lessor shall be entitled to all remedies provided hereunder or at law.

(c) Gross Receipts

"Gross Receipts" means and includes all monies paid or payable to Lessee, whether for cash, credit or otherwise, for sales made and services rendered at the Leased Premises, regardless of when or where the order therefor is received, including, without limitation: mail, computer, other electronic or telephone orders; all deposits not refunded to or otherwise forfeited by customers; orders taken; the entire amount of the actual sales price and all other receipts for sales and services rendered; all insurance proceeds received due to loss of gross earnings paid under Lessee's business interruption insurance policy.

A "sale" shall be deemed to have been consummated for purposes hereof, and the entire amount of the sales price shall be included in Gross Receipts and deemed received at the time of determination of the amount due for each transaction, whether for cash, credit or otherwise and not at the time of billing or payment. Losses from "bad" checks or credit card fee transactions are Lessee's sole responsibility and shall not be excluded from Gross Receipts. Gross Receipts shall also include all such sales, revenues or receipts generated by Lessee's subtenants or anyone else conducting business pursuant to an arrangement with Lessee within the Leased Premises.

Gross Receipts shall not include: (i) any amounts collected for any federal, state, county and municipal sales taxes, so-called luxury taxes, use taxes, consumer excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed by law upon the sale of merchandise and products or series, but only if separately stated from the sales price and only to the extent paid by Lessee to any duly constituted governmental/taxing authority; (ii) similar taxes as those listed in (i) that are not separately stated from the sales price because it is prohibited by law to do so, such as the mixed beverage tax, but only to the extent paid by Lessee to the applicable taxing authority; (iii) the portion of the sales price for all merchandise and products returned by customers and accepted for credit to the extent of the credit actually given to the customer, as well as rebates, exchanges or allowances made to customers; (iv) shipping and delivery charges if there is not profit to Lessee and such charges are merely an accommodation to customers; (v) sale of trade fixtures, equipment or property which are not stock in trade and not in the ordinary course of business; (vi) receipts in the form of refunds from or the value of merchandise and products; services, supplies or equipment returned to vendors, shippers, suppliers or manufactures including volume discounts received from vendors, suppliers or manufacturers; (vii) customary discounts given by Lessee on sales of merchandise and products or services to Lessee employees, if separately stated, and limited in amount to no more than 1% of Lessee's Gross Receipts per Lease Month; (viii) gratuities for services performed by employees of Lessee which are paid by Lessee's customers to such employees; (ix) exchange of merchandise and products between stores or warehouses owned by or affiliated with Lessee (where such exchange is made solely for the convenient operation of the business of Lessee and not for purposes of consummating a sale which has theretofore been made in or from the Leased Premises and/or for the purpose of depriving Lessor of the benefit of a sale which otherwise would be made in or from the Leased Premises); (x) proceeds from the sale of gift certificates or like vouchers until such time as the gift certificates or like vouchers have been treated as a sale pursuant to Lessee's recordkeeping system or have been recognized as income; (xi) the sale or transfer in bulk of the inventory of Lessee to a purchaser of all or substantially all of lessee's assets in a transaction not in the ordinary course of Lessee's business; (xii) except with respect to proceeds received for business interruptions paid on a gross earnings business interruption insurance policy as provided in the definition of Gross Receipts, receipts from all other insurance proceeds received by Lessee as a result

of a loss or casualty, and; (xiii) unless otherwise agreed by Lessor, sales reported by Lessee under another agreement with the City.

- 4.2 All rentals, fees and charges payable by Lessee to Lessor under the terms hereof, whether or not expressly denominated as rent, shall constitute rent for all purposes, including, but not limited to, purposes of the United States Bankruptcy Code.
- 4.3 Other Contractual Charges. Lessee shall pay the following charges (collectively "**Contractual Charges**") for violation of various lease requirements set out in the referenced sections below. Acceptance of payment for contractual charges shall not constitute a waiver by Lessor of its right to pursue other contractual or legal remedies:

Section	Violation	Amount of fee
5.2(c)	Late Monthly Statements	\$100.00 per month per late statement.
5.2(d)	Late Annual Audit	\$100.00 per month until submitted

4.4 Payments.

All Rents, fees, and charges shall be paid by Lessee by check payable to the City of Abilene, which shall be delivered or mailed, postage prepaid to the address in this section or to such other address as may be designated in writing by Lessor. At the time of this contract, the City of Abilene is unable to accept ACH electronic payments from non-State or Federal sources. This is subject to change and may be provided as an option in the future.

City of Abilene
Attn: Accounts Receivable
555 Walnut St.
Abilene, TX 79601

- 4.5 Time of Payment. The following sets forth the time of Lessee payments of rents, fees, and charges to Lessor which shall all be paid without deduction or setoff:
- (a) Ground Space Rental and MAG shall be due and payable, without deduction or setoff, in monthly installments in advance on or before the first day of each month.
 - (b) Percentage Concession Fees for each month of operations shall be due and payable, without deduction or setoff, on or before the twentieth (20th) day of the month for the prior month.
 - (c) Miscellaneous, Contractual, and/or Late Payment Charges shall be paid by Lessee within ten (10) days of transmittal of an invoice or other writing by Lessor or in conformance with procedures established by Lessor.
- 4.6 Late Payment Charge. If any Rentals, charges, or fees required to be paid to Lessor hereunder are not made when such Rentals, charges and fees are due, including amounts identified as a result of any audit findings, are delinquent for a period of thirty (30) days or more from the date when such payment is due

to Lessor, Lessee shall pay Lessor late fees thereon, from the date such Rents, fees, or charges became payable to the date of payment at the rate of one and one-half percent (1.5%) per month; provided, however, that if the maximum rate then provided by law is less than one and one-half percent (1.5%) per month, then the rate shall be such maximum legal rate. Lessor may, but is not obligated to, provide Lessee with a written reminder when invoiced rents, fees, or charges have not been received within thirty (30) days of the due date. The parties hereto agree that such late payment charge represents a fair estimate of expenses Lessor will incur by reason of any such late payment. Lessor's acceptance of partial payments or late payment charges shall not constitute a waiver of Lessee's default with respect to Lessee's nonpayment nor prevent Lessor from exercising all other rights and remedies available to Lessor under this Agreement or at law.

- 4.7 Lessee's Payment Obligations. Lessor may apply any payments received from Lessee to any Rentals which are then due. If Lessor shall not make any specific application of a payment received from Lessee, then any such payment received shall be applied first to the Rentals which have been overdue for the longest period of time. No designation of any payment by Lessee for application to a specific portion of Lessee's financial obligations hereunder shall be binding unless otherwise required under Texas law. Lessee covenants to pay all Rentals hereunder independent of any obligation of Lessor. No breach of this Agreement by Lessor shall relieve Lessee of its obligation and duty to pay all such Rentals when due under the terms hereof. Except as otherwise specifically set forth herein, all Rentals shall be paid by Lessee to Lessor without set-off, deduction, demand, notice or abatement. All payments received by Lessor shall be credited and be deemed to be on account of the Rental and other charges first then due. No statements or endorsements on any check or any letter accompanying any check or payment of Rental or other charges shall be deemed an accord and satisfaction of any debt or obligation of Lessee hereunder. Lessor reserves the right to accept any check or payment without prejudicing in any way Lessor's right to recover the balance of any and all Rental and other charges due from Lessee after receipt of any such check or payment or to pursue any other remedy provided herein or by law.

ARTICLE 5. RECORDS AND SALES REPORTS

5.1 Lessee's Records.

- (a) Lessee shall keep and maintain full and accurate books and source documents, in accordance with generally accepted accounting principles ("GAAP"), of the Gross Receipts, whether for cash, credit or otherwise, of Lessee's business at any time operated within the Leased Premises and of the operations of each sublessee, joint venture partner or licensee, if any, and shall require and cause all such parties to prepare and keep books, source documents, records and accounts sufficient to substantiate those kept by Lessee (collectively, "Records"). The Records to be kept by Lessee at its principal business office in the United States shall include, without limitation, true copies of all federal, state and local sales and use tax returns and reports, daily receipts from all sales (including those from mail, electronic or telephone orders), duplicate bank deposit slips, invoices, journals, ledgers and other pertinent original sales records and records of any other transactions conducted in or from the Leased Premises. Pertinent original sales records shall also include a point of sale system of record keeping and such other reasonable documentation which would normally be examined by an independent accountant pursuant to GAAP in performing an audit of Lessee's sales sufficient to provide determination and verification of Gross Receipts and the exclusions therefrom.
- (b) Lessee must also provide an electronic cash control system which will provide all significant point-of-sale information reasonably satisfactory to the Lessor which must include sales by general product category,

if applicable;

- (c) Lessee's electronic cash control system must ensure tight cash control, have complete audit capability and include:
- i. the ability to record transactions by sequential control number which can be printed on audit tape(s);
 - ii. be capable of printing transactions on tape or receipt for customers showing time of day and day, month and year;
 - iii. print out customer receipts showing the amount of the transaction, the amount of cash, check or credit tendered and the amount of cash or credit returned to the customer; and
 - iv. the point-of-sale device shall have a provision for non-resettable totals and access for resetting the control totals shall be reserved solely to the point-of-sale device supplier.
- (d) The Records shall be preserved by Lessee and its subcontractors for a period of three (3) years following the expiration of the term or earlier termination of this Agreement. All Records maintained pursuant hereto shall at all reasonable times, during Lessee's normal business hours after 10 days prior written notice, be open to the inspection of, and may be copied or extracted from, in whole or in part, by, Lessor, or Lessor's designated management representatives or agents, including Lessor's internal or external auditors.

5.2 Reports by Lessee.

- (a) Lessee shall deliver to Lessor:
- i. Within sixty (60) days after the expiration of each Lease Month, in the form of a written statement signed by an officer of Lessee, showing the Gross Receipts made from the Leased Premises during such period including an itemization of any exclusions or deductions made to Gross Receipts and the amount of Percentage Fee Rate paid, if any, among other matters ("Monthly Statement"); and
 - ii. Within 180 days after the expiration of each Operating Year and after termination of this Agreement, a written statement on a form reasonably satisfactory to the Lessor signed by an officer of Lessee and audited by an independent certified public accountant ("CPA") employed by Lessee ("Annual Audit") showing in reasonable detail the amount of Gross Receipts made by Lessee from the Leased Premises during the preceding Operating Year including an itemization of any exclusions or deductions made to Gross Receipts, the payments of Guaranteed Rent and Percentage Fee Rate paid among other matters. Lessee shall certify in its Annual Audit that
 - 1) such statements have been prepared in accordance with the terms of this Agreement and GAAP,
 - 2) that all revenues derived from Lessee's activities hereunder which are required to be included in Gross Receipts have been so included, and
 - 3) that all payments of Guaranteed Rent and Percentage Fee Rate have been made in accordance with the terms of this Agreement.
 - iii. The written audit by the independent CPA with respect to the Annual Audit required above shall state that in the CPA's opinion Lessee's total Gross Receipts for the previous Operating Year and the MAG and Percentage Concession Fee paid by Lessee to Lessor were calculated

and reflected by Lessee in its Annual Audit in accordance with the applicable terms of this Agreement and prepared in accordance with GAAP. Lessee shall require all sub-lessees, licensees and/or assignees, if any, to furnish a similar statement.

iv. The Monthly Statements and Annual Audits prepared by Lessee also provide an analysis of operations, which shall include the following data for Convenience Store, fuel, lottery sales, Restaurant, and any other category requested by the Lessor:

- a. Total Gross Receipts and, if requested, Lessee shall calculate such Gross Receipts per square foot of Floor Area in the Leased Premises;
- b. Sales by general product category;
- c. Total number of transactions;
- d. Average dollar amount per transaction;
- e. Sales variance analysis as compared to the immediately prior Lease Month and/or Operating Year;
- f. Sales time distribution if requested by the Lessor; and
- g. Average fuel sales per month.

v. The Lessor may make reasonable changes to the form of the Monthly Statement or Annual Audit from time to time upon 30 days prior notice to Lessee.

- (b) Lessee shall require and deliver a similar Annual Audit, as the Annual Audit required from Lessee, from any Sub-Lessee or operating entity on the Leased Premises.
- (c) If Lessee fails to furnish Lessor with the Monthly Statement required above, Lessee's monthly sales shall be determined by assuming that the total sales during the preceding month were one hundred fifty percent (150%) of Gross Receipts for the highest month in the preceding 12- month period. Any necessary adjustment in such Percentage Concession Fee shall be calculated after an accurate report is delivered to the Lessor by Lessee for the month in question, and resulting surpluses or deficits shall be applied to Lessee for the next succeeding month. An accounting fee of \$100 per month per late monthly statement will be charged to Lessee and shall be payable by Lessee for the additional services required by Lessor pursuant to this paragraph. This remedy shall be in addition to other remedies provided herein or by law to Lessor. If Lessee fails to furnish Lessor with an Annual Audit, or with a sub-lessee's Annual Audit, as required above, the Lessee shall pay within 10 days of written demand therefor by Lessor as a contractual charge of \$100.00 per month, or fraction thereof, until the Annual Audit is delivered to Lessor by Lessee. This remedy shall be in addition to other remedies provided herein or by law to Lessor.
- (d) If Lessee fails to furnish to the Lessor an Annual Audit as required above, the Lessee shall pay within 10 days of written demand therefor by Lessor as a contractual charge of \$100.00 per month, or fraction thereof, until the Annual Audit is delivered to Lessor by Lessee. This remedy shall be in addition to other remedies provided herein or by law to Lessor.

ARTICLE 6. AUDIT

6.1 Right to Examine Books.

Notwithstanding the acceptance by Lessor of payments of Rentals or installments thereof, Lessor shall

have the right to audit all Rentals and other charges due hereunder. Lessee shall make available to the Lessor within thirty (30) days following Lessor's written request for the same at the Lessor's office in the Airport for the purpose of examination, extracting and/or copying all books, source documents, accounts, records and sales tax reports filed with applicable government agencies of Lessee and any sublessees, licensees and/or assignees, if any, in order to verify the amount of Gross Receipts in and from the Leased Premises and the amount of all Rentals.

6.2 Audit.

Lessor may at any time upon thirty (30) days' prior written notice to Lessee, cause a complete audit to be made by an auditor or accountant selected by Lessor, or internal City auditor or City compliance personnel, of the entire records and operations of Lessee and/or any sublessees, licensees and/or assignees, if any, relating to the Leased Premises for the period covered by any statement issued or required to be issued by Lessee as above set forth in **Article 5 – Records and Sales Reports**. Lessee shall make available to Lessor's auditor at its office in the Airport within thirty (30) days following Lessor's written notice requiring such audit, all of the books, source documents, accounts, records and sales tax reports of Lessee which such auditor deems necessary or desirable for the purpose of making such audit. If the audit is conducted after the expiration of this Agreement, Lessee shall make the records available at the address indicated by Lessor. If such audit discloses that Lessee's Gross Receipts as previously reported for the period audited were understated, Lessee shall immediately pay to Lessor the additional Percentage Fee Rate due for the period audited together with interest at the Interest Rate from the date(s) such amount was originally due. Further, if such understatement was in excess of one percent (1%) of Lessee's actual Gross Receipts as disclosed by such audit, Lessee shall immediately pay to Lessor or to Lessor's designee the reasonable and actual cost of such audit, within 30 days of an invoice therefor. If such understatement was in excess of five percent (5%) of Lessee's Gross Receipts as disclosed by such audit due to Lessee's intentional, willful or fraudulent act or omission, Lessor may declare this Agreement terminated and the term ended, in which event this Agreement shall cease and terminate on the date specified in such notice with the same force and effect as though the date set forth in such notice were the date set forth in this Agreement for expiration of the term, and Lessee shall vacate and surrender the Leased Premises on or before such date in the condition required by this Agreement for surrender upon the expiration of the term. If upon examination or audit Lessor's auditor, accountant or representative reasonably determines that sufficient documentation is not maintained, retained, recorded, or available in accordance with GAAP to verify Lessee's actual Gross Receipts, Lessee shall pay for the reasonable and actual cost of such audit and, in addition, should Lessor deem it necessary, Lessee shall reconstruct, at its sole cost and expense, all records for the determination of Gross Receipts for any period being audited.

If Lessee is not able to provide records as required under this Article, Lessor reserves the right to review records/conduct an audit at Lessee's office within the continental United States of America, at Lessee's full expense. Upon written demand by Lessor, Lessor shall be entitled and Lessee shall advance all expenses associated with conducting the audit.

ARTICLE 7. CONDUCT OF BUSINESS BY LESSEE

7.1 Permitted Use.

Lessee shall use the Leased Premises solely for (i) during the Initial Construction Period, construction of the Project Improvements, and (ii) upon completion of construction, operation of the Retail Fuel Station, Convenience Store, and Restaurant, and other reasonably incidental uses, and for such other purposes as

may be approved in writing by the Lessor.

7.2 Retail Fuel Station.

Lessee shall provide low-grade regular unleaded, mid-grade regular unleaded, and premium unleaded gasoline, diesel fuel, and is permitted to provide low or zero-emission alternative fuel options, including electric car charging stations. All fueling equipment, including fuel tanks, must meet all applicable Federal, State and local laws, regulations, ordinances and requirements, including but not limited to those mandated by the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), the Texas Railroad Commission (TRC), and the State Energy Conservation Office (SECO). Lessee shall provide and maintain sufficient quantities of fuel to satisfy anticipated customer demand. Self-service pumps shall be fully automated allowing customers to pay-at-the-pump with the credit and debit cards normally accepted by Lessee pursuant to Section 8.1 below. All pump islands and fueling positions shall be covered by a permanent overhead canopy.

7.3 Convenience Store.

Convenience Store shall offer standard convenience store retail items and amenities. Convenience Store may sell beer and wine at retail to be sold for off-site consumption only. Applications and associated fees for a beer/wine permit from the Texas Alcoholic Beverage Commission are the sole responsibility of Lessee. Lessee may sell lottery tickets. Convenience Store shall include public restrooms. Convenience Store shall provide separate public restrooms for men and women which are accessed from the interior of the facility. There shall be a sufficient number of restrooms to serve anticipated customer demand.

7.4 Restaurant.

Lessee shall provide a Restaurant within the Convenience Store structure, and/or on the Leased Premises, through itself or through a sub-lessee, concession, or management or similar agreement. The selection of the Restaurant shall be subject to the prior written approval of Lessor.

7.5 Restrictions on Privileges, Uses, and Rights.

- (a) The rights granted hereunder are expressly limited to the construction, maintenance, and operation of the Retail Fuel Station, Convenience Store, and Restaurant pursuant to the terms and conditions of this Agreement.
- (b) Lessee covenants and agrees that the Leased Premises shall be utilized solely for the uses permitted in this Agreement and for no other purpose whatsoever.
- (c) Parking of boats, motor homes or inoperable or derelict vehicles and the stockpiling or storage of inoperable equipment, machinery, or containers is strictly prohibited.
- (d) All storage and dumpsters must be screened or concealed from public view, and storage shall be limited to the storage incidental to Lessee's overall operations on the Leased Premises.
- (e) Persons, including, but not limited to, Lessee's employees, shall not loiter or remain overnight on the Leased Premises. The foregoing will not preclude Lessee's personnel from being present on

the Leased Premises while on-duty.

- (f) Notwithstanding anything to the contrary contained herein, including Lessee's Permitted Use, if the Lessor reasonably determines that any item and/or service displayed, offered for sale or sold by Lessee is objectionable or inappropriate for display or sale at the Leased Premises, including, but not limited to, Adult Materials as set forth in Section 8.5 below, Lessee shall, within one (1) day after delivery of the Lessor's written notice to the Lessee, immediately remove such item and/or service from display and its inventory. If the objectionable item and/or service displayed, offered for sale or sold shall be deemed to be offensive or potentially dangerous to the general public, as reasonably determined by the Lessor from time to time, Lessee shall remove such offensive or potentially dangerous item and/or service immediately upon verbal notice from the Lessor, and Lessee shall not thereafter display, offer for sale or sell any such objectionable or inappropriate item and/or service. If Lessee shall fail to remove any such item and/or service from display as may be required from time to time by Lessor within such 1-day period, or immediately if required herein, then Lessee shall pay, within 10 days of demand therefor by the Lessor, Contractual Charges in the amount of not more than \$150.00 per day until such time as Lessee has removed any such item and/or service from display. This remedy shall be in addition to any and all other remedies provided in this Agreement or by law to Lessor.
- (g) Lessee represents and warrants that it holds all certificates, permits, licenses or other entitlements required by federal, state or local, laws, rules or regulations in order to enable Lessee to conduct its operations and to engage in its Permitted Use and that such certificates, permits, licenses or other entitlements are and shall be kept current, valid and complete at all times during the term hereof. Lessee shall submit any of the foregoing for inspection by Lessor from time to time. Lessee, at Lessee's expense, shall at all times comply with the requirements of any and all such certificates, permits, licenses or other entitlements.

ARTICLE 8. OPERATION OF BUSINESS

- 8.1 Lessee agrees to be open to the public for business and to continuously and uninterruptedly operate in all of the Leased Premises during the entire term following the beginning of first Operating Year, to actively and diligently conduct its business at all times in a first class and reputable manner, making every reasonable and lawful effort to develop, maintain and increase Lessee's business, using best efforts to achieve maximum sales volumes, customer satisfaction and maintaining at all times a complete stock of high quality merchandise and products.

Lessee will at all times provide a well-managed, appropriately staffed, and clean interior of the property. Lessee will address any customer complaints in a timely fashion. Lessee agrees to accept at least three (3) nationally recognized credit and debit cards for payment of purchases made at the Leased Premises.

- 8.2 Lessee shall not abandon or permanently vacate the Leased Premises without the prior, advance written approval of the Lessor. For purposes hereof, "abandonment" shall mean closing the Leased Premises to public trade for five (5) or more consecutive days, unless other provisions herein permit such closing.
- 8.3 Lessee shall be obligated to be open to the public for business and to operate continuously during all established business hours identified further below. Convenience Store and Restaurant shall be open for the days per week and operation hours deemed appropriate by the Lessee and provided in writing to the Lessor. Fuel pumps shall be operational for sales 24 hours per day, 7 days per week, with point-of-sale

payment available during hours when the Convenience Store is closed. The Restaurant may be closed for holidays designated in writing by the Lessee to the Lessor.

- 8.4 The management, maintenance, and operation of the Leased Premises shall be at all times during the term hereof under the supervision and direction of an active, qualified, competent, and experienced manager to be assigned at the Leased Premises during normal business hours, and Lessee will at all times during the absence of such manager assign, or cause to be assigned, a qualified subordinate to assume and be directly responsible for the carrying out of his or her duties. Lessee shall assure that a local representative of Lessee is available, by telephone, on a 24 hours-per-day, 7 days-per-week, basis in case of emergencies and Lessee shall notify Lessor of the name and telephone number of such representative and shall update such information promptly as necessary.
- 8.5 Adult Materials. Any Adult Materials approved for sale at the Leased Premises shall be handled in a discreet manner so as not to offend the public. Adult magazines shall be wrapped or covered, except for the name, and their manner of display shall be subject at all times to the Lessor's approval. "Adult Material" is defined as one or more of the following, regardless of whether it is new or used: (a) books, magazines, periodicals or other printed matter; photographs, films, motion pictures, video cassettes, slides, or other visual representations; recordings, other audio matter; and novelties or devices; which have as their primary or dominant theme subject matter depicting, exhibiting, illustrating, describing or relating to specified sexual activities or specified anatomical areas; or (b) instruments, novelties, devices, or paraphernalia which are designed for use in connection with specified sexual activities.
- 8.6 Lessee, at its expense, shall promptly comply with all present and future laws, ordinances, orders, rules, regulations, applicable business licenses and requirements of Lessor and all governmental authorities having jurisdiction affecting or applicable to the Leased Premises or the cleanliness, safety, occupancy, operation and use of the same, whether or not any such law, ordinance, order, rule, regulation or requirement is foreseen or unforeseen, ordinary or extraordinary, shall necessitate changes or improvements (other than structural changes or structural improvements) and/or interfere with the use and enjoyment of the Leased Premises. Lessee shall promptly correct any deficiencies reported by Lessor and all other governmental authorities having jurisdiction. Lessee shall not do or permit anything to be done in or about the Leased Premises, nor bring anything therein, which will in any way conflict with any such law, ordinance, order, rule, regulation or requirement affecting the occupancy or use of the Leased Premises which has been or may hereafter be enacted or promulgated by Lessor and all governmental authorities, or in any way obstruct or interfere with the rights of others, nor shall Lessee use or allow the Leased Premises to be used for any improper, immoral or objectionable purposes or do any act tending to injure the reputation of the City and/or Airport.
- 8.7 Any area occupied by Lessee and all equipment and materials used by Lessee shall at all times be kept clean, sanitary, and free from rubbish, refuse, dust, dirt, offensive or unclean materials, flies and other insects, rodents and vermin in accordance with any and all applicable rules, regulations and requirements of Lessor and in accordance with any and all laws, statutes, ordinances and regulations that may be promulgated from time to time by governmental agencies and authorities.
- 8.8 No auction, liquidation, going out of business, fire or bankruptcy sale may be conducted or advertised by sign or otherwise in the Leased Premises.
- 8.9 All receiving and delivery of goods and merchandise and products for the Leased Premises, and all removal

of merchandise and products, supplies, equipment, trash and debris and all storage of trash and debris from the Leased Premises shall be made only by way of or in the areas provided therefor. No trash, trash containers, hand trucks, carts, racks or movable fixtures designed for the movement of merchandise and products and/or trash within the Leased Premises or to or from the Leased Premises may be left unattended. Lessee shall be solely responsible for prompt disposal within the Leased Premises or in such areas as may be provided for such disposal of all trash and debris from the Leased Premises.

8.10 Lessee shall not use or permit the use of any portion of the Leased Premises for any unlawful purposes, or, except as specifically permitted in **Section 7.1** above. Lessee shall not install any radio, television, communication dish or other similar device or related equipment exterior to the Leased Premises, and shall not erect any aerial or antenna on the roof or exterior walls of any building at the Leased Premises without the written approval of the Lessor.

8.11 Lessee shall, without charge, provide services such as making change, giving directions, and providing general information to the public. Lessee shall strive to ensure that all of its employees know the layout of the Airport and have the ability to provide passengers and visitors with accurate information regarding the locations of Airport services.

(a) As the owner and operator of the Airport, Lessor has the right to regulate and control certain aspects of Lessee's operations at the Leased Premises including but not limited to the matters listed below in this section. Lessee agrees that the Leased Premises shall be utilized solely for the uses permitted herein and for no other purpose whatsoever. Lessee shall not provide any products or services that are not specifically authorized by this Agreement or the Lessor, including, but not limited to, the following products and services: Automotive service, repair and maintenance, including, but not limited to oil changes, tune ups, and general minor repair services;

(b) Paid parking;

(c) Parking or storage of unattended vehicles for more than two (2) hours, except for the personal vehicles of employees currently working on the Leased Premises;

(d) Rental or sales of motor vehicles;

(e) Towing/emergency road services;

(f) Outside Advertising not in compliance with the City of Abilene's Signs Ordinance

(g) Valet, shuttle, or ground transportation services;

(h) Food trucks or trailers, except as approved by the Lessor;

(i) Any use prohibited by law.

8.12 Flammable Liquids. All flammable liquids that are kept or stored at the Leased Premises must at all times be handled, stored, and used in accordance with all applicable federal, state, and local laws.

8.13 If Lessee shall fail to comply with any of the provisions of this **Article 8**, then Lessee shall pay, within 10

days of demand therefor by Lessor, Contractual Charges in the amount of not more than \$150.00 per day until such time as Lessee is in compliance. This remedy shall be in addition to any and all other remedies provided in this Agreement or by law or in equity to Lessor.

ARTICLE 9. INDEMNIFICATION

- 9.1 **LESSEE covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, LESSOR and its elected and appointed officials, employees, officers, directors, volunteers and representatives of LESSOR, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon LESSOR directly or indirectly arising out of, resulting from or related to LESSEE's activities under this AGREEMENT, including any acts or omissions of LESSEE, any sub-lessee, agent, officer, director, representative, employee, consultant or subcontractor of LESSEE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LESSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO LESSOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 9.2 The provision of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LESSEE shall notify LESSOR in writing within 24 hours of any claim or demand against LESSOR or LESSEE known to LESSEE related to or arising out of LESSEE's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at LESSEE's costs. LESSOR shall have the right, at its option and at its own expense, to participate in such defense without relieving LESSEE of any of its obligations under this paragraph.
- 9.3 All personal property placed in the Leased Premises shall be at the sole risk of Lessee. Lessor shall not be liable, and Lessee waives all claims for any damage either to the person or property of Lessee or to other persons: (i) due to the Leased Premises, or any part of appurtenances thereof, becoming out of repair; (ii) arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current (unless caused by the sole negligence or willful misconduct of Lessor or its elected officials, employees, officers, directors, volunteers and/or representatives); (iii) from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; or (iv) due to the happening of any accident in or about the Leased Premises. Lessee shall save and hold harmless Lessor from any claims arising out of damage to Lessee's property or damage to Lessee's business, including subrogation claims by Lessee's insurers.

ARTICLE 10. INSURANCE

- 10.1 Prior to occupancy of the Leased Premises and the conduct of any business thereupon, Lessee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to Lessor, which shall be clearly labeled "Abilene Regional Airport Lease and Concession Agreement" in the Description of

Operations block of the Certificate. The Additional Insured shall be listed as "City of Abilene". The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. Lessor will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to Lessor. Lessor shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by Lessor. No officer or employee, other than the City Manager, shall have authority to waive this requirement.

- 10.2 Lessor reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when reasonably deemed necessary and prudent by the City Manager, or his/her designee, based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will Lessor allow modification whereby Lessor may incur increased risk.
- 10.3 A Lessee's financial integrity is of interest to Lessor; therefore, subject to Lessee's right to maintain reasonable deductibles in such amounts as are approved by Lessor, Lessee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Lessee's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TABLE 1 – INSURANCE REQUIRED DURING INITIAL CONSTRUCTION PERIOD

TYPE	AMOUNTS
1. Workers' Compensation	Statutory Limits
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Broad Form Property Damage to include Fire and Legal Liability g. Damage to property rented by you h. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability.	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage g. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$5,000,000 per occurrence
5. Builder's Risk Insurance for the construction of the Project Improvements and all materials, equipment and supplies that will become a part of the Project Improvements	Contract Sum in the Construction Contract between Lessee and the Contractor for the construction of the Project Improvements

TABLE 2 – INSURANCE REQUIRED UPON COMMENCEMENT OF FIRST OPERATING YEAR

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory Limits
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: ** a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Broad Form Property Damage to include Fire and Legal Liability g. Damage to property rented by you h. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability.	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage g. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$5,000,000 per occurrence
5. Property Insurance For physical damage to the property of LESSEE, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Contractor's property
6. Above Ground and/or Underground Storage Tank Storage Tank Liability	\$10,000,000.00 per claim
* if applicable	

- 10.4 Lessee agrees to require, by written contract, that the Lessee's Contractor obtain the same insurance coverages required of Lessee herein, and provide a certificate of insurance and endorsement that names the Lessee and Lessor as additional insureds. Lessee shall provide Lessor with said certificate and endorsement prior to the commencement of any work by the Contractor. This provision may be modified by the City Manager, or his/he designee, when reasonably deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification

may be enacted by letter signed by the City Manager, which shall become a part of the Agreement for all purposes.

- 10.5 Lessee shall maintain, at its sole cost and expense, (when required under **Section 10.3**) commercial property insurance covering the building, fixtures, equipment (excluding non-fixture equipment), tenant improvements and betterments. Lessee shall maintain, at its sole cost and expense, (when required under **Section 10.3**) builder's risk insurance covering the construction of the Project Improvements and all materials, equipment and supplies that will become a part of the Project Improvements. Commercial property insurance shall, at minimum, cover the perils insured under the ISO broad causes of loss form (CP 10 20). Builder's risk insurance shall be "special form" (also known as "all-risk") insurance. Commercial property insurance and builder's risk insurance shall cover the replacement cost of the property insured. The amount insured shall equal the full estimated cost of the property insured. Any coinsurance requirement in the policy shall be eliminated through the attachment of an agreed amount endorsement, the activation of an agreed value option, or as is otherwise appropriate under the particular policy form. Lessor shall be included as an insured and loss payee under the commercial property or builder's risk insurance. Lessee may, at its option, purchase business income, business interruption, extra expense or similar coverage as part of this commercial property insurance, and in no event shall Lessor be liable for any business interruption or other consequential loss sustained by Lessee, whether or not it is insured, even if such loss is caused by the negligence of Lessor, its employees, officers, directors, or agents.
- 10.6 As they apply to the limits required by Lessor, Lessor shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Lessee shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to Lessor at the address provided below within 10 days of the requested change. Lessee shall pay any costs incurred resulting from said changes.

City of Abilene
Abilene Regional Airport
Attn: Director of Transportation Services
2933 Airport Boulevard, Ste.200
Abilene, Texas 79602

- 10.7 Lessee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name Lessor, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with Lessor, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Abilene where the City is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of Lessor.
 - Provide advance written notice directly to Lessor of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 10.8 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Lessee shall provide a replacement Certificate of Insurance and applicable endorsements to Lessor. Lessor shall have the option to suspend Lessee's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 10.9 In addition to any other remedies Lessor may have upon Lessee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, Lessor shall have the right to order Lessee to stop work hereunder, and/or withhold any payment(s) which become due to Lessee hereunder until Lessee demonstrates compliance with the requirements hereof.
- 10.10 Nothing herein contained shall be construed as limiting in any way the extent to which Lessee may be held responsible for payments of damages to persons or property resulting from Lessee's or its subcontractors' performance of the work covered under this Agreement.
- 10.11 It is agreed that Lessee's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Abilene for liability arising out of operations under this Agreement.
- 10.12 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of Lessor shall be limited to insurance coverage provided.
- 10.13 Lessee, Sub-lessees, and any Subcontractors are responsible for all damage to their own equipment and/or property.

[Article 11 left blank intentionally]

ARTICLE 12. PRIVILEGES AND CONDITIONS

- 12.1 Lessor hereby grants to Lessee the following general, non-exclusive privileges, uses and rights, subject to the terms, conditions and covenants herein set forth:
- 12.1.1 The right of ingress to and egress from the Leased Premises, over and across common or public roadways serving the Airport for Lessee, its agents, servants, patrons, invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now, or may hereafter, apply at the Airport.
- 12.2 The granting and acceptance of this Agreement is conditioned upon compliance with the covenant that the right to use said common Airport facilities, in common with others so authorized, shall be exercised

subject to and in accordance with the laws of the United States, State of Texas and City of Abilene, the rules and regulations promulgated by their authority with reference to aviation and navigation, and all reasonable and applicable rules, regulations and ordinances of Lessor, now in force or hereafter prescribed or promulgated by charter authority or by law.

- 12.3 Lessor reserves the right to enter the Leased Premises at any reasonable time upon notice to Lessee for the purpose of inspecting same or verifying that fire, safety, sanitation regulations and other provisions contained in this Agreement are being adhered to by Lessee; however, notice to Lessee shall not be required for Lessor to enter the Leased Premises in the event of an emergency.

ARTICLE 13. AS IS ACCEPTANCE AND CONDITION OF LEASED PREMISES

- 13.1 Lessee has had full opportunity to examine the Leased Premises. Except for environmental matters not caused by or reasonably discoverable by Lessee prior to the commencement of this Agreement, Lessee's taking possession of the Leased Premises shall be conclusive evidence of Lessee's acceptance thereof in an "AS IS" condition, and Lessee hereby accepts same in its present condition as suitable for the purpose for which leased. Should additional environmental site assessments deem the site not suitable for development or too costly to develop, Lessee may elect to terminate this Agreement by providing Lessor written notice no later than sixty (60) days after the Commencement Date. Lessee agrees that no representations respecting the condition of the Leased Premises and no promises to improve same, either before or after the execution hereof, have been made by Lessor or its agents to Lessee, unless contained herein or made a part hereof by specific reference.

ARTICLE 14. CONSTRUCTION BY LESSEE

14.1 Construction (Leased Premises Improvements and Access Road).

The provisions of this Section 14.1 shall apply with respect to the Project Improvements.

14.1.1 Construction of the Project Improvements. Lessee shall construct or cause to be designed and constructed, at Lessee's sole expense, (i) An Access Road intersecting Highway 36 and connecting to the Leased Premises, (ii) the Retail Fuel Station, Convenience Store, and Restaurant and (iii) the Lessee Site Work (together with the Access Road, Retail Fuel Station, Convenience Store, and Restaurant, the "Project Improvements"), all as reflected in City of Abilene approved site plan, and substantially in accordance with the plans and specifications to be prepared by Lessee (the "Construction Documents"). In addition, Lessee shall at its sole expense obtain and install within the Retail Fuel Station, Convenience Store, and Restaurant the furniture, fixtures, and equipment, security, utilities, and cabling and other items needed by Lessee for its operations (the "FFE"). To the extent those items of the FFE, upon installation within the Retail Fuel Station, Convenience Store, and Restaurant, constitute fixtures under applicable law, such items shall be included within the terms "Retail Fuel Station, Convenience Store, and Restaurant" and "Project Improvements" for purposes of this Agreement. Lessee's Minimum Capital Investment for the Project Improvements shall be \$2,000,000.00 ("Minimum Capital Investment"). Construction of the Project Improvements shall commence no later than three hundred sixty-five (365) days following the Effective Date. Construction of the Project Improvements shall be completed and a certificate of occupancy obtained no later than twenty-four (24) months after the Effective Date, subject to (i) any delay caused by force majeure events, (ii) any delay resulting from the inability

of Lessee to obtain all necessary governmental permits required for such construction (provided that Lessee has used reasonable, good faith attempts to obtain such permits), and (iii) any delay in the completion of the construction to the extent such delay is caused by Lessor, DOT, FAA or other governmental agency having regulatory jurisdiction over operations at or near the Airport. The parties acknowledge that Lessee will utilize a general contractor (the "**Contractor**") for the construction of the Project Improvements.

14.1.2 The Access Road shall meet the City of Abilene's standards for a four-lane Arterial Road, which is 48' of pavement plus curb and gutter which will be 53' back of curb to back of curb. The base/pavement section would be 6" of engineered subgrade, 8" of Flex Base, 4" of Type B hot mix base, and 2" of Type D hot mix surface.

14.1.3 Approval of Construction Documents. The Construction Documents are subject to the approval of the Lessor. Lessee (i) shall submit the Construction Documents to the Lessor no later than one hundred eighty (180) days following the Effective Date. Notwithstanding the foregoing, approval by the Lessor of the Construction Documents shall in no way alleviate Lessee's responsibility for the integrity of such documents. The approval by the Lessor of the Construction Documents refers to the construction and capacity design of the Access Road, to the conformity of same to the general architectural plan for the Leased Premises, as opposed to their architectural or engineering design, to the exterior lighting plan to ensure no interference with flight crew or air traffic control visibility, and receipt of a Determination of No Hazard to Air Navigation from the FAA. Lessor, by giving its approval, assumes no liability or responsibility therefor or for any defect in any work performed according to such plans and specifications. No later than fourteen (14) days after the Lessor has approved the Construction Documents, Lessee shall submit the Construction Documents for permitting with appropriate City departments. Notwithstanding the foregoing, and as set forth in Subsection 14.1.1 above, construction of the Project Improvements shall commence no later than three hundred sixty-five (365) days following Effective Date.

14.1.4 Prior to the commencement of construction, Lessee shall procure any and all additional approvals of the Construction Documents required by any federal, state or municipal authorities (including other departments of Lessor), agencies, officers and departments having jurisdiction thereof, and shall obtain any and all requisite building or construction licenses, permits or approvals. Construction shall comply with applicable building code requirements and with applicable regulations promulgated by any federal, state or municipal agency or department having jurisdiction thereof. Lessee will obtain at its expense all required permits from City of Abilene; however, Lessor will assist Lessee in all reasonable respects with City of Abilene permitting processes. Lessee specifically agrees that it shall hold Lessor completely harmless from and against any and all claims, causes of action or liabilities, whether actual or potential, associated with any construction undertaken by Lessee hereunder.

14.1.5 Infrastructure Site Work. Lessee will perform certain infrastructure and other site work (collectively, the "Site Work") at the Leased Premises in connection with the construction of the Project Improvements in accordance with the Construction Documents. The Site Work shall include site preparation, utilities, telecommunication, fencing, landscape, parking areas, accessibility requirements, driveways, installation of below ground fuel tanks for the retail fuel pumps. The site must be landscaped and made presentable to the traveling public. In

development of the site for landscaping, Lessee must comply with all applicable landscaping ordinances and regulations, including, but not limited to, City of Abilene requirements per the Site Plan Review and Approval process. It is further expressly understood and agreed that any improvements and access thereto constructed by Lessee on the Leased Premises shall be performed in such a manner that shall not cause flowage of surface drainage onto adjacent tracts or interrupt flow to the storm drainage system.

14.1.6 Delivery of Payment and Performance Bonds. Prior to the commencement of any work on the Project Improvements or any Improvements constructed by Lessee on the Leased Premises during the term of the Agreement, Lessee shall deliver a fully executed Agreement to Lessor, along with such bonds as Lessee may be required to furnish, including, but not limited to, a required payment bond in the form and amount specified in this Agreement and a required performance bond in the form and amount specified in this Agreement.

14.1.6 (i) **Payment & Performance Bonds.** Lessee shall, with the execution and delivery of the Agreement, furnish and file with Lessor, in the amounts required in this Article 14, the surety bonds described herein. Each surety bond shall be signed by Lessee, as the Principal, as well as by an established corporate surety bonding company as surety. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign and shall include:

14.1.6 (i)(a) **Performance Bond.** A good and sufficient bond in an amount equal to one hundred percent (100%) of the total cost of the construction contract amount, guaranteeing the full and faithful execution of the work and performance of the Project Improvements in accordance with the Construction Documents and all other contract documents, including any extensions thereof, for the protection of Lessor. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of Final Completion or acceptance of the Project Improvements by Lessor.

14.1.6 (i)(b) **Payment Bond.** A good and sufficient bond in an amount equal to 100% of the total construction contract amount, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Project Improvements, and for the use and protection of each claimant.

14.1.7 Delivery of Evidence of Insurance. Upon execution of the Agreement and prior to the commencement of any work on the Project Improvements or any other Improvements constructed by Lessee on the Leased Premises during the term of this Agreement, Lessee shall deliver evidence of insurance to Lessor. Lessee shall furnish an original completed Certificate of Insurance and a copy of all insurance policies, together with all required endorsements thereto, required by the Agreement to the Lessor, clearly labeled with the name of the Project Improvements and which shall contain all information required by the Agreement. Lessee shall be prohibited from taking possession or commencing work on the Project Improvements until such evidence of insurance is delivered to Lessor.

14.1.8 Supervision. Lessee shall be fully responsible for the acts and omissions of Contractor's agents and employees, Subcontractors and their agents and employees and other persons or

entities performing portions of the work for or on behalf of Contractor or any of its Subcontractors. If Lessee, its Contractor, or any of its Subcontractors, agents, or employees, damages City property, including, but not limited to, fencing not already approved for demolition, Lessee shall be responsible for any such repairs required, and shall indemnify Lessor from any such claims.

14.1.9 Warranty. Lessee warrants to Lessor that materials and equipment furnished and installed in the Access Road shall be of good quality and new, unless otherwise required or permitted by the Agreement, the Access Road work shall be free from material defects as determined by Lessor not inherent in the quality required or permitted and shall conform to the requirements of the Construction Documents. Work not conforming to this warranty and these requirements may be considered defective. Lessee's warranty excludes remedies for damage or defect caused by abuse, modifications not executed by the Lessee, improper or insufficient maintenance, improper operation, normal wear and tear and normal usage, and additional damage or defects caused by Lessor's failure to promptly notify Lessee.

14.1.9 (i) A right of action by Lessor for any breach of Lessee's express warranty herein shall be in addition to, and not in lieu of, any other remedies Lessor may have under this Agreement, at law or in equity, regarding any defective work. Such warranty shall be interpreted to require Lessee, upon written timely demand by Lessor, to replace defective materials and equipment and re-execute any defective work disclosed to the Lessee by the Lessor within a period of one (1) year after Substantial Completion of the Access Road (as defined herein) or, in the event of a latent defect, within one (1) year after the earlier to occur of (i) actual discovery thereof by Lessor, (ii) the date that Lessor should have discovered such defect in the exercise of reasonable diligence, or (iii) two years following Substantial Completion. "Substantial Completion" is the date certified by Lessee, when the Access Road (including the installation of the FFE), or a Lessee-designated portion thereof that is approved by the Lessor, is sufficiently complete in accordance with the Construction Documents so as to be operational and fit for the intended use.

14.1.9 (ii) Except when a longer warranty time is specifically called for in the Agreement or is otherwise provided by law or by manufacturer, all warranties shall be at minimum for twelve (12) months and shall be in form and content otherwise reasonably satisfactory to Lessor.

14.1.9 (iii) Warranties shall become effective on the date of Substantial Completion of the Access Road, unless otherwise provided in any certificate of partial Substantial Completion approved by the parties, except for work to be completed or corrected after the date of Substantial Completion. Warranties for work to be completed or corrected after the date of Substantial Completion and prior to final completion shall become effective on the later of the date the work is completed or corrected or the date of final completion of the work.

14.1.10 Access Road Schedule. Lessee shall meet with Lessor each month at a scheduled project schedule update meeting, for the duration of the Initial Construction Period to coordinate the work being performed by Lessee and review progress made. At each monthly meeting, Lessee shall submit an updated critical path method Access Road Schedule to aid in the coordination

and scheduling of work Lessee is required to perform hereunder. The project schedules shall show the sequence and interdependence of activities required for complete performance of the work to be performed. Lessee shall submit Construction Documents to the Lessor for review at the 30%, 60% and 90% completion phases.

14.1.11 Use of Site During Construction. Lessee shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Leased Premises, and shall not unreasonably encumber the Leased Premises with construction equipment or other materials or equipment that are not related to the Project Improvements.

14.1.12 Cleaning Up. Prior to Substantial Completion of the Access Road and Project Improvements, Lessee shall remove all waste materials, rubbish and debris from and about the Leased Premises, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Leased Premises clean and ready for occupancy.

14.1.13 Lien Waivers/As-Built Plans. Within sixty (60) days after completion of the Access Road, Lessee shall deliver to the City executed copies of all mechanics' lien waivers and/or releases or other lien waivers and/or releases on account of Lessee's Project Improvements, notarized and unconditional, in such form as the Lessor shall have reasonably approved and an engineer's certification that the Access Road has been constructed in accordance with the approved final drawings and are fully complete in accordance with all of such requirements specified or referenced herein.

14.1.14 Physical Street Address. Lessee shall obtain a street address for the Retail Fuel Station, Convenience Store, and Restaurant at commencement of construction.

14.2 It is further expressly understood and agreed that any improvements and access thereto constructed by Lessee pursuant to this Agreement shall be performed in such a manner that shall not cause flowage of surface drainage onto adjacent tracts or interrupt flow to the storm drainage system.

14.3 Renovations, Alterations, and Construction After the Initial Construction Period

After completion of the Initial Construction Period, Lessee shall have the right to erect, alter, remodel and renovate buildings and other Improvements on the Leased Premises, provided that Lessee complies with all requirements set forth within this Article 14, including, but not limited, to, approval of designs, plans and specifications. The cost of any renovations, construction, alterations or improvements upon the Leased Premises shall be borne and paid for solely by Lessee. Except as may be otherwise set forth herein, Lessor has no financial or other obligation of any kind under this Agreement, other than the renting to Lessee of the premises which are the subject hereof for the term and consideration hereinbefore set forth. Except as may be otherwise set forth herein, Lessor has no financial or other obligation of any kind under this Agreement, other than the renting to Lessee of the premises which are the subject hereof for the term and consideration hereinbefore set forth.

14.4 Documentation of Lessee's Minimum Capital Investment and Additional Capital Investment

Lessee shall provide documentation such as invoices, contracts, proof of payment, and other records reasonably satisfactory to the Lessor as evidence of costs incurred for the Minimum Capital Investment requirements set forth in **Section 14.1** above.

ARTICLE 15. LIENS PROHIBITED

- 15.1** Lessee shall not suffer or permit any mechanics' or other liens to be filed against the fee of the Leased Premises, or against Lessee's leasehold interest in the land, buildings or improvements thereon, by reason of any work, labor, services or materials supplied, or claimed to have been supplied, to Lessee or to anyone holding the Leased Premises, or any part thereof, through or under Lessee.
- 15.2** If any such mechanics' lien or materialmen's lien described in **Section 15.1** above shall be recorded against the Leased Premises, or any improvements thereon, Lessee shall cause the same to be removed or, bonded around pursuant to the terms of the Texas Property Code. In the alternative, if Lessee, in good faith, desires to contest the same, it shall be privileged to do so; however, in such case, Lessee hereby agrees to indemnify and save Lessor harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to sale of the property or execution of such judgment.

ARTICLE 16. MAINTENANCE AND REPAIR

- 16.1** Lessee shall pay or cause to be paid, any and all charges for water, heat, gas, electricity, sewer and any and all other utilities used on the Leased Premises, throughout the term of this Agreement, including, but not limited to, any connection fees and any and all additional costs related to utility connection, metering, maintenance, repair and usage.
- 16.2** Except as may be otherwise provided herein, Lessee shall, throughout the term of this Agreement, assume the entire responsibility, cost and expense, for all repair and maintenance of the Leased Premises and all buildings and improvements thereon, whether such repair or maintenance be ordinary, extraordinary, structural or otherwise. Additionally, without limiting the foregoing, Lessee shall:
- 16.2.1** at all times maintain the buildings and improvements in a good state of repair and preservation, excepting ordinary wear and tear and obsolescence in spite of repair; and
- 16.2.2** replace or substitute any fixtures and equipment which have become inadequate, obsolete, worn out, unsuitable or undesirable, with replacement or substitute fixtures and equipment, free of all liens and encumbrances, which shall automatically become a part of the buildings and improvements; provided that Lessee shall not be obligated to replace or substitute any such fixtures or equipment which Lessee reasonably determines to not be necessary for the operations of Lessee conducted on the Leased Premises; and
- 16.2.3** at all times keep the Leased Premises, its buildings, improvements, fixtures, equipment and personal property, in a clean and orderly condition and appearance; and

- 16.2.4 provide, and maintain in good working order, all obstruction lights and similar devices, fire protection and safety equipment, and all other equipment of every kind and nature required by applicable laws, rules, orders, ordinances, resolutions or regulations of any competent authority, including Lessor; and
- 16.2.5 observe all insurance regulations and requirements concerning the use and condition of the Leased Premises; and
- 16.2.6 repair any damage caused by Lessee to paving or other surfaces of the Leased Premises or the Airport, in connection with the scope of the Agreement, caused by any oil, gasoline, grease, lubricants, flammable liquids and/or substances having a corrosive or detrimental effect thereon, or by any other reason whatsoever; and
- 16.2.7 take reasonable measures to prevent erosion, including, but not limited to, the planting and replanting of grass on all unpaved or undeveloped portions of the Leased Premises; the planting, maintaining and replanting of any landscaped areas; the designing and constructing of improvements on the Leased Premises; and the preservation of trees as may be required by City ordinance, consistent with Lessee's construction and operations; and
- 16.2.8 if damage is caused by Lessee, be responsible for the maintenance and repair of all utility services lines upon the Leased Premises, including, but not limited to, water and gas lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers; and
- 16.2.9 replace broken or cracked plate glass, paint/repaint structures upon the Leased Premises and, where applicable, mow the grass; and
- 16.2.10 provide and use suitable covered metal receptacles for all garbage, trash and other refuse; assure that boxes, cartons, barrels or similar items are not piled in an unsightly, unsafe manner, on or about the Leased Premises; provide a complete and proper arrangement, satisfactory to the Lessor, for the adequate sanitary handling and disposal away from the Airport, of all trash, garbage and refuse caused as a result of the operation of Lessee's business.

ARTICLE 17. TITLE

- 17.1 All foundations, buildings, alterations, additions or improvements (hereinafter "**Improvements**") made upon the Leased Premises by Lessee are and shall be the property of Lessee during the term of this Agreement. During the term, such Improvements may be conveyed, transferred or assigned, with the Lessor's prior written approval, only to a person or entity to whom this Agreement simultaneously is being transferred or assigned, whereupon the subsequent holder of the leasehold interest hereunder shall own the Improvements. Absent written approval of the Lessor, any other attempted conveyance, transfer or assignment of the Improvements, to any person or entity, whether voluntary, by operation of law or otherwise, shall be void and of no effect.

ARTICLE 18. COMPLIANCE WITH ENVIRONMENTAL LAWS

18.1 Definitions in Article 18 and Article 19.

"Environmental Baseline Study Update" means an investigation of site environmental conditions sufficient to identify changes in environmental conditions at the Project Site as compared to the Environmental Baseline Study or the most recent Updated Environmental Baseline Study. The Environmental Baseline Study Update shall meet at least the minimum standards of American Society for Testing and Materials ("ASTM") Standard *D6008 -96(2014) Standard Practice for Conducting Environmental Baseline Surveys*, or its latest version.

"Environmental Audit" means an environmental compliance audit consistent with any applicable or relevant and appropriate assessment or auditing standards, including, but not limited to, CERCLA § 101(35)(B) (42 U.S.C. § 9601(35)(B)), 40 C.F.R. Part 312, and ASTM

Standard *E2107-00 Standard Practice for Environmental Regulatory Compliance Audits*. An Environmental Audit should be conducted under audit privilege laws, including the Texas Environmental, Health and Safety Audit Privilege Act, Tex. Rev. Civ. Stat. Ann. Art. 4447cc (Vernon's).

"Environmental Baseline Study / Phase I" will be conducted by the Lessor prior to construction of the Gas Station, Convenience Store, and Restaurant at the Leased Premises.

"Environmental Claims" means, without limitation, all claims, demands, suits, actions, judgments, and liability for: (i) spills, discharges, releases, removal, remediation, assessment, transportation, testing or disposal of Hazardous Materials; (ii) bodily injury or death; (iii) damage to or loss of use of property of any Person; (iv) injury to natural resources; (v) fines, costs, fees, assessments, truces, demands, orders, directives or any other requirements imposed in any manner for violation of Environmental Laws by any governmental agency; and (vi) costs and expenses of cleanup, remediation, assessment testing, investigation, transportation and disposal of a Hazardous Material spill, release, or discharge.

Environmental Law" or "Environmental Laws" means any law pertaining to health, industrial hygiene, public safety, occupational safety, mining, mine reclamation, natural or cultural resources, fish, wildlife or other protected species or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, *et. seq.*); the Resource, Conservation and Recovery Act of 1976 (42 U.S.C.

§ 6901, *et. seq.*); the Toxic Substances Control Act (15 U.S.C. § 2601, *et. seq.*); the CleanWater Act (33 U.S.C. § 1251, *et. seq.*); the Oil Pollution Act of 1990 (33 U.S.C. § 2701, *et. seq.*); the Clean Air Act (42 U.S.C. § 7401, *et. seq.*); the Atomic Energy Act (42 U.S.C. § 2011, *et. seq.*); the Hazardous Materials Transportation Act (49 U.S.C. § 5101, *et. seq.*); the Emergency Planning and Community Right-To-Know Act (42 U.S.C. 11001, *et. seq.*); the Endangered Species Act of 1973 (16 U.S.C. § 1531, *et. seq.*); the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701, *et. seq.*); the Lead-Based Paint Exposure Reduction Act (15 U.S.C.

§ 2681, *et. seq.*); the Safe Water Drinking Act Amendments of 1996 (42 U.S.C. § 300); the National Historic Preservation Act of 1966; the Mine Safety and Health Act (30 U.S.C. 801 *et seq.*); the Surface Mining Control And Reclamation Act (30 U.S.C. 1201 *et seq.*) and state and local counterparts of each of the foregoing.

"Fuel Spill Response Plan" means the written plan approved by the Fire Marshal.

"Hazardous Materials" means, without limitation, all substances whose use, handling, treatment, storage, disposal, discharge, or transportation is governed, controlled, restricted, or regulated by Environmental Laws, and includes all Hazardous Substances.

"Hazardous Substance" means all materials, substances, or wastes defined, designated, regulated or classified as hazardous, toxic or radioactive, under any Environmental Law, whether by type or by quantity, and shall include petroleum or any derivative or by-product thereof, and asbestos and asbestos containing materials.

"Pre-Lease Agreement Environmental Condition" means the site environmental condition prior to construction of the Facility as determined in the Environmental Baseline Study.

"Spill Prevention Control and Countermeasures Plan" or "SPCC Plan" means a written plan required by Environmental Law, that includes a risk evaluation performed by a Professional Engineer and that describes the storage of petroleum products (as defined in 40 C.F.R. 112.7) and spill response procedures as they relate to the storage and use of petroleum products. The SPCC Plan shall be prepared by the Lessee.

"Storm Water Pollution Prevention Plan" or "SWPPP" means a written plan required by the Clean Water Act or other Environmental Law, or if not required by Environmental Law, an equivalent plan required by the City for the Project Site, prepared by Lessee, that describes the Leased Premises (including, but not limited to, the Fuel Facilities) and adjacent Airport properties (including roadways) and the management, training, operational, and monitoring activities and requirements in place to prevent illicit discharges to the waters of the United States or other deleterious materials (e.g., total suspended solids) from, or in connection with, the Leased Premises; control and remediate spills or releases; and/or meet other environmental permit requirements related to releases from, or in connection with, the Leased Premises.

"Storm Water Best Management Practices" or "BMPs" mean the schedules of activities, prohibitions of practices, maintenance procedures, and other techniques to control, prevent or reduce the discharge of pollutants from storm water discharges. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spills or leaks, sludge or waste disposal, or drainage from raw material storage areas. All BMPs shall be subject to approval by the Lessor.

"Updated Environmental Baseline Study" means the Environmental Baseline Study as updated by the most recent Environmental Baseline Study Update or other environmental investigation meeting at least the minimum standards of *D6008 -96(2014) Standard Practice for Conducting Environmental Baseline Surveys*, or its latest version.

18.2 Environmental Compliance.

In its operations on the Leased Premises and at the Airport, Lessee shall strictly comply with all applicable Environmental Laws, the Airport Rules and Regulations (including without limitation, the SWPPP, SPCC, and Fuel Spill Response Plan), and other Airport environmental policies and procedures as may be promulgated from time to time. Without limiting the generality of the foregoing provision, Lessee shall not use or store Hazardous Materials on or at the Leased Premises or Airport except as reasonably necessary in the ordinary course of Lessee's permitted activities at the Leased Premises and Airport, and then only if such Hazardous Materials are properly labeled and contained as required pursuant to

Applicable Laws, and an annual inventory and a copy of the current material safety data sheet is provided to the City for each such Hazardous Material. Lessee shall not discharge, release, or dispose of any Hazardous Materials on the Leased Premises or Airport or surrounding air, lands or waters in violation of Applicable Laws. Lessee shall promptly and no later than 24 hours after occurrence notify City of any Hazardous Material spills, releases, or other discharges by Lessee at the Airport in accordance with City's Fuel Spill Response Plan and promptly abate, remediate, and remove any of the same to the extent required under Applicable Laws. Lessee shall provide the City with copies of all reports, complaints, claims, citations, demands, inquiries, or notices relating to the environmental condition of the Airport, or any alleged material noncompliance with Environmental Laws by Lessee at the Leased Premises or Airport within ten (10) days after such documents are generated by or received by Lessee. If Lessee uses, handles, treats, or stores Hazardous Materials at the Leased Premises or Airport, Lessee shall arrange for the proper storage, handling, and disposal of the Hazardous Materials, and shall comply with all applicable Environmental Law regarding waste characterization, transportation, and disposal. Complete records of all disposal manifests, receipts and other documentation required by Applicable Law shall be retained by Lessee and made available to the City for review upon request. The City shall have the right at any time to enter the Leased Premises to inspect, take samples for testing, and otherwise investigate the Leased Premises for the presence and proper management of Hazardous Materials. In exercising its right of access, City shall endeavor to minimize disruption of or interfere with Lessee's operations or use of the Leased Premises. Lessee will comply with Occupational Safety and Health Administration ("OSHA") hazard communications laws, 29 C.F.R. 1910.1200 *et seq.*, and Texas hazard communication laws. All waste containers shall be labeled with the name of the Lessee, to avoid orphaned or wandering waste containers.

18.3 Hazardous Materials Responsibility.

Lessee's Hazardous Materials shall be the responsibility of Lessee. Lessee shall not allow the release, spill, discharge, leak, emission, injection, escape, migration or dumping in, on, about, from or adjacent to the Leased Premises (including storm drains, sanitary sewer system, surface waters, soils, underground waters or air) of any Hazardous Material or other deleterious substance in any manner that could be a detriment to the Leased Premises or in violation of the Pollution Prevention Plan, the SPCC Plan, any City Codes and City Standards, any City Environmental Permit or any Environmental Law. All reporting and notice requirements under Environmental Laws with respect to spills, releases, or discharges of Hazardous Materials by Lessee at the Leased Premises or Airport shall be the responsibility of Lessee. Lessee shall promptly notify the Lessor of any report or notice in accordance with **Section 18.8.**

18.4 Stormwater Requirements.

Lessee acknowledges that the Airport is subject to the National Pollution Discharge Elimination System Program ("NPDES"), Federal Stormwater Regulations (40 C.F.R. Part 122) and the Texas Pollution Discharge Elimination System Program ("TPDES"). The Airport currently has a delegated shared SWPPP, and Lessee shall prepare and implement a unified SWPPP for the Leased Premises, and shall coordinate Lessee's SWPPP with the Airport's delegated shared SWPPP. Lessee shall provide a copy of the SWPPP to the City before Lessee commences operations at the Leased Premises. Lessee shall be responsible for updating the SWPPP to address future changes in the Leased Premises or activities, operations and practices of Lessee upon the Leased Premises.

18.5 Sustainability.

Lessee shall comply with Applicable Laws and policies pertaining to recycling, energy, and natural resource conservation and management.

18.6 Spill Prevention Control and Countermeasure Plan.

Lessee shall determine whether Section 112.7 of Title 40 of the Code of Federal Regulations is applicable to the Leased Premises and Lessee's operations, and whether Lessee is required to prepare a SPCC Plan. This determination must be submitted to City for approval, with a copy to the City. Preparation of Lessee's SPCC Plan, if required, shall be the sole responsibility of Lessee. Any SPCC Plan must be certified by a licensed Professional Engineer in accordance with all applicable legal requirements (specifically including Environmental Laws) and an up-to-date copy thereof shall be furnished at all times to the City.

18.7 Survival.

The covenants, conditions, and indemnities in this Article shall survive the expiration or earlier termination of this Agreement.

18.8 Permits, Reports, and Notices.

Lessee shall make available to the City upon request copies of all material safety data sheets for all Hazardous Materials used or stored on the Leased Premises, Lessee's U.S. Environmental Protection Agency waste generator number, and its generator annual hazardous waste reports. Within seventy-two (72) hours of receipt or transmission, whichever first occurs, Lessee shall provide City with copies of any environmentally related regulatory permits or approvals (including revisions or renewals) and any material report or notice Lessee receives from, or provides to, any governmental authority in connection with the handling of Hazardous Materials on the Leased Premises or the presence, or possible presence, of any Hazardous Material in, on, about, from or adjacent to the Leased Premises. Lessee shall report to the City any spills or emissions of Hazardous Materials resulting from the acts or omissions of the Lessee in accordance with the City's Fuel Spill Response Plan and shall report to the appropriate governmental authorities any spills or emissions of Hazardous Materials by Lessee that are above reportable quantities as defined by applicable Environmental Laws.

18.9 Violation of Environmental Laws.

If Lessee is in violation of any Environmental Law concerning the presence or use of Hazardous Materials or the handling or storing of hazardous wastes, Lessee shall promptly take such action as is necessary to mitigate and correct the violation. If Lessee does not act in such a manner, the City has the right, but not the obligation, to come onto the Leased Premises, to act in place of Lessee (and Lessee hereby appoints the City as its agent for such purposes) and to take such action as the City deems necessary to ensure compliance or to mitigate the violation. If the City has a reasonable belief that Lessee is in violation of any of the Environmental Laws, or that Lessee's acts or omissions present a threat of violation or a threat of damage to the Leased Premises, the City have the right to enter onto the Leased Premises and take such corrective or mitigating action as it deems necessary in City's sole discretion. All reasonable and necessary costs and expenses incurred by the City in connection with any such actions shall become immediately due and payable by Lessee upon presentation of an invoice therefor. Interest shall accrue on all unpaid sums.

18.10 Inspection: Test Results.

The City shall have access to the Leased Premises to conduct (but shall have no obligation to conduct) environmental inspections, including an Environmental Audit, and Lessee shall permit the City access to the Leased Premises for the purpose of conducting environmental testing, whether in connection with the City's action taken pursuant to Section 18.9 hereof or for other City purposes. Except in the event of any real or threatened emergency, (a) environmental testing by the City shall occur only during normal business hours, or at such other times as Lessee shall reasonably approve; (b) the City shall provide notice to Lessee of its intention to conduct tests at least five (5) business days prior to such date of testing; (c)

testing shall not unreasonably interfere with Lessee's normal business operations; and (d) any damages to the Leased Premises caused by the environmental testing conducted by City shall be repaired by City at its sole cost and expense. Lessee shall not conduct or permit others to conduct environmental media testing on the Leased Premises without first obtaining the City's prior consent. Lessee shall within three (3) business days inform the City of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Leased Premises whenever Lessee knows the same, and Lessee shall provide copies thereof to the City, with the exception of Lessee internal audits covered under attorney-client privilege. Notwithstanding such privilege, Lessee shall have a duty to warn City of life/safety risks revealed by such an audit.

18.11 Termination: Removal of Equipment and Hazardous Materials.

Prior to the expiration or earlier termination of this Agreement, Lessee shall remove or remediate in accordance with applicable Environmental Laws and the Airport Rules and Regulations (including without limitation, the SWPPP, SPCC, and Fuel Spill Response Plan, and other Airport environmental policies and procedures as may be promulgated from time to time), all of Lessee's Hazardous Materials from the Leased Premises and, if Lessee is ceasing to operate at Airport, then from Airport, and surrounding lands and waters. Unless instructed otherwise by City, Lessee shall also, prior to vacating the Leased Premises and Airport, remove all aboveground and underground storage tanks, piping and other equipment, if any, installed by or on behalf of Lessee at the Leased Premises which stored Hazardous Materials, or which are contaminated by Hazardous Materials, provided that Lessee shall not at any time install or have installed any such storage tanks, piping or other equipment without express prior written consent of the City. Prior to expiration or earlier termination of this Agreement, Lessee shall conduct, at its sole expense, an Environmental Phase 1 Study of the Leased Premises, and shall provide to the City an Environmental Survey.

18.12 Remedies Not Exclusive.

No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the City shall be entitled to full reimbursement from Lessee whenever the City incurs any costs resulting from the use or management of Hazardous Materials on the Leased Premises by Lessee, including costs of remedial activities, fines or penalties assessed directly against the City, injuries to third persons or other properties, and loss of revenues resulting from an inability to re-lease or market property due to its environmental condition, even if such loss of revenue occurs after the expiration or earlier termination of the Term.

18.13 Environmental Indemnity.

IN ADDITION TO ALL OTHER INDEMNITIES PROVIDED IN THIS AGREEMENT, LESSEE AGREES TO DEFEND, INDEMNIFY AND HOLD CITY AND ITS ELECTED OFFICIALS, MANAGERS, OFFICERS, AGENTS AND EMPLOYEES, FREE AND HARMLESS FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, REGULATORY DEMANDS, LIABILITIES, FINES, PENALTIES, LOSSES, AND EXPENSES, INCLUDING REMEDIAL COSTS (AND INCLUDING REASONABLE ATTORNEYS' FEES, COSTS AND ALL OTHER REASONABLE LITIGATION EXPENSES WHEN INCURRED AND WHETHER INCURRED IN DEFENSE OF ACTUAL LITIGATION OR IN REASONABLE ANTICIPATION OF LITIGATION ARISING FROM THE EXISTENCE OR DISCOVERY OF ANY HAZARDOUS MATERIAL ON THE LEASED PREMISES, OR THE MIGRATION OF ANY HAZARDOUS MATERIAL FROM THE LEASED PREMISES TO OTHER PROPERTIES OR INTO THE SURROUNDING ENVIRONMENT, ARISING OR RESULTING FROM ANY ACT OR OMISSION OF LESSEE, WHETHER (A) MADE, COMMENCED OR INCURRED DURING THE LEASE TERM, OR (B) MADE, COMMENCED OR INCURRED AFTER THE EXPIRATION OR TERMINATION OF THE LEASE TERM IF ARISING OUT OF EVENTS OCCURRING DURING THE LEASE TERM; PROVIDED, HOWEVER, LESSEE'S OBLIGATION TO INDEMNIFY THE CITY PURSUANT TO THIS SECTION SHALL

NOT APPLY WITH RESPECT TO ANY RELEASE OF A HAZARDOUS MATERIAL CLEARLY ARISING OUT OF ANY CONSTRUCTION DEFECT IN THE FUEL FACILITIES, WHICH DEFECT IS DISCOVERED WITHIN ONE YEAR AFTER THE COMMENCEMENT DATE. LESSEE'S OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THE LEASE TERM.

18.14 Term of Environmental Provisions.

The provisions of **Articles 18 and 19**, including the representations, warranties, covenants and indemnities of Lessee shall expressly survive termination of this Agreement, and Lessee's obligations and liabilities under **Articles 18 and 19** shall continue so long as the City bears any liability or responsibility under Environmental Law arising from Lessee's occupancy or use of the Leased Premises and/or Airport during the term of this Agreement.

ARTICLE 19 . FUEL FACILITIES AND MANAGEMENT

19.1 Fuel Facilities.

Lessee, as part of the construction of the Project Improvements, shall build, install and equip gasoline fuel facilities ("Fuel Facilities") for the operation of its Retail Fuel Station. Fuel Facilities include underground fuel tanks, piping, and automated fuel leak sensors, dispensers and other required and appropriate equipment, including shut-off alarm systems to support the retail fueling of vehicles.

19.2 Fuel and Environmental Responsibilities.

Lessee shall operate its allocated fuel dispenser(s) in accordance with Environmental Laws and in such a manner as to prevent and eliminate fuel spills or damage to the Fuel Facilities.

19.3 Environmental Assessment.

Within forty-five (45) days after (i) any change in ownership or affiliation of Lessee; (2) Lessee vacates the Leased Premises for any reason; or (3) this Agreement terminates for any reason, at Lessee's sole cost and expense, an Environmental Baseline Study of the Leased Premises and, specifically, the Fuel Facilities, shall be performed to identify the nature and extent of any release of Hazardous Materials, if any, present on the Leased Premises. The Environmental Baseline Study shall be used to prepare an Environmental Baseline Study and the full report shall be given to the City identifying any change in the environmental condition of the Leased Premises. Any contamination identified shall be subject to removal as more particularly set forth in **Section 18.11, Termination: Removal of Equipment and Hazardous Materials** and this Article.

19.4 Fuel Facilities Management - Operation, Maintenance, and Repair Responsibilities. Lessee shall be responsible for the proper operation, maintenance, repair and use of the Fuel Facilities and the payment of all costs and expenses incurred for the operation, maintenance, repair and use of the Fuel Facilities. Lessee shall be entirely responsible for all spill response, the immediate or other removal, investigation, remediation, restoration and other corrective actions, or site closure associated with a release of any Hazardous Material from the Fuel Facilities. Lessee will immediately take all necessary action to address such an event in accordance with Environmental Laws. Immediately upon becoming aware that a release of any Hazardous Material from the Fuel Facilities has occurred, Lessee shall inform City of such release in accordance with the Fuel Spill Response Plan. The City shall have no liability for, or responsibility for the payment of, any costs, expenses or liabilities incurred in connection with the operation, maintenance, repair and use of the Fuel Facilities.

19.5 Fuel Facilities Operations Manual; Lessee Cooperation and Compliance.

Lessee shall prepare the Fuel Facilities Operations Manual ("**Fuel Facilities Operations Manual**"). The Fuel Facilities Operations Manual shall: (a) be provided to City not more than thirty (30) days before retail operations commence at the Retail Fuel Station (and not more than thirty (30) days after any update thereof); (b) be prepared in coordination with City staff; (c) describe in detail the fuel storage inventory and leak detection systems; (d) be consistent with warranty requirements and the manufacturer's recommendations with respect to the Fuel Facilities; (e) be consistent with the Environmental Laws; (f) be consistent with the Storm Water Pollution Prevention Plan, the SPCC Plan, Storm Water Best Management Practices and all other legal requirements; and (g) be updated to address future changes in the design, use or composition of the Fuel Facilities. The Fuel Facilities Operations Manual shall be subject to the prior approval of City and shall be updated as needed, but not less often than annually, to address the operations and practices of Lessee. Lessee shall conduct all of its activities on, or relating to, the Fuel Facilities: (a) in compliance with Environmental Laws, the provisions of this Agreement, City Codes and Standards and all other legal requirements; (b) in cooperation with City in City's efforts to comply with the Environmental Laws; and (c) in compliance with the Fuel Facilities Operations Manual. In the event of a conflict between any provisions of this Agreement and the Environmental Laws, the more stringent provisions shall govern and control.

19.6 Necessary Permits.

Lessee shall obtain and maintain any and all necessary permits or consents required by Environmental Laws with respect to its use of the Fuel Facilities, including registration and certification requirements for underground storage tanks. For all permits, registrations, certifications and other authorizations required by Environmental Laws, Lessee shall be identified as the operator of the Retail Fuel Station, and City shall be identified as owner of the Ground Space. Prior to submitting any document to a federal or state regulatory authority wherein the City is identified as an owner, or otherwise identified as a responsible party, the document shall be first submitted to the City for review and acceptance. The costs associated with obtaining and maintaining permits, registrations and other authorizations shall be borne by Lessee. Lessee shall promptly furnish the City with copies of permits, registrations, and all other material correspondence between Lessee and any permitting agency.

19.7 Environmental Audit.

Lessee shall hire an independent third party to conduct an Environmental Audit of the Leased Premises (including the Fuel Facilities), and Lessee's operations, equipment, facilities and fixtures on or about the Leased Premises, every fifth (5th) Operating Year after commencement of retail operations. Not later than thirty (30) days after completion of each Environmental Audit, Lessee shall review the findings of the Environmental Audit with the City, together with a draft plan (including a performance schedule) to correct all deficiencies and compliance issues identified during the Environmental Audit. The City shall have thirty (30) days within which to comment upon the draft plan, and Lessee shall promptly incorporate any comments of City into a final plan and correct all compliance issues according to the final plan (and performance schedule). Lessee shall modify the Fuel Facilities Operations Manual or other operational plans and procedures associated with the Fuel Facilities as reasonably recommended by such Environmental Audit. Environmental Audits should be conducted under the Texas Environmental Health and Safety Audit Privilege Act, and the City shall be included as a person afforded the privileges provided and receiving immunity from penalties for violations of Environmental Laws discovered and disclosed to any regulatory authority.

19.8 Subsequent City Environmental Audit.

The City shall have the right to conduct its own Environmental Audit of the Leased Premises and the

operations, equipment, facilities and fixtures on or about Leased Premises. Upon being presented with any non-compliances discovered under the Environmental Audit, Lessee shall provide the City with a draft plan (including a performance schedule) to correct all identified deficiencies and compliance issues. The City shall have thirty (30) days within which to review and comment upon the draft plan, and Lessee shall promptly incorporate any City comments into a final plan and correct all compliance issues according to the final plan (and performance schedule). Lessee shall modify the Fuel Facilities Operations Manual or other operational plans and procedures associated with the Fuel Facilities as reasonably recommended by any such Environmental Audit. In conducting any Environmental Audit, the City shall not unreasonably interfere with Lessee's business operations.

19.9 Environmental Certification.

Lessee shall provide to the City at the commencement of each Operating Year (other than the first Operating Year) a written statement that Lessee's occupation and use of the Leased Premises, complied with (a) the Storm Water Pollution Prevention Plan, the SPCC Plan, the terms of all applicable permits, the Fuel Facilities Operations Manual and the Environmental Laws during the preceding Operating Year, and (b) all directions and recommendations set forth in any previous Environmental Audit. If Lessee is unable to provide such certification or documentation to City, it shall provide City with a written statement of the steps that are being taken to enable it to provide City with a certification of compliance and all required documentation.

19.10 General Standards.

In determining those recommendations incorporated into any Environmental Audit that are reasonable (and therefore to be implemented), all recommendations shall be presumed reasonable unless Lessee can demonstrate in a manner acceptable to City that a recommendation (a) is not required by Legal Requirements; and (b) the cost of implementing such recommendation significantly outweighs the benefits thereof.

19.11 Fuel Facilities Environmental Indemnity.

LESSEE SHALL DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS COUNCIL MEMBERS, MANAGERS, OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM ANY DAMAGES, CLAIMS OR LIABILITY ARISING OUT OF LESSEE'S USE OR OCCUPANCY OF THE FUEL FACILITIES ON OR ABOUT THE LEASED PREMISES, INCLUDING LIABILITY FOR INVESTIGATION AND REMEDIAL ACTION RELATED TO THE FOLLOWING OR SIMILAR ACTIVITIES OCCURRING DURING AND BY REASON OF ANY OF LESSEE'S USE AND/OR OPERATION OF THE FUEL FACILITIES: (A) ANY RELEASES, SPILLS, DISCHARGES, LEAKS, EMISSIONS, INJECTIONS, ESCAPES, DUMPING, GENERATION, TRANSPORTATION, STORAGE, TREATMENT OR DISPOSAL OF HAZARDOUS MATERIALS; (B) ANY OTHER DISCHARGE TO SURFACE OR GROUND WATERS; (C) ANY AIR EMISSIONS; AND (D) ANY CONTAMINATION OF SOIL OR GROUND WATERS BENEATH OR ADJACENT TO THE LEASED PREMISES, EXCEPT FOR SUCH DAMAGE, CLAIMS OR LIABILITY (I) CAUSED BY THE CITY OR ITS OFFICERS, AGENTS OR EMPLOYEES, (II) ASSOCIATED WITH THE PRE-LEASE ENVIRONMENTAL CONDITION, (III) CLEARLY ARISING FROM ANY CONSTRUCTION DEFECT IN THE FUEL FACILITIES DISCOVERED WITHIN ONE (1) YEAR AFTER SUBSTANTIAL COMPLETION, OR (IV) ASSOCIATED WITH ANY HAZARDOUS MATERIAL CLEARLY MIGRATING ONTO THE LEASED PREMISES FROM SOME OTHER LOCATION THROUGH NO ACT OR OMISSION OF LESSEE.

19.12 Remedies Not Exclusive.

No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the City shall be entitled to full reimbursement from Lessee whenever the City incurs any costs resulting from the

use or management of Hazardous Materials on the Leased Premises by Lessee, including costs of remedial activities, fines or penalties assessed directly against the City, injuries to third persons or other properties, and loss of revenues resulting from an inability to re-lease or market property due to its environmental condition, even if such loss of revenue occurs after the expiration or earlier termination of the Term.

19.13 Environmental Indemnity.

IN ADDITION TO ALL OTHER INDEMNITIES PROVIDED IN THIS AGREEMENT, LESSEE AGREES TO DEFEND, INDEMNIFY AND HOLD CITY AND ITS ELECTED OFFICIALS, MANAGERS, OFFICERS, AGENTS AND EMPLOYEES, FREE AND HARMLESS FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, REGULATORY DEMANDS, LIABILITIES, FINES, PENALTIES, LOSSES, AND EXPENSES, INCLUDING REMEDIAL COSTS (AND INCLUDING REASONABLE ATTORNEYS' FEES, COSTS AND ALL OTHER REASONABLE LITIGATION EXPENSES WHEN INCURRED AND WHETHER INCURRED IN DEFENSE OF ACTUAL LITIGATION OR IN REASONABLE ANTICIPATION OF LITIGATION ARISING FROM THE EXISTENCE OR DISCOVERY OF ANY HAZARDOUS MATERIAL ON THE LEASED PREMISES, OR THE MIGRATION OF ANY HAZARDOUS MATERIAL FROM THE LEASED PREMISES TO OTHER PROPERTIES OR INTO THE SURROUNDING ENVIRONMENT, ARISING OR RESULTING FROM ANY ACT OR OMISSION OF LESSEE, WHETHER (A) MADE, COMMENCED OR INCURRED DURING THE LEASE TERM, OR (B) MADE, COMMENCED OR INCURRED AFTER THE EXPIRATION OR TERMINATION OF THE LEASE TERM IF ARISING OUT OF EVENTS OCCURRING DURING THE LEASE TERM; PROVIDED, HOWEVER, LESSEE'S OBLIGATION TO INDEMNIFY THE CITY PURSUANT TO THIS SECTION SHALL NOT APPLY WITH RESPECT TO ANY RELEASE OF A HAZARDOUS MATERIAL CLEARLY ARISING OUT OF ANY CONSTRUCTION DEFECT IN THE FUEL FACILITIES, WHICH DEFECT IS DISCOVERED WITHIN ONE YEAR AFTER THE COMMENCEMENT DATE. LESSEE'S OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THE LEASE TERM.

19.14 Term of Environmental Provisions.

The provisions of **Articles 18 and 19**, including the representations, warranties, covenants and indemnities of Lessee shall expressly survive termination of this Agreement, and Lessee's obligations and liabilities under **Articles 18 and 19** shall continue so long as the City bears any liability or responsibility under Environmental Law arising from Lessee's occupancy or use of the Leased Premises and/or Airport during the term of this Agreement.

**ARTICLE 20. AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) and
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM SPECIAL CONTRACT PROVISIONS**

20.1 ACDBE/DBE Policy Requirements. ACDBE and DBE participation commitments (0.72%) have been established for this Agreement, which participation is a contractual commitment upon commencement of the first Operating Year of the Agreement. Participation is measured as a percentage of total annual Gross Receipts received by Concessionaire in the Leased Premises operated as a Convenience Store and a Restaurant under the Agreement.

20.1.1 General Requirements

1. It is the policy of the Airport that ACDBEs and DBEs as defined in 49 C.F.R. Part 23 ("Part 23") and Part 26 ("Part 26") shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. The Airport has developed and implemented an ACDBE and DBE program as required by Part 23 and Part 26. The ACDBE/DBE program objective is to ensure full and fair access to concession

opportunities for all businesses and in particular for ACDBE/DBE businesses.

2. Concessionaire acknowledges that it is a "concessionaire" as that term is defined in 49 C.F.R. § 23.3.
3. This Agreement is subject to the requirements of the United States Department of Transportation's ("DOT") regulations, 49 C.F.R. Parts 23 and 26. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the performance of this Agreement or any management contract, subcontract, purchase agreement, or other agreement covered by Part 23 or Part 26. Concessionaire agrees to include the above statements in any subsequent concession agreement or contract covered by Part 23 or Part 26 that it enters into, and that it shall require such those businesses to similarly include the statements in further agreements.
4. Concessionaire shall carry out applicable requirements of 49 C.F.R. Part 23 and Part 26 in the award and administration of DOT-assisted contracts. Failure by Concessionaire to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Airport deems appropriate.
5. The Airport's Small Business Element is responsible for ensuring compliance with the Airport's ACDBE/DBE policies and procedures. The Airport's Management Analyst has been designated as the ACDBE/DBE Liaison Officer. In that capacity, the Management Analyst is responsible for compliance with all aspects of the ACDBE/DBE programs. The City of Abilene has established overall, annual ACDBE and DBE goals for the Airport.
 - a. The Small Business Element will evaluate the number of ACDBE's that reasonably reflect their availability in the Abilene market area, in the absence of discrimination, to do the types of work required, will participate as concessionaires throughout the term of the agreement, and account for a percentage of the estimated annual gross receipts equivalent to a level set in accordance with 49 C.F.R §§ 23.47 and 23.55.
 - b. The Small Business Element is required to review the extent of ACDBE participation before the exercise of each renewal option in a long-term exclusive lease, to consider whether an increase or decrease in ACDBE participation is warranted (to reflect ACDBE availability in the ABI market area or is consistent with an approved overall goal).
6. Concessionaire specifically agrees to comply with all applicable provisions of the Airport's ACDBE and DBE Policy and any amendments thereto. ACDBE/DBE and Non-ACDBE/DBE sub-concessionaires shall also be required to agree to comply with all applicable provisions of the Airport's ACDBE and DBE Policy.
 - a. Concessionaire shall maintain records showing: Subcontract/supplier awards, including awards to ACDBE/DBEs;
 - b. Specific efforts to identify and award such contracts to ACDBE/DBEs;

- c. Executed contracts with ACDBE/DBEs showing actual ACDBE/DBE project participation.
- 7. Failure to comply with the Airport's ACDBE and DBE policies or Part 23 or Part 26, or any other applicable laws or regulations, shall constitute a material breach of this Agreement, shall be cause for termination of this Agreement and shall entitle Airport to any and all remedies available at law or equity.

20.1.2 Administrative Requirements

- 1. Concessionaire is charged with knowledge of and is solely responsible for complying with each requirement of Parts 23 and 26 in maintaining its participation commitment or demonstrating a good faith effort as described below. Should any questions arise regarding specific circumstances, Concessionaire must consult Parts 23 and 26, appropriate DOT Rules and Regulations, or may contact the Airport's Small Business Element.
- 2. Concessionaire shall appoint a high-level official, who will report directly to Concessionaire's chief executive officer or equivalent to administer and coordinate Concessionaire's ACDBE/DBE contractual commitments and obligations under 49 C.F.R. Parts 23 and 26.
- 3. Concessionaire agrees to submit quarterly reports of payments and subcontract and/or supplier awards to DBEs and Non-DBEs in such form and manner and at such times as the Airport shall prescribe.
- 4. Concessionaire shall provide Airport with access to all books, records, accounts and personnel. Such access will be used for, among other purposes, determining ACDBE/DBE participation and compliance with the ACDBE and DBE Policy. Concessionaire may be subject to interim and post-contract ACDBE/DBE audits. Audit determination(s) regarding Concessionaire's compliance with the ACDBE/DBE Policy may be considered and have a bearing on consideration of Concessionaire for award of future contracts.

20.2 Participation Commitments and Good Faith Efforts

- 1. Concessionaire has a continuing obligation to meet its ACDBE/DBE participation commitment. If amendments or other modifications are made to agreements with ACDBE/DBEs, and if said changes affect the dollar value or scope of work of said ACDBE/DBEs, Concessionaire shall immediately inform City in writing of such changes, regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification. Concessionaire must make good faith efforts to maintain its ACDBE participation commitment. Concessionaire cannot terminate or otherwise change the terms of its ACDBE and DBE commitments without the prior written consent of City. This includes, but is not limited to, instances in which the Concessionaire seeks to perform work originally designated for an ACDBE/DBE firm with its own forces or those of an affiliate, a non-ACDBE/DBE or another ACDBE/DBE. If Concessionaire during performance of this Agreement must replace an ACDBE/DBE for any reason, it must follow the provisions herein governing the substitution of ACDBE/DBEs and make documented good faith efforts to meet its original ACDBE/DBE participation commitments.

An ACDBE concessionaire that is unable to perform successfully will be replaced by another ACDBE concessionaire, if the remaining term of the Agreement makes this feasible. In the event that such action is not feasible, Concessionaire must make a good faith effort during the remaining term of the Agreement to encourage ACDBEs to compete for the purchases and/or leases of goods and services to be made by the Concessionaire.

2. Concessionaire must demonstrate good cause to terminate an ACDBE/DBE joint venturer, subcontractor, contractor or supplier. Good cause includes the following circumstances:
 - a. The listed ACDBE/DBE joint venturer, subcontractor, contractor or supplier fails or refuses to execute a written contract.
 - b. The listed ACDBE/DBE joint venturer, subcontractor contractor or supplier fails or refuses to meet Concessionaire's reasonable, nondiscriminatory bond requirements.
 - c. The listed ACDBE/DBE joint venturer, contractor or supplier becomes bankrupt, insolvent or exhibits credit unworthiness.
 - d. City has determined that the listed ACDBE/DBE joint venturer, sub- contractor, contractor or supplier is not a responsible firm.
 - e. The listed ACDBE/DBE joint venturer, sub-contractor, contractor or supplier voluntarily withdraws from the project and provides City written notice of its withdrawal.
 - f. The listed ACDBE/DBE joint venturer, sub-contractor, contractor or supplier is ineligible to receive credit for the type of work required.
 - g. The ACDBE/DBE owner dies or becomes disabled with the result that the listed ACDBE/DBE joint venturer, sub-contractor, contractor or supplier is unable to complete its work on the contract.
 - h. Other documented good cause as determined by City. Good cause does not include where Concessionaire seeks to terminate a ACDBE/DBE it relied upon to obtain this Agreement so that Concessionaire can self-perform the work or substitute another ACDBE/DBE or non-ACDBE/DBE joint venturer, sub-contractor, contractor or supplier to perform the work for which the ACDBE/DBE was engaged or listed in the proposal.

Concessionaire must give the ACDBE/DBE notice in writing, with a copy to Airport, of its intent to request to terminate and/or substitute, and the detailed reasons for the request.

3. Good faith efforts during performance of this Agreement must include, but are not limited to:
 - a. Solicitation of ACDBE/DBEs that are certified in the applicable area of work or specialty;
 - b. Providing interested ACDBE/DBEs with adequate information about the plans, specifications, scope of work and requirements of this Agreement;

- c. Fairly investigating and evaluating the interested ACDBE/DBEs regarding their capabilities, not rejecting ACDBE/DBEs as unqualified without sound reasons based on a thorough investigation, and providing verification, including a statement giving Concessionaire's reasons for its conclusion that it rejected each non-utilized ACDBE/DBE because the ACDBE/DBE was not qualified;
 - d. Negotiating in good faith with interested ACDBE/DBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested ACDBE/DBEs, and providing written documentation why Concessionaire and any of the ACDBE/DBEs contacted did not succeed in negotiating an agreement; and
 - e. Effectively using the services of available minority and women community organizations; chambers and concessionaire groups; local, State, and Federal business assistance offices, and other organizations that provide assistance in the identification of ACDBE/DBEs.
- 4. If Concessionaire is found not to have made continuing good faith efforts to meet its ACDBE and DBE contractual commitments, it may request administrative review and final reconsideration by the Director of Transportation Services. Concessionaire may elect to meet in person to discuss whether Concessionaire made continuing good faith efforts in accordance with the Policies.
 - 5. Concessionaire may not require exclusive subcontracting or teaming agreements with other concessionaires, sub-concessionaires, contractors or vendors.
 - 6. In evaluating Concessionaire's good faith efforts submission, City will only consider those documented efforts that occurred prior to the good faith effort submission.
 - 7. Concessionaire must submit a Letter of Intent form for each proposed new joint venturer, sub-contractor, contractor or supplier. Lessor will approve or disapprove the substitution based on Concessionaire's documented compliance with these provisions.
 - 8. Lessor will look not only at the different kinds of efforts that Concessionaire has made but also the quantity and intensity of those efforts. Efforts that are merely pro-forma are not good faith efforts to meet the commitments, even if they are sincerely motivated. Airport will also consider if, given all relevant circumstances, Concessionaire's efforts could reasonably be expected to produce a level of ACDBE/DBE participation sufficient to meet the goal.

20.3 Counting ACDBE Participation

Concessionaire may meet its ACDBE obligations in any of the following ways:

- 1. ACDBE prime concessionaire participation: If Concessionaire is a certified ACDBE, count the total amount of the dollar value of the Gross Receipts the ACDBE earns under this Agreement and the total value of a management contract or subcontract with an ACDBE toward the goal. An ACDBE prime concessionaire can count its self-performance toward meeting the ACDBE goal, but only for the scope of work and at the percentage levels it will self-perform. If the ACDBE enters into a sub-concession agreement or subcontract with a non-ACDBE, do not count any of the Gross Receipts

earned by the non-ACDBE.

2. ACDBE sub-concessionaire participation: Count only the portion of the Gross Receipts earned by the ACDBE under its sub-agreement.
3. ACDBE joint venture participation: If the goal is to be met through a joint venture agreement with an ACDBE partner, count the portion of the Gross Receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces. To be eligible for credit towards meeting the goal, the ACDBE partner must share in the financial risks and rewards commensurate with the amount of proposed ACDBE participation sought to be credited towards the ACDBE goal. For purposes of ACDBE participation, joint ventures are not certified as ACDBEs. If Concessionaire forms a new joint venture for any purpose that has not been previously approved by Lessor, it must submit a Draft Joint Venture Agreement to Lessor.
4. ACDBE/DBE services participation: Count the entire amount of fees or commissions charged by an ACDBE for a *bona fide* service, provided that the Small Business Element determines this amount to be reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial services.
5. ACDBE/DBE manufacturer participation: Count 100 percent of the cost of goods obtained from an ACDBE manufacturer. The term manufacturer has the same meaning as in 49 C.F.R. § 26.55(e)(1)(ii).
6. ACDBE/DBE regular dealer participation: Count 100 percent of the cost of goods purchased or leased from an ACDBE/DBE regular dealer. The term "regular dealer" has the same meaning as in 49 C.F.R. § 26.55(e)(2)(ii).
7. ACDBE/DBE goods participation: Count credit toward DBE goals for goods purchased from a DBE which is neither a manufacturer nor a regular dealer as follows:
 - i. Count the entire amount of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.
 - ii. Count the entire amount of fees or transportation charges for the delivery of goods required for a concession, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of goods themselves

8. Other Legal Arrangement. Concessionaire may propose some other legal arrangement so long as it meets the eligibility standards in 49 C.F.R. Part 23.
9. Costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "build-out") do not count towards the ACDBE participation commitment.
10. When calculating participation levels, percentages and dollar amounts for each ACDBE/DBE, Concessionaire cannot round up in determining whether or not the total of these amounts meets or exceeds the ACDBE/DBE contractual commitment.
11. Concessionaire may count towards its ACDBE/DBE participation commitments an ACDBE/DBE that is certified during the performance of the Agreement if the ACDBE/DBE is added to the Agreement or substituted for another ACDBE/DBE pursuant to these provisions.
12. Concessionaire may not count toward its ACDBE/DBE participation commitment the dollar value of work performed by a ACDBE/DBE after it has ceased to be certified as an ACDBE/DBE, except where the ACDBE/DBE is no longer certified because it has exceeded the size standard.
13. ACDBE prime concessionaires can count their self-performance toward meeting the ACDBE goal, but only for the scope of work and at the percentage level they self-perform.
14. When an ACDBE/DBE participates in the Agreement, Concessionaire shall count only the value of the work actually performed by the ACDBE/DBE toward the ACDBE/DBE goals.
15. Concessionaire may count expenditures to an ACDBE/DBE towards the ACDBE/DBE participation commitment only if the ACDBE/DBE is performing a commercially useful function. For purposes of these provisions, the term "commercially useful function" has the same meaning as in 49 C.F.R. § 26.55(c).
 - a. An ACDBE/DBE performs a commercially useful function when it is responsible for execution of the work under the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the ACDBE/DBE must also be responsible, with respect to materials and supplies used under the Agreement, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the materials itself. To determine whether an ACDBE/DBE is performing a commercially useful function, Small Business Element will evaluate the amount of the work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, the ACDBE/DBE credit claimed for its performance of the work, and other relevant factors.

- b. An ACDBE/DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of ACDBE/DBE participation. In determining whether an ACDBE/DBE is such an extra participant, the Small Business Element will examine, among other relevant factors, similar transaction, particularly those in which ACDBE/DBEs do not participate.
- c. When an ACDBE/DBE is presumed not to be performing a commercially useful function as provided in this section, the ACDBE/DBE may present evidence to rebut this presumption. The Small Business Element will determine whether the firm is performing a commercially useful function given the type of work involved and normal industry practices.

16. Small Business Element will count ACDBE participation where the ACDBE or joint venture partner performs a portion of work under the Agreement based on the percentage of ownership or equity of the ACDBE in a joint venture. Small Business Element will allow the joint venture to count the portion of the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work under the Agreement that the ACDBE joint venture partner performs with its own forces toward the ACDBE commitment and for which it is at risk.

20.4 Certification

1. In order to count the participation of ACDBE's towards the ACDBE participation commitments, the ACDBE must be certified by an approved entity of the Texas Unified Certification Program ("TUCP"). Other certifications are not acceptable.
2. Concessionaire must submit to Small Business Element a properly completed ACDBE certificate or letter, with all required attachments, for all ACDBE's proposed to be utilized as sub-concessionaires or suppliers to meet the contract goals.
3. A firm must be certified as an ACDBE by the TUCP at the time of substitution or replacement to be counted towards the participation commitment. However, Concessionaire may count ACDBE's certified during the performance of the Agreement towards its ACDBE participation commitment once documentation confirming such certification is submitted to Airport.
4. South Central Texas Regional Certification Agency, the Texas Department of Transportation (TxDOT) and the Federal Aviation Administration (FAA) maintain current listings of certified ACDBE's. Concessionaire must utilize these Directories to assist them in locating ACDBE's for the work required on the contract. The ACDBE Directories are located at:
 - <https://txdot.txdotcms.com/FrontEnd/searchcertifieddirectory.asp?TN=txdot>
 - www.sctrca.org
 - <https://faa.dbesystem.com/FrontEnd/VendorSearchPublic.asp?TN=faa&XID=7227>
5. ACDBE certification does not constitute a representation or warranty as to the qualifications or capabilities of any certified firm.

20.5 ACDBE/DBE Utilization Forms and Related Documentation

1. Concessionaire must submit completed ACDBE and DBE utilization forms as required by Lessor.
2. Concessionaire shall timely submit reports and verifications within ten (10) business days as requested by the Lessor, which form may be modified from time to time by the Lessor, and shall provide such financial information or other information deemed necessary to support and document the ACDBE/DBE commitment and ACDBE/DBE participation for this Agreement. The Lessor shall have the right until five (5) years after the expiration or termination of this Agreement, to review books, records and financial information of Concessionaire, and where applicable, all individuals, joint venturers or other business entities that are engaged in concession activity under this Agreement, to substantiate compliance with 49 C.F.R. Parts 23 and 26, as amended, and any guidance issued by the Federal Aviation Administration regarding the interpretation of the federal regulations.
3. For Concessionaire's participation commitment, where an ACDBE firm is a joint venture partner or subconcessionaire, if the ACDBE's information or status changes, Concessionaire must immediately notify the Small Business Element of the change and provide a written explanation for the change by submitting a Request for Approval of Change to Original Joint Venture Commitment form. No change in the use of an ACDBE firm will change Concessionaire's participation commitment. Any change in the use of an ACDBE firm shall be governed by the MODIFICATION OR SUBSTITUTION provisions herein.
4. Except as authorized by Lessor, Concessionaire shall enter into formal agreements with the partners, subcontractors, suppliers listed in its bid proposal and Letter of Intent form within ten (10) business days after receipt of this Agreement executed by the Lessor. If requested, Concessionaire must provide the Lessor copies of those agreements within five (5) business days of the written request.

20.6 Compliance and Enforcement

1. These compliance and enforcement provisions address the additional contractual remedies available to City as a result of Concessionaire's failure, if any, to comply with the obligations set forth in the ACDBE and DBE Program requirements. The contractual remedies set forth in the ACDBE and DBE Programs are also applicable to any failure to comply with the Program requirements, as well as any remedies available at law or in equity. These remedies are not intended to apply to any failure by Concessionaire to comply with other obligations under this Agreement unrelated to the Program requirements or preclude City's recovery of its actual damages for such unrelated breaches.
2. Concessionaire must forward to Airport all necessary documents and information during the course of performance under this Agreement and to close out the Agreement, and must cooperate with Airport in providing any information, including the final accounting for ACDBE and DBE participation on this Agreement.
3. Airport is empowered to receive and investigate complaints and allegations by ACDBEs and/or DBEs, third parties or staff, or to initiate its own investigations, regarding Concessionaire's compliance with the Program requirements. If Airport determines that an investigation is warranted, Concessionaire must fully cooperate with the investigation and provide complete, truthful information to the Airport concerning the investigation and Concessionaire's compliance

with the Program requirements.

ARTICLE 21. SIGNS

Lessee shall neither erect signs nor distribute advertising materials upon Airport premises, without the prior written consent of the Lessor. Signs displayed on the Leased Premises must be approved in advance of display, and in writing, by the Lessor, in the Lessor's sole discretion.

ARTICLE 22. REGULATIONS

Lessee's officers, agents, employees and servants shall obey all rules and regulations promulgated by Lessor, its authorized agents in charge of the Airport, or other lawful authority, to insure the safe and orderly conduct of operations and traffic thereon.

ARTICLE 23. TIME OF EMERGENCY

During time of war or national emergency, Lessor shall have the right to lease the landing area or any part thereof to the United States for government use, and, if such lease is executed, the provisions of this Agreement, insofar as they are inconsistent with those of the Government lease, shall be suspended.

ARTICLE 24. QUALITY OF SERVICES

Lessee shall, at all times, furnish good, prompt and efficient services, adequate to meet demand for same at the Airport, furnish said services on a non-discriminatory basis to all users thereof, and charge non-discriminatory prices for each unit of sale or service; provided, however, that Lessee will be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

ARTICLE 25. SUBORDINATION OF AGREEMENT AND RIGHT OF RECAPTURE

- 25.1 This Agreement shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States of America regarding operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport. Should the effect of such agreement with the United States be to take any of the property under lease, or substantially alter or destroy the commercial value of the leasehold interest granted herein, Lessor shall not be held liable therefore, but, in such event, Lessee may cancel this Agreement upon ten (10) days' written notice to Lessor. Notwithstanding the foregoing, Lessor agrees that, in the event it becomes aware of any such proposed or pending agreement or taking, Lessor shall utilize its best efforts to (i) give the maximum possible notice thereof to Lessee. Any portion of the Leased Premises recaptured from Lessee under this provision shall result in a proportionate abatement of rent as of the date the recapture is effectuated; provided, that nothing herein shall prevent or prohibit Lessee from seeking an award for damages from the taking authority.
- 25.2 Lessor shall have the right to recapture any or all of the Leased Premises to the extent that such are necessary for Lessor's development, improvement, and or maintenance of the Airport's runways, taxiways and access roads; for protection or enhancement of flight operations; or for other development in compliance with any current or future Airport Master Plan. In the event of any such recapture, Lessor shall

pay to Lessee the unamortized cost of Lessee's investment in the Leased Premises which are taken.

ARTICLE 26. SECURITY

Lessee shall comply with all rules, regulations, statutes, orders, directives or other mandates of the United States, the State of Texas, and/or the City of Abilene or Airport regarding Airport security requirements or measures.

- 26.1 Lessee shall indemnify and hold harmless Lessor, its officers and employees from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States or State of Texas, by reason of Lessee's failure to comply with any applicable security provision and/or requirement for compliance set forth herein.

ARTICLE 27. DEFAULT AND REMEDIES

- 27.1 Each of the following shall constitute an event of default by Lessee:

27.1.1 Lessee shall fail to pay any rent as provided for in this Agreement and such failure shall continue for a period of ten (10) days after receipt by Lessee of written notice thereof.

27.1.2 Lessee shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained, and if such neglect or failure should continue for a period of thirty (30) days after receipt by Lessee of written notice of same, or if more than thirty (30) days shall be required because of the nature of the default, if Lessee shall fail within said thirty (30) day period to commence and thereafter diligently proceed to cure such default.

27.1.3 Lessee shall become insolvent; take the benefit of any present or future insolvency statute; make a general assignment for the benefit of creditors; file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state thereof; or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property.

27.1.4 An Order of Relief shall be entered, at the request of Lessee or any of its creditors, under federal bankruptcy, reorganization laws or any law or statute of the United States or any state thereof.

27.1.5 A petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute, shall be filed against Lessee and shall not be dismissed within ninety (90) days after the filing thereof.

27.1.6 Pursuant to, or under the authority of, any legislative act, resolution, rule, or any court, governmental, agency or board order or decree or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Lessee and such possession or control shall continue in effect for a period of sixty (60) days.

27.1.7 Lessee shall become a corporation in dissolution or voluntarily or involuntarily forfeit its corporate charter; provided that, in the event of involuntary charter forfeiture no event of default shall exist so long as Lessee reinstates the charter within sixty (60) days following the forfeiture

thereof.

27.1.8 The rights of Lessee hereunder shall be transferred to, pass to or devolve upon, by operations of law or otherwise, any other person, firm, corporation or other entity, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, receivership, or other proceeding or occurrence described in Paragraphs 27.1.3 through 27.1.8 of this Section 27.1.

27.1.9 Lessee shall voluntarily discontinue its operations at the Airport for a period of sixty (60) consecutive days.

27.1.10 Lessee shall fail to complete the Project Improvements required under Article 14 - Construction by Lessee within two (2) years of Commencement Date.

27.1.11 Lessee shall fail to make the Minimum Capital Investment required under Article 14 - Construction by Lessee within two (2) years of Commencement Date.

- 27.2 In the event any default shall occur, Lessor then, or at any time thereafter, but prior to the removal of such condition of default, shall have the right, at its election, to terminate Lessee's right of possession of the Leased Premises, by giving at least five (5) days written notice to Lessee, at which time Lessee will then quit and surrender the Leased Premises to Lessor, but Lessee's obligations under the Agreement shall remain in full force and effect. At the expiration of said five (5) days notice period, Lessor may enter upon and take possession of the Leased Premises (or any part thereof in the name of the whole), without demand or notice, and repossess the same as of the Lessor's former estate, expelling Lessee and those claiming under Lessee, forcibly if necessary, without prejudice to any remedy for arrears of rent or preceding breach of covenant and without any liability to Lessee or those claiming under Lessee for such repossession.
- 27.3 Lessor's repossession of the Leased Premises shall not be construed as an election to terminate this Agreement nor shall it cause a forfeiture of rents or other charges remaining to be paid during the balance of the term hereof, unless a written notice of such intention be given to Lessee, or unless such termination is decreed by a court of competent jurisdiction.
- 27.4 Upon repossession, Lessor shall have the right, at its election and whether or not this Agreement shall be terminated, to relet the Leased Premises or any part thereof for such period(s), which may extend beyond the term hereof, at such rent and upon such other terms and conditions as Lessor may, in good faith, deem advisable. Notwithstanding any law or anything contained herein to the contrary, to the full extent permitted under applicable law, Lessee and Lessor agree that Lessor's duty to relet the Leased Premises or otherwise to mitigate damages hereunder shall be limited to those requirements set forth in the Texas Property Code, as amended. Lessor shall in no event be liable, and Lessee's liability shall not be affected or diminished whatsoever, for failure to relet the Leased Premises, or in the event the Leased Premises are relet, for failure to collect any rental under such reletting, so long as the Lessor uses objectively reasonable efforts to comply with said Texas Property Code. Lessor and Lessee agree that any such duty shall be satisfied and Lessor shall be deemed to have used objective reasonable efforts to relet the Leased Premises and mitigate Lessor's damages by: (1) posting a "For Lease" sign on the Leased Premises; and (2) advising Lessor's lease agent, if any, of the availability of the Leased Premises.

- 27.5 In the event that Lessor elects to relet, rentals received by same from such reletting shall be applied: first, to the payment of any indebtedness, other than rent due hereunder from Lessee under this Agreement; second, to the payment of any cost of such reletting; third, to the payment of rent due and unpaid hereunder; and finally, the residue, if any, shall be held by Lessor and applied hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Lessee hereunder, then Lessee shall pay such deficiency to Lessor. Such deficiency shall be calculated and paid monthly. Lessee shall also pay to Lessor, as soon as ascertained, any costs and expenses reasonably incurred by Lessor in such reletting not covered by the rentals received from such reletting of the Leased Premises.
- 27.6 If Lessor shall terminate this Agreement or take possession of the Leased Premises by reason of a condition of default, Lessee and those holding under Lessee, shall forthwith remove their goods and effects, including underground fuel storage tanks, from the Leased Premises. If Lessee or any such claimant shall fail to effect such removal forthwith, Lessor may, without liability to Lessee or those claiming under Lessee, remove such goods and effects and store same for the account of Lessee or of the owner thereof at any place selected by Lessor, or, at Lessor's election, and upon giving fifteen (15) days' written notice to Lessee of date, time and location of sale, Lessor may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise, as Lessor in its sole discretion may deem advisable. If, in Lessor's judgment, the cost of removing and storing, or of removing and selling any such goods and effects, exceeds the value thereof or the probable sale price thereof, as the case may be, Lessor shall have the right to dispose of such goods in any manner Lessor may deem advisable.
- 27.7 Lessee shall be responsible for all costs of removal, storage and sale, and Lessor shall have the right to reimburse the Airport Revenue Fund from the proceeds of any sale for all such costs paid or incurred by Lessor. If any surplus sale proceeds remain after such reimbursement, Lessor may deduct from such surplus any other sum due to Lessor hereunder and shall pay over to Lessee any remaining balance of such surplus sale proceeds.
- 27.8 If Lessor shall enter into and repossess the Leased Premises as a result of Lessee's default in the performance of any of the terms, covenants or conditions herein contained, then Lessee hereby covenants and agrees that it will not claim the right to redeem or re-enter the Leased Premises to restore the operation of this Agreement pursuant to any present or future statute providing a right of redemption or right of re-entry to tenants under real property leases, and Lessee hereby waives the right to such redemption and re-entrance under any present or future law, and does hereby further, for any party claiming through or under Lessee, expressly waive its right, if any, to make payment of any sum or sums of rent, or otherwise, of which Lessee shall have made default under any of the covenants of the Agreement and to claim any subrogation of the rights of Lessee under these presents, or any of the covenants thereof, by reason of such payment.
- 27.9 All rights and remedies of Lessor herein created or otherwise existing at law are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently, whenever and as often as deemed desirable.
- 27.10 If proceedings shall, at any time, be commenced for recovery of possession, as aforesaid, and compromise or settlement shall be effected either before or after judgment whereby Lessee shall be permitted to retain possession of the Leased Premises, then such proceeding shall not constitute a waiver of any

condition or agreement contained herein or of any subsequent breach thereof or to this Agreement.

- 27.11 Any amount paid or expense or liability incurred by Lessor for the account of Lessee may be deemed to be additional rental and the same may, at the option of Lessor, be added to any rent then due or thereafter falling due hereunder, including but not limited to attorney's fees and costs as set forth in Article 36.

ARTICLE 28. HOLDING OVER

- 28.1 It is agreed and understood that any holding over by Lessee, with Lessor's consent, after the termination of this Agreement, shall not renew and extend same, but shall operate and be construed as a tenancy from month-to-month, upon all the terms and conditions set forth herein.. In the event that Title to any Improvements shall vest upon Lessor at the end of the term or any extension thereof, Lessee shall also pay rent for the Improvements at rental rates established by the Appraisal Process.
- 28.2 Should Lessee hold over against Lessor's will, Lessee agrees to pay to Lessor, as monthly rent during such period of non-consensual holding over, for the Leased Premises (including Ground Space and all Improvements located thereon), whether title to such Improvements is in the name of Lessor or Lessee) for each month of such tenancy.
- 28.3 "Appraisal Process" means the process followed by the parties to arrive at a fair market value of the Improvements to be constructed by Lessee that will be utilized to set rental rates during a holding over period in the event this Agreement expires and Lessee continues to occupy the Leased Premises on the basis of a month-to-month tenancy in accordance with this Article 28. Said process consists of the following: Lessor shall, at Lessor's cost, cause an appraisal to be conducted of the Leased Premises ("Lessor's Appraisal"). The appraisal shall be undertaken by a recognized, qualified and impartial Member of the Appraisal Institute (MAI) or equivalent appraiser, experienced in airport appraisals, selected by the Lessor. The Lessor's Appraisal shall be performed within the twelve (12) month period preceding the date upon which a change in rental rates is due to be implemented. In the event that Lessee states, in writing, to the Lessor that it does not agree with the Lessor's Appraisal, then and in such event Lessee shall retain a recognized, qualified and impartial MAI or equivalent appraiser, experienced in airport appraisals (hereinafter, "Lessee Appraiser") to conduct an appraisal of the Leased Premises at Lessee's cost (hereinafter "Lessee's Appraisal"). Such retention shall be signed and noticed in writing from Lessee to Lessor. Lessor's Appraiser, along with Lessee's Appraiser, shall, in turn, appoint a third appraiser, qualified as stated above, to render an opinion of value of the Leased Premises and the cost of such third appraiser shall be shared and paid equally by Lessee and Lessor. If Lessee fails to retain an appraiser for a period of twenty (20) days after receipt of Lessor's Appraisal, then Lessor's Appraisal shall stand as if uncontested. No two appraisers may be employed by, or office within, the same company, firm or organization, or family of organizations or companies.

ARTICLE 29. ASSIGNMENT AND SUBLET

- 29.1 Lessee is not permitted under any circumstances to transfer or assign this Agreement or Lessee's interest in or to the Leased Premises without having first obtained Lessor's prior written consent, which may be given only by or pursuant to a resolution enacted by the City Council of the City of Abilene; provided, however, that the foregoing shall not apply to and prevent the assignment of this Agreement by Lessee, with the prior written consent of the City Manager, to any Affiliate or Subsidiary of Lessee.

- 29.2 Lessee shall not sublet the Leased Premises or any part thereof without having first obtained the Lessor's written consent. In the event Lessee requests permission to sublease, the request shall be submitted to the Lessor, prior to the effective date of the sublease requested, and shall be accompanied by a copy of the proposed sublease agreement(s) and of all agreement(s) collateral thereto. The identity of the sublessee, the area or space to be subleased, the rental to be charged, the type of business to be conducted, and all other information reasonably requested by the Lessor shall be specified. Lessee shall not sublease a total of more than fifty percent (50%) of the Leased Premises without the prior written approval of the Lessor. If such limit is exceeded without the Lessor's prior written approval, Lessor shall have the right, upon thirty (30) days' written notice, to recapture the space described in the sublease, and terminate the entire Agreement on the expiration of such thirty (30) day period. In the event of any recapture, Lessee's rental payments shall be adjusted on a pro-rata basis; provided, however, that all rights and remedies of Lessor contained in **Article 27 - Default and Remedies**, shall be available to Lessor.
- 29.3 Each subletting to which there has been consent shall be by written instrument, in a form reasonably satisfactory to Lessor, and shall be executed by sublessee, who shall agree, in writing, for the benefit of Lessor, to be bound by and to perform the terms, covenants and conditions of this Agreement. Four (4) executed copies of such written instrument shall be delivered to Lessor. Failure either to obtain Lessor's prior written consent or to comply with the provisions herein contained shall operate to prevent any such subletting from becoming effective.

ARTICLE 30. DAMAGE OR DESTRUCTION OF LEASED PREMISES

- 30.1 In the event any of the Improvements on the Leased Premises are destroyed or damaged to the extent that they are unusable, Lessee shall have the election of repairing or reconstructing the Improvements substantially as they were immediately prior to such casualty, or in a new or modified design, or not to construct the Improvements. Lessee shall give the Lessor written notice of its election within sixty (60) days after the occurrence of such casualty. If the entirety or substantially all of the Improvements are damaged or destroyed and Lessee elects not to repair or reconstruct the damaged Improvements within the sixty (60) day election period, the Lessor may terminate this Agreement by written notice to Lessee given within sixty (60) days following expiration of Lessee's election period, whereupon (i) this Agreement shall terminate, Lessee shall clear the Leased Premises of any remaining improvements or debris, and Lessee shall thereupon abandon the Leased Premises and (ii) the insurance proceeds covering the Improvements shall be paid to Lessee. In the event of damage or destruction to any of the Improvements, Lessor shall have no obligation to repair or rebuild the Improvements or any fixtures, equipment or other personal property installed by Lessee on the Leased Premises.
- 30.2 If Lessee elects to repair or reconstruct the Improvements, Lessee shall use its insurance proceeds from the policy covering the destroyed Improvements. If the insurance proceeds are not sufficient, Lessee agrees to pay the deficiency. If Lessee elects to repair or reconstruct, Lessee shall, at its expense, replace and repair any and all fixtures, equipment and other personal property necessary to properly and adequately continue its authorized activities on the Leased Premises. In no event shall Lessee be obligated to provide equipment and fixtures in excess of those existing prior to the damage or destruction. Lessee agrees that such work will be commenced and completed with due diligence.
- 30.3 Prior to any repair or reconstruction described above, Lessee shall submit plans and specifications to the Lessor for written approval. Such repair or reconstruction shall be in accordance therewith. Any changes

must be approved in writing by the Lessor.

ARTICLE 31. LAWS AND ORDINANCES

Lessee agrees to comply promptly with all laws, ordinances, orders, rules and regulations, as amended from time to time, affecting the Leased Premises, including, but not limited to, those related to its cleanliness, safety, operation, use, and business operations. Lessee shall comply with all Federal and State regulations concerning its operation on the Airport and shall indemnify and hold harmless Lessor, its officers and employees, from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States or the State of Texas, by reason of Lessee's failure to comply with the terms of this Article or with any other terms set forth in this Agreement.

ARTICLE 32. TAXES AND LICENSES

Lessee shall, at its sole cost and expense, pay on or before their respective due dates, to the appropriate collecting authority, all Federal, State, County, and City taxes and fees, which are now or may hereafter be levied upon the Lessee, Leased Premises, Improvements, and the business conducted thereon or upon any of Lessee's property used in connection therewith including, but not limited to, any possessory interest taxes. Lessee shall also maintain, in current status, all Federal, State, County, and City licenses and permits required for the operation of its business.

ARTICLE 33. NONDISCRIMINATION AND AFFIRMATIVE ACTION REGULATIONS

- 33.1 Lessee understands and agrees to not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. As part of said compliance, Lessee shall adhere to such Non-Discrimination in the solicitation, selection, hiring or commercial treatment of vendors, suppliers or commercial customers; further, Lessee shall not retaliate against any person for reporting instances of such discrimination.
- 33.2 Lessee for itself, its heirs, representatives, successors and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained or otherwise operated on the Leased Premises, for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
- 33.3 Lessee for itself, its representatives, successors and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that: (1) no person, on the grounds of race, color, creed, sex, age, religion, national origin or handicap, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, in the use of said facilities; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, creed, sex, age, religion, national origin or handicap shall be excluded from participation, denied the benefits of, or otherwise be subjected to discrimination;

and (3) that Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

- 33.4 Lessee agrees that it will comply with applicable statutes, Executive Orders and such rules as are promulgated by applicable state, federal or municipal agencies to assure that no person shall be excluded from participating in any activity conducted with or benefiting from Federal assistance on the basis of race, creed, color, national origin, sex age, or handicap. Lessee, its successors and assigns, shall be obligated to comply with the provisions of this **Section 33.4** for the period during which Federal assistance is extended to the Airport, except where Federal assistance is to provide, or is in the form of, personal property or real property or interest therein or structures or improvements thereon. In these cases, this **Section 33.4** shall apply to Lessee, its successors and assigns, through the later of: (a) the period during which such property is used by Lessor, its successors and assigns for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which Lessor, its successors or assigns, retains ownership or possession of the Leased Premises.

ARTICLE 34. WAGES

Lessee and sub-lessees shall pay at least the minimum wage, as required by Federal and State statutes to employees of its operations hereunder.

ARTICLE 35. FORCE MAJEURE

If either party shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, war, terrorism, inability to procure materials, restrictive governmental laws or regulations or other cause, without fault and beyond the control of the party obligated (the financial inability of the party excepted), performance of such act shall be extended by a period equal to the period of such delay; provided, however, that nothing in this paragraph shall excuse Lessee from the prompt payment of any rental except as may be expressly provided otherwise in this Agreement; and further provided that the party relying on this paragraph shall provide written notice to the other party notifying such other party of the force majeure event promptly after such force majeure event, and shall proceed with all diligence to complete the performance of the act upon the cessation of the force majeure event.

ARTICLE 36. ATTORNEYS' FEES AND COSTS

In the event that either party brings an action under this Agreement, and prevails therein, it shall be entitled to recover from the other party its reasonable attorneys' fees and court costs, including but not limited to constable and eviction fees and expenses, not to exceed the actual amount incurred in the defense or prosecution thereof.

ARTICLE 37. SEVERABILITY

If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws, it is the parties' intention that the remainder hereof not be affected. In lieu of each clause or provision that is illegal, invalid or unenforceable, the parties intend that there be added, as a part of this Agreement, a clause or provision, as similar in terms to such illegal,

invalid or unenforceable clause or provision, as may be possible, yet be legal, valid and enforceable.

ARTICLE 38. AMENDMENT

This Agreement, together with its authorizing ordinance, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this Agreement shall be binding, unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

ARTICLE 39. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship, between the parties hereto. It is understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, creates a relationship other than one of Lessor and Lessee.

ARTICLE 40. CUMULATIVE REMEDIES NO WAIVER - NO ORAL CHANGE

The specific remedies of the parties under this Agreement are cumulative and do not exclude any other remedies to which they may be lawfully entitled in law or equity, in the event of a breach or threatened breach hereof. The failure of either party to insist upon the strict performance of any covenant of this Agreement, or to exercise any option herein contained, shall not be construed as its future waiver or relinquishment thereof. Lessor's receipt of a rent payment, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach. Further, no waiver, change, modification or discharge by either party of any provision of this Agreement shall be deemed to have been made or be effective, unless in writing and signed by the party to be charged. In addition to other remedies herein, the parties shall be entitled to an injunction restraining the violation, or attempted violation, of any of the covenants, conditions or provisions hereof, or to a decree compelling performance of same; subject, however, to other provisions herein.

ARTICLE 41. COVENANTS OF LESSOR

(a) 41.1 In the event that during the term of this Agreement, Lessee seeks to sell the Retail Fuel Station, Convenience Store and Restaurant to a third-party, and the parties agree to voluntarily terminate this Agreement, Lessor agrees to negotiate in good faith a new lease agreement, with a new lease term, with the proposed new Lessee. Nothing herein shall require the Lessor to enter into a new lease agreement with a proposed new Lessee.

(b) 41.2 In consideration of the construction of the Access Road and the road's ownership transfer to the City of Abilene upon completion, the Lessor agrees that it shall not enter into another lease or operating agreement upon property owned by the City of Abilene/Abilene Regional Airport for a Retail Fuel Station and Convenience Store within one (1) mile in radius from this Leased Premises during the Term of this agreement. This non-compete clause shall not apply to such a lease or operating agreement located within the airport terminal.

ARTICLE 42. GENERAL PROVISIONS

- 42.1 Incorporation of Exhibits. All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.
- 42.2 Nonexclusive Rights. It is understood and agreed that nothing herein contained shall be construed to grant to Lessee any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Lessee shall have the right to exclusive possession of the Leased Premises and exclusivity given in Article 7.5(b).
- 42.3 Compliance with Part 77, Title 14, CFR. Lessee agrees to comply with the notification and review requirements covered in Part 77, Title 14, Code of Federal Regulations, FAA Regulations, in the event future construction of a building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.
- 42.4 Reservations re: Airspace and Noise There is hereby reserved to Lessor, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises.
- 42.5 Inspection of Books and Records. Each party hereto, at its expense and on reasonable notice, shall have the right from time to time to inspect and copy the books, records, and other data of the other party as reasonably required in order to verify a party's compliance with the provisions hereof, provided (i) such inspection is made during regular business hours, and (ii) such examination is not prohibited by the U.S. Government.
- 42.6 Independent Contractor. Lessee is not an employee or agent of Lessor by reason of this Agreement, or otherwise. Lessee shall be solely responsible for its acts and omissions arising from or relating to its operations or activities at Airport, or lease of property herein.
- 42.7 Authority of Agreement. Lessee warrants and represents that it has the right, power, and legal capacity to enter into, and perform its obligations under this Agreement, and no approvals or consents of any persons are necessary in connection with it. The execution, delivery, and performance of this Agreement by the undersigned Lessee representatives have been duly authorized by all necessary corporate action of Lessee, and this Agreement constitutes a legal, valid, and binding obligation of Lessee, enforceable in accordance with its terms.
- Authority of the Lessor. The Lessor shall administer this Agreement on behalf of Lessor. Whenever this Agreement calls for approval by Lessor, such approval shall be evidenced, in writing, by either the Lessor or the City Manager of the City of Abilene or his/her designee.
- 42.8 Consent. Whenever the consent or approval of either party hereto is required or authorized hereunder, unless otherwise stated, such consent or approval shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.
- 42.9 Net Agreement. It is the intent and purpose of Lessor and Lessee that all rental payable by Lessee herein shall be absolutely net to Lessor so that this Agreement shall yield to Lessor the entire rent specified, in

each year of this Agreement, free of any charges, assessments, impositions or deductions of any kind or character which may be charged, assessed, or imposed on or against Lessee or the Leased Premises, without abatement, deduction or set-off by Lessee.

- 42.10 Noise Control. Lessee, for itself and each of its officers, representatives, agents, employees, guests, patrons, contractors, subcontractors, licensees, subtenants, invitees, or suppliers shall not conduct any operation or activity on the Leased Premises, or elsewhere at Airport, in which the sound emitting therefrom is of such volume, frequency or intensity at such time as to constitute a nuisance. The Lessor shall have the sole and exclusive authority to determine what constitutes a nuisance under the provisions of this Agreement except that operations and activities having noise levels not in violation of federal, State, or local governmental standards shall not be deemed a nuisance.
- 42.11 Time is of the Essence. Time shall be of the essence in complying with the terms, conditions and provisions of this Agreement.
- 42.12 Vehicular and Equipment Parking. Vehicular and equipment parking in areas other than the Leased Premises by Lessee, its officers, representatives, agents, employees, guests, patrons, volunteers, contractors, subcontractors, licensees, suppliers or other invitees shall be restricted to such areas at Airport as are designated by the Lessor.
- 42.13 Notices. Unless otherwise expressly provided elsewhere in this Agreement, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or United Parcel Service) for expedited delivery to be confirmed in writing by such courier.

If intended for LESSEE, to:

Bowie's ABI, LLC
ATTN Joshua Duncan
PO BOX 81
Tuscola, TX 79562

If intended for LESSOR, to:

Abilene Regional Airport
Attn: Director of Transportation Services
2933 Airport Boulevard,
Ste 200
Abilene, TX 79602

ARTICLE 43. PARTIES BOUND

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as permitted hereby.

ARTICLE 44. TEXAS LAW TO APPLY

All obligations under this Agreement are performable in Taylor County, Texas, and shall be construed pursuant to the laws of the State of Texas, except where state law shall be preempted by any rules, laws or regulations of the United States. Venue for any actions brought to enforce or interpret this Agreement shall be Taylor County, Texas.

ARTICLE 45. GENDER

Words of either gender used in this Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

ARTICLE 46. CAPTIONS

The captions of the provisions contained herein are for convenience in reference and are not intended to define, extend or limit the scope of any provision of this Agreement.

ARTICLE 47. ENTIRE AGREEMENT

This Agreement comprises the final and entire agreement, including all terms and conditions thereof, between the parties hereto, and supersedes all other agreements, oral or otherwise, regarding the subject matter hereof, none of which shall hereafter be deemed to exist or to bind the parties hereto. The parties intend that neither shall be bound by any term, condition or representation not herein written.

[signature page follows]

ARTICLE 48. SIGNATURE PAGE

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

LESSOR

LESSEE

DocuSigned by:
Joshua Duncan
F07E19778D004C3

By: City of Abilene

Name: Robert Hanna

Title: City Manager

By: Bowie's ABI LLC

Name: Joshua Duncan

Title: Partner

Address: PO Box 81, Tuscola, TX 79562

Phone Number: 713-306-0025

Federal Tax ID#:

ATTEST:

ATTEST: (if corporation)

City Secretary

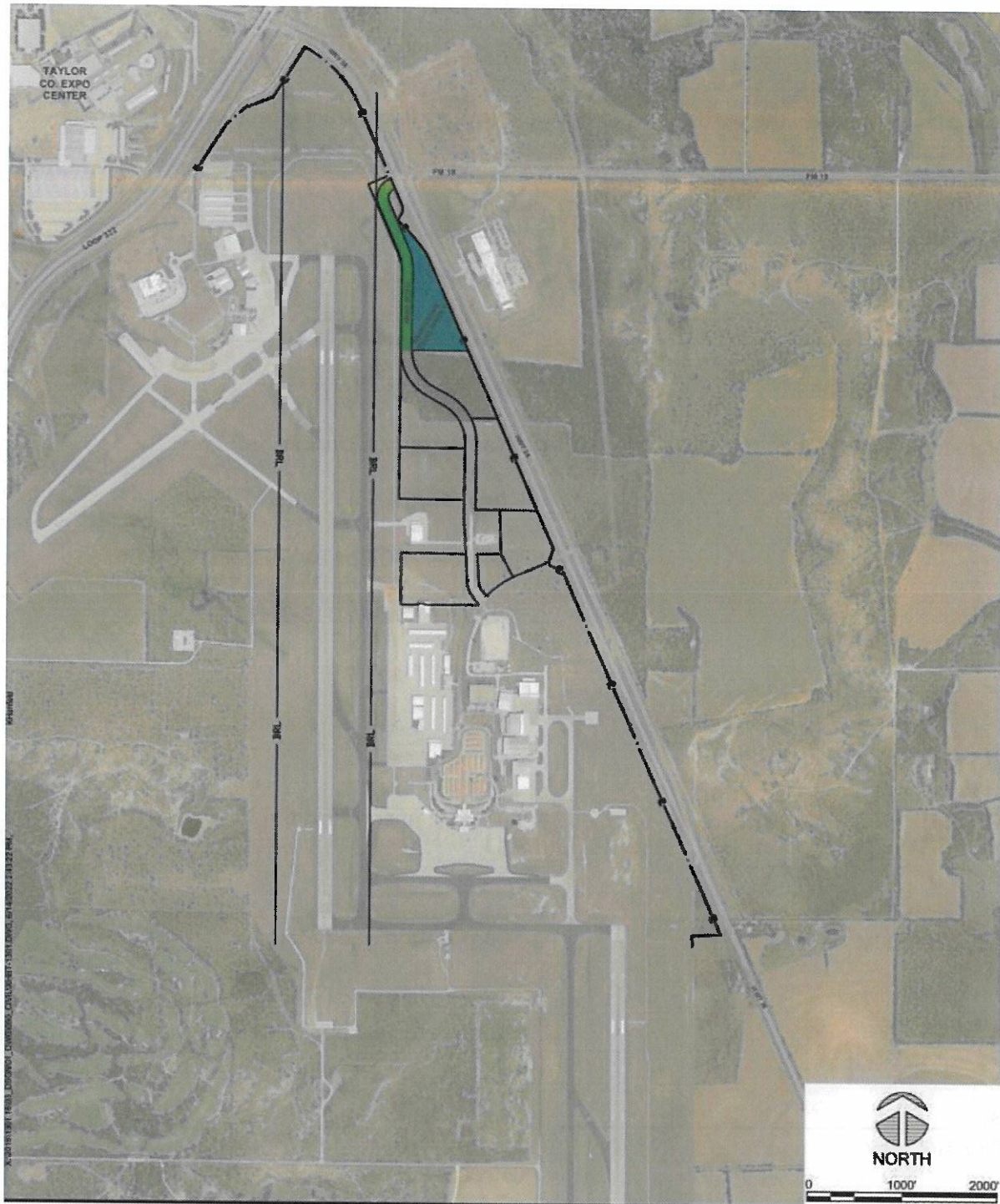
Corporation's Secretary

APPROVED:

Corporate Seal (if available)

By: _____
City Attorney

EXHIBIT 1 – GROUND LEASE PLAT – TRACT



Area B - Prospective Development ABI Land Planning Study

Abilene Regional Airport
Abilene, TX

Parkhill

Parkhill.com

Issue:

Date:

Project No:

Sheet:

06-14-2022

1301.18

C-001

EXHIBIT 2 – AVIGATION EASEMENT

The Lessee, its administrators, successors, assigns, and sub-Lessees, does hereby acknowledge and agree to an Avigation Easement and right of way, appurtenant to Abilene Regional Airport (Airport ID: "KABI") for the unobstructed use and passage of all types of aircraft (as hereinafter defined), in and through the airspace above Lessee's Leased Premises above the imaginary planes (geometric, not a referral to aircraft) rising and extending over the Leased Premises, said imaginary planes running from the Mean Sea Level elevations depicted on the Lessor's Airport Layout Plan above each property line in accordance with the imaginary plane contours to an infinite height above said imaginary plane.

This Avigation Easement shall be appurtenant to and for the benefit of the real property now known as Abilene Regional Airport including any additions thereto wherever located, hereafter made by the City of Abilene or its successors and assigns, guests, and invitees, including any and all persons, firms, or corporations operating aircraft to or from the airport.

This Avigation Easement and burden, together with all things which may be alleged to be incident to or resulting from the use and enjoyment of said easement, including, but not limited to the right to cause in all airspace above or in the vicinity of the surface of the Leased Premises such noise, vibrations, fumes, deposits of dust or other particulate matter, fuel particles (which are incidental to the normal operation of said aircraft), fear, interference with sleep and communication and any and all other effects that may be alleged to be incident to or caused by the operation of aircraft over or in the vicinity of the Leased Premises in landing at or taking off from, or operating at or on said Abilene Regional Airport.

As used herein, the term "aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, to include, but not limited to, jet aircraft, propeller driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all types of aircraft or vehicles now in existence or hereafter developed, regardless of existing or future noise levels, for the purpose of transporting persons or property through the air, by whoever owned or operated.

The easement and right-of-way hereby grants to the Lessor the continuing right to prevent the erection or growth upon the Leased Premises of any building, structure, tree, or other object, extending into the airspace above the aforesaid imaginary planes, and to remove from said air space, or at the sole option of the Lessor, as an alternative, to mark and light as obstructions to air navigation, any such building, structure, tree or other objects now upon, or which in the future may be upon the Leased Premises, together with the right of ingress to, egress from, and passage over the Leased Premises for the above purpose.

Lessee, for itself, its administrators, successors, assigns, and Sub-Lessees, does hereby agree that for and during the life of this Avigation Easement and right of way, it will not hereafter erect, permit the erection or growth of, or permit or suffer to remain upon the Leased Premises any building, structure, tree or other object extending into the airspace above the aforesaid imaginary planes, and that it shall not hereafter use or permit or suffer the use of the Leased Premises in such a manner as to create electrical interference with radio communication between any installation upon said airport and aircraft, or as to make it difficult for flyers to distinguish between airport lights and others, or to permit any use of the Leased Premises that causes a discharge of fumes, dust or smoke so as to impair visibility in the vicinity of the airport or as otherwise to endanger the landing, taking off or maneuvering of aircraft. Lessee furthermore waives all damages and claims for damages caused or alleged to be caused by or incidental to such activities.

City Council Meeting

January 12, 2022





Bowie's Convenience Store Lease

- Bowie's ABI, LLC approached Airport staff about a lease/operating agreement to construct and operate a retail fuel station, convenience store and restaurant on City/Airport property along Hwy 36.
- The specific area wanted for this development was identified in the Airport's Land Use Plan Area B along Hwy 36 just south of the FM 18 intersection.
- Due to the investment in improvements to be built by Bowie's ABI, the ground lease will be for 40 years, which is the maximum term allowed by the State of Texas for a municipality.
- Construction of these improvements, including the access road, will start no later than one year after the effective date of this lease.

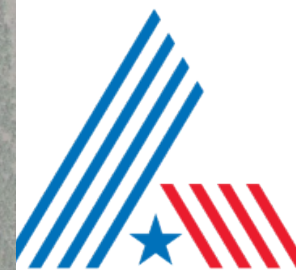
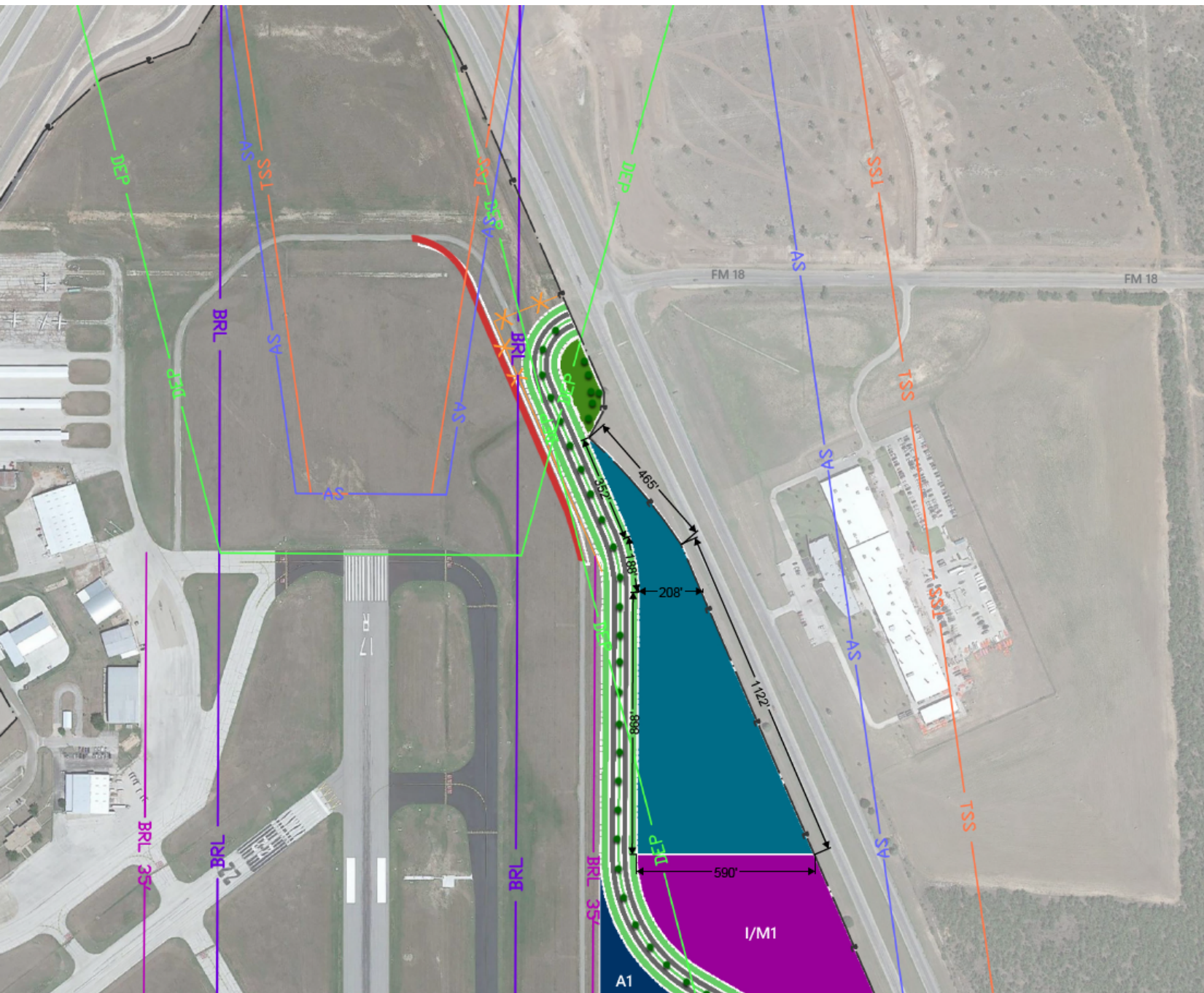


CITY OF
ABILENE
TEXAS

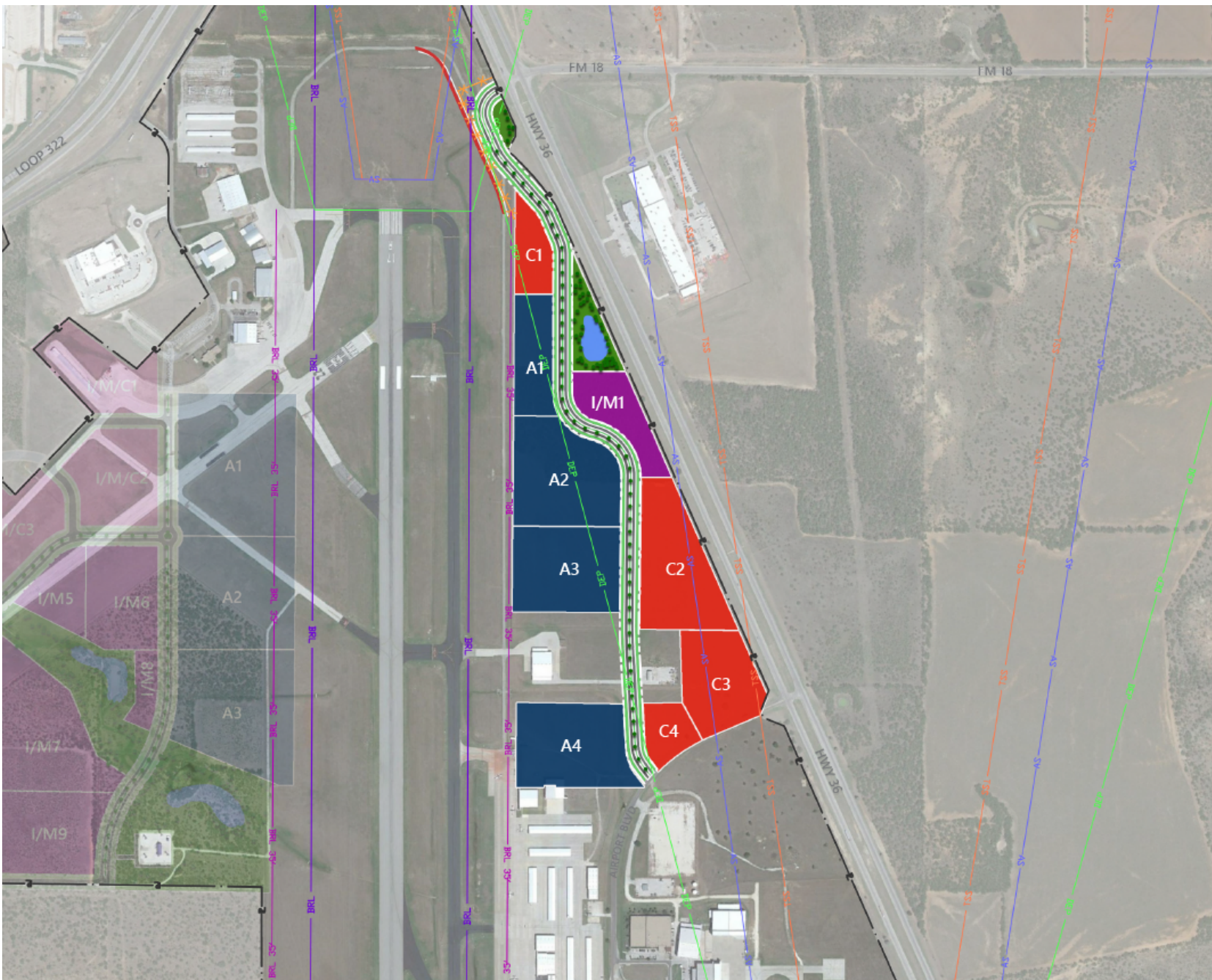


- In consideration of Bowie's construction of the access road and turning over ownership of it to the City upon completion, the City agrees not to enter a lease or operating agreement for a retail fuel and convenience store on City or Airport property within a one mile radius of the Bowie's site during the term of this agreement.
- In accordance with Article 4 of the Agreement, the Airport will receive ground rent from Bowie's ABI, LLC after the access road construction cost has been amortized for 10 years. Additionally, the Airport will receive a concession fee as a percentage of all gross sales on the leased premises effective upon opening for business.





CITY OF
ABILENE
TEXAS



Menard Location:



Tuscola Location (Opening Soon):



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 1/12/2023

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: **15. Ordinance (Final Reading) Z-2022-28:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from Buffalo Gap I & E, Represented by Harris Acoustics, to Change the Zoning of Approximately 5.83 Acres Located at 888 Ben Richey Drive from Agricultural Open (AO) to Heavy Commercial (HC). *(Tim Littlejohn)*

GENERAL INFORMATION

The request is to rezone approximately 5.8 acres from Agricultural Open (AO) to Heavy Commercial (HC). The owner intends to use the property for commercial purposes. The subject property is located at 888 Ben Richey Drive and is legally described as Lot 1, Block A of the Baacks Subdivision.

SPECIAL CONSIDERATIONS

The subject property was annexed in 1963. The existing building was constructed in 2003 and was used for automotive repairs. Amendments to the Zoning Ordinance and Land Development Code no longer allowed most commercial uses in the AO zoning district, resulting in the use being grandfathered. The grandfathered use has ceased to exist for more than six months, so that use is considered by the LDC to have been abandoned. The owner is requesting HC rezoning to allow a variety of commercial uses.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

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

ATTACHMENTS:

1. Z-2022-28 Ordinance
2. Z-2022-28 Staff Report
3. Responses
4. Z-2022-28 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 15th day of December, 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 19th day of November 2022, the same being more than fifteen (15) days prior to a public hearing held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m. on the 12th day of January 2023, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FINAL READING THIS 12th day of January, 2023.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT A

Change the zoning classification of the following described land, from an Agricultural Open (AO) district to a Heavy Commercial (HC) District:

Location: Lot 1, Block A, Baacks Subdivision



END

ZONING CASE Z-2022-28

STAFF REPORT

Scheduled Hearings

Planning & Zoning Commission: December 6, 2022

City Council 1st Reading: December 15, 2022

City Council 2nd Reading: January 12, 2023

Applicant

Owner: Buffalo Gap I&E

Agent: Harris Acoustics

Case Manager

Adam Holland – Planner I

Request

Rezoning of approximately 5.8 acres from Agricultural Open (AO) to Heavy Commercial (HC). The owner intends to use the property for commercial purposes.

Location

The subject property is located at 888 Ben Richey Drive and is legally described as Lot 1, Block A of the Baacks Subdivision.

Background

- The subject property was annexed in 1963.
- The existing building was constructed in 2003 and was used for automotive repairs.
- Amendments to the Zoning Ordinance and Land Development Code no longer allowed most commercial uses in the AO zoning district, resulting in the use being grandfathered.
- The grandfathered use has ceased to exist for more than six months, so that use is considered by the LDC to have been abandoned.
- The owner is requesting HC rezoning to allow a variety of commercial uses.

Zoning, Existing and Proposed Land Use

Heavy Commercial (HC) zoning is located west of the subject property. Light Industrial and Heavy Industrial zoning districts are located across Ben Richey Drive to the west. To the northeast and east is an Agricultural Open zoning district. The Ben Richey Boys Ranch is immediately south of the subject property.

Comprehensive Plan (Future Land Use Map)

The 100-year floodplain covers the northern portion of the subject site. The existing building is located just south of the floodplain. The attached exhibit shows the subject site and 100- and 500-year floodplain boundaries. The floodplain information is noteworthy because it was a factor in the Future Land Use Map use recommendation of open space for the subject site. Development in the 100- and 500-year floodplains is permitted.

When Future Land Use Maps are created, it is not typical for the authors to review individual properties when considering boundaries between different land uses, but rather to generalize those boundaries. Had that level of detail been considered for this site, it's likely that the commercial use boundary on the lot to the immediate west would have been extended to include the subject site.

Based on those circumstances, the request, if approved, would be generally consistent with the spirit and intent of the Future Land Use Map, the zoning of properties to the immediate west, and the historic use of the site.

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.**

As described in detail above, the proposed request would be generally consistent with the spirit and intent of the Comprehensive Plan and Future Land Use Map (FLUM) and would establish the appropriate boundary between commercial and open space development.

- (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 proposed Heavy Commercial (HC) is consistent with zoning immediately west of this site and is appropriate given the close proximity of industrial development to the south/southwest.

- (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 property has access to all required utilities.

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

None.

P&Z Recommendation

The Commission recommends **approval**.

Notification

X – Not applicable

O – Opposed

F – In favor

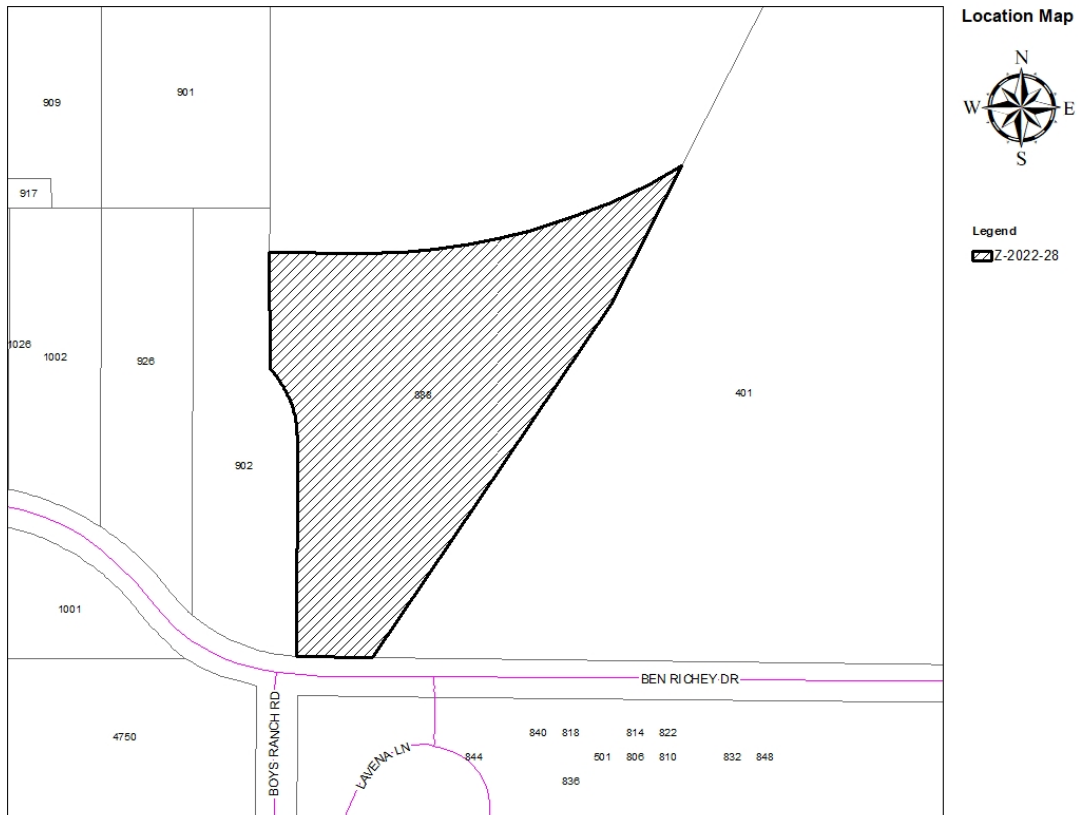
Owner

Owner	Property ID	Situs	Response
ABILENE ASSET MANAGEMENT LLC	77199	4750 BOYS RANCH RD	
ARRINGTON RICHARD SHANE &	72566	901 PETROLEUM DR	
ARRINGTON RICHARD SHANE &	21525		
CITY OF ABILENE	68390	501 BEN RICHEY DR	X
PAK HARRIS ENTERPRISES LTD	10185	902 BEN RICHEY DR	F
PAK HARRIS ENTERPRISES LTD	10079	926 BEN RICHEY DR	F
PAK HARRIS ENTERPRISES LTD	76201	1001 BEN RICHEY DR	F
PITTMAN HERB	21526	888 BEN RICHEY DR	
SHOOK MARKLIN ROBERT	1079223	401 BEN RICHEY DR	

Property ID

Owner	Property ID	Situs	Response
PAK HARRIS ENTERPRISES LTD	10079	926 BEN RICHEY DR	F
PAK HARRIS ENTERPRISES LTD	10185	902 BEN RICHEY DR	F
ARRINGTON RICHARD SHANE &	21525		
PITTMAN HERB	21526	888 BEN RICHEY DR	
CITY OF ABILENE	68390	501 BEN RICHEY DR	X
ARRINGTON RICHARD SHANE &	72566	901 PETROLEUM DR	
PAK HARRIS ENTERPRISES LTD	76201	1001 BEN RICHEY DR	F
ABILENE ASSET MANAGEMENT LLC	77199	4750 BOYS RANCH RD	
SHOOK MARKLIN ROBERT	1079223	401 BEN RICHEY DR	

LOCATION MAP



ZONING MAP



EXISTING FLOODPLAIN/ZONING BOUNDARIES

ArcGIS Web Map



12/1/2022, 2:14:48 PM

-  Zoning Districts
- Flood Layer
-  500 Year .2%
- 100 Year 1%

1:1,128
0 0.01 0.03 0.05 mi
0 0.01 0.03 0.05 km
City of Atlanta, Taylor County, Texas Parks & Wildlife, Esri, HERE, Garmin,
GeoTechnology, Inc., USGS, EPA, USDA
ArcGIS Web AppBuilder
City of Atlanta, Taylor County, Texas Parks & Wildlife, Esri, HERE, Garmin, GeoTechnology, Inc., USGS, EPA, USDA



PAK HARRIS ENTERPRISES LTD
PO BOX 5615
ABILENE, TX 79608-5615

NOTICE OF PUBLIC HEARING

RE: Zoning Application Number Z-2022-28

11/21/2022

The Planning and Zoning Commission will hold a public hearing on **December 6, 2022 at 1:30 PM**, in the Council Chambers at 555 Walnut St. in Abilene, Texas vote to recommend approval or denial to City Council on a request from Buffalo Gap I & E, represented by Harris Acoustics, to change the zoning of approximately 5.83 acres from Agricultural Open (AO) to Heavy Commercial (HC). Legal description being Lot 1, Block A Baacks Subdivision, Abilene in Taylor County, Texas.

This hearing is open to any interested person. Opinions, objections and/or comments relative to this matter may be expressed in writing or in person at the hearing. At the bottom of this letter is a form that you may cut off, fill out, and mail. Comments are also accepted by email as indicated below. All written responses must be signed.

The attached map shows the area of this request. Only the area highlighted by striped lines shown on that map is being considered for a change of zoning. The solid boundary line surrounding this subject area is only a notification area. If approved by the Planning and Zoning Commission, or if denied and promptly appealed to Abilene's City Council, this case will be heard by City Council for 2nd and Final Reading with a public hearing on **January 12, 2023 at 8:30 AM** in Council Chambers on the second floor of City Hall, 555 Walnut Street.

If you have any questions, please contact Adam Holland at telephone 325-676-6230 or by email address planning@abilenetx.gov

For the PLANNING & ZONING COMMISSION

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

CASE #: Z-2022-28

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: PAK HARRIS ENTERPRISES LTD

Parcel I.D.: 76201

Address: 1001 BEN RICHEY DR

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: _____



PAK HARRIS ENTERPRISES LTD
PO BOX 5615
ABILENE, TX 79608-5615

NOTICE OF PUBLIC HEARING

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Name: PAK HARRIS ENTERPRISES LTD
Parcel I.D.: 10079
Address: 926 BEN RICHEY DR

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: _____



PAK HARRIS ENTERPRISES LTD
PO BOX 5615
ABILENE, TX 79608-5615

NOTICE OF PUBLIC HEARING

RE: Zoning Application Number Z-2022-28

11/21/2022

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This hearing is open to any interested person. Opinions, objections and/or comments relative to this matter may be expressed in writing or in person at the hearing. At the bottom of this letter is a form that you may cut off, fill out, and mail. Comments are also accepted by email as indicated below. All written responses must be signed.

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For the PLANNING & ZONING COMMISSION
Please call (325) 676-6237 if you have any questions about this notice.

CASE #: Z-2022-28

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: PAK HARRIS ENTERPRISES LTD
Parcel I.D.: 10185
Address: 902 BEN RICHEY DR

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: _____

A handwritten signature in blue ink, appearing to be "PAK HARRIS", is written over a horizontal line.



REZONE REQUEST

Case: Z-2022-28

Owner: Buffalo Gap Instrumentation and Electrical Co.

Agent: Harris Acoustics

Request: Rezoning from AO to HC

Location: 888 Ben Richey Drive

Notification: 3 in Favor, 0 Opposed

Planning & Zoning: December 6, 2022

City Council Hearing: December 15, 2022
January 12, 2023





Z-2022-28 LOCATION MAP



Location Map



Legend

- Z-2022-28
- CourierParcels



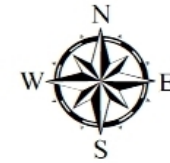
CITY OF
ABILENE
TEXAS



Z-2022-28 ZONING MAP



Zoning Map



Legend

- Z-2022-28
- Collector
- Collector
- AO -
- Agricultural Open Space
- HC: Heavy Commercial
- LI: Light Industrial
- HI: Heavy Industrial
- PD: Planned Development



CITY OF
ABILENE
TEXAS



Z-2022-28 FLOODPLAIN/ZONING MAP



12/1/2022, 2:14:48 PM

 Zoning Districts  Flood Layer  500 Year .2%  100 Year 1%

0 0.01 0.01 0.03 0.03 mi
0 0.01 0.03 0.05 km
City of Abilene, Taylor County, Texas Parks & Wildlife, Esri, HERE, Garmin,
GeoTechnologies, Inc., USGS, EPA, USDA

ArcGIS Web AppBuilder
City of Abilene, Taylor County, Texas Parks & Wildlife, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA, USDA



CITY OF
ABILENE
TEXAS



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



CITY OF
ABILENE
TEXAS

LEGEND

- P 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)
- C Permitted as a Conditional Use Permit, Requiring Approval by City Council
- TP Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment



Permitted Uses in HC Zoning

RESIDENTIAL USES:

C	Hotel/Motel
<u>ACCESSORY AND INCIDENTAL USES:</u>	
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	Drive-Through Facility
TP	Field Office or Construction Office (temporary)
P	Freight Container
P	Fuel Sales
TP	Itinerant Business
P	Manufacturing (incidental)
C	Mobile Home (permanent security residence)
TP	Mobile Home (temporary security residence)
P	Mobile Home or Temporary Building (office for sales and service)
P	Recycling Collection Point
C	Travel Trailers (accessory to hospitals)
P/SE	Wind Energy Conversion Systems

CULTURAL AND RECREATIONAL USES:

C	Adult Entertainment Enterprise
P	Civic, Social, and Fraternal Organization
P	Cultural Facilities
P	Drive-in Theater
C	Motorized Racing
P	Recreation – Outdoors (active)
P	Recreation – Outdoors (passive)
P	Recreation and Commercial Entertainment - Indoor

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

P	Ambulance Service
C	Correction, Detention, or Penal Facilities
P	Fire/Police Station
P	Homeless/Emergency Shelter
P	Hospital
P	Medical/Dental Laboratory
P	Military and Armed Forces Reserve Center
P	Post Office
P	Rehabilitation Facility
C	Sanitary Landfill
P	Social Service Facility

EDUCATIONAL AND RELIGIOUS USES:

P	Arts School
C	Cemetery, Crematorium, and Mausoleum
P	Church or Place of Worship
P	Educational and Scientific Research
P	School: Public/Private
P	Trade/Business School

SERVICE

P/C	Automobile Wash
P	Contractor Services
P	Funeral Home/ Mortuary/Morgue
P	Kennel (With Outdoor Pens)
P	Kennel (Without Outdoor Pens)
P	Laundry, Dry Cleaning, Dyeing, and Linen Service (no retail customers)
P	Laundry/Dry Cleaning Services & Facilities
P	Office (general, professional, financial)
P	Printing, Copying, Reproduction, Publishing
P	Recycling Collection and Processing Center
P	Repair and Maintenance Services - Automobile/Small Truck (major)
P	Repair and Maintenance Services - Automobile/Small Truck (minor)
P	Repair and Maintenance Services (indoor)
P	Repair and Maintenance Services (outdoors)
P	Repair and Maintenance Services (truck and other large vehicles)
P	Scales (public)
P	Storage - Self-Service Units
P	Tattoo Parlor
P	Taxidermist
P	Veterinary Service (all size animals)
P	Veterinary Service (small animals)
P	Wrecker/Towing

TRADE – RETAIL USES

P	Aircraft and Accessories
P	ATM's, Self-Serve Kiosks, and Similar Facilities
P	Fuel Sales
P	Head Shop
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 (automobile/small truck)
P	Retail Sales/Rental (indoor)
P	Retail Sales/Rental (outdoors, non-vehicle)
P	Retail Sales/Rental (trucks and other large vehicles and equipment)

TRADE – WHOLESALE USES

P	Liquor, Wholesale/Distribution
P	Wholesaling and Storage (indoor)
C	Wholesaling and Storage (outdoors)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

P	Airport, Heliport and Flying Field Terminals - Commercial (passenger and freight)
C	Antenna Tower - Commercial
P	Automobile Parking Lot or Structure - Commercial
P	Broadcast Studio
P	Passenger Ground Transportation Terminal
P	Pressure Control Station
P	Public Utility Facility
C	Utility Generation, Production, Treatment

RESOURCE PRODUCTION AND EXTRACTION USES:

P	Petroleum or Gas Well
C	Manufacturing (light)
P	Urban Garden



CITY OF
ABILENE
TEXAS

LEGEND

P	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)
C	Permitted as a Conditional Use Permit, Requiring Approval by City Council
TP	Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment

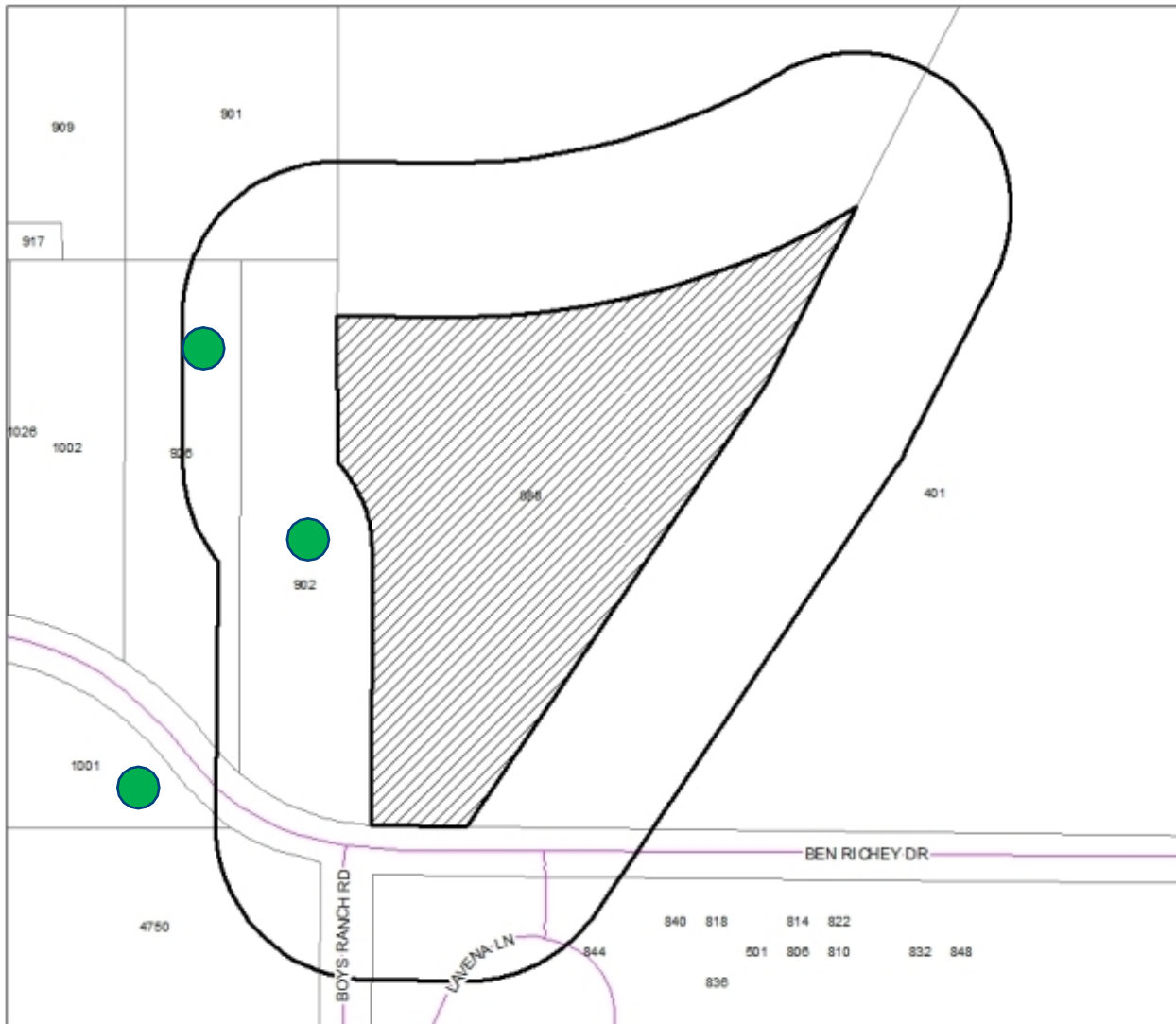


Z-2022-28 VIEWS OF SUBJECT & NEIGHBORING PROPERTIES





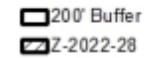
Z-2022-28 NOTIFICATION AREA MAP



Notification Map



Legend



3- In Favor-



0- Opposed-



CITY OF
ABILENE
TEXAS



FINDINGS AND RECOMMENDATIONS

The proposed request for HC rezoning is *consistent* with:

- The surrounding uses and zoning;
- The spirit and intent of the Comprehensive Plan;
- Generally accepted planning principals; and
- The Criteria for Approval in the LDC.

P&Z Recommendation: **Approval**





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 1/12/2023

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: **16. Ordinance (Final Reading) CUP-2022-11: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from Hallum, Represented by Art Attack Tattoo, for a Conditional Use Permit of Approximately 0.08 Acres Located at 226 Pine Street Zoned Central Business (CB) to Allow a Tattoo Parlor as a Permitted Use. *(Tim Littlejohn)***

GENERAL INFORMATION

The request is for a Conditional Use Permit to approximately 0.08 acres of land in the Central Business District to allow a Tattoo Parlor located at 226 Pine Street.

SPECIAL CONSIDERATIONS

The subject property is located in the Original Town of Abilene. The applicant proposes to use a portion of the building at 226 Pine Street as a tattoo parlor. A Plan of Operation from the applicant describing the proposed use of the site is attached with this report.

This property is located in the Central Business district. Surrounding the subject site are the Abilene ISD building to the east, retail uses to the south, a restaurant to the west, and a brewery further south.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends **approval**, subject to compliance with the proposed Plan of Operation.

BOARD OR COMMISSION RECOMMENDATION

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

ATTACHMENTS:

1. CUP-2022-11 Council Ordinance
2. CUP-2022-11 Staff Report
3. 241 Cypress
4. 241 Pine Street
5. CUP-2022-11 Presentation

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING THE "LAND DEVELOPMENT CODE" OF THE ABILENE CITY CODE, BY APPROVING A CONDITIONAL USE PERMIT (CUP) AFFECTING CERTAIN PROPERTY; 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 approving a Conditional Use Permit (CUP) 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 15th day of December 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 19th day of November 2022, the same being more than fifteen (15) days prior to a public hearing held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m. on the 12th day of January 2023, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FINAL READING THIS 12th day of January 2023.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT A

Approve a Conditional Use Permit (CUP) to allow a Tattoo Parlor to be located on property zoned Central Business (CB).

Subject to compliance with the attached Plan of Operation (Exhibit B)

Legal description being Lot 9, Block 8, Original Town of Abilene, City of Abilene, Taylor County, Texas.

Located at 226 Pine Street, Abilene, Taylor County, Texas.

EXHIBIT B

226 Pine Street
Art Attack Tattoo

Hours

Sun-Mon	Tues-Wed	Thur-Sat
Closed	1pm-9pm	1pm-12am

Services:

Tattooing

Piercing

Reasoning:

Desire a good, clean, safe enviroment for the establishment.

The block provides what is needed to establish a high end clientel base.

We seek to set the bar to a higher standard in the industry.

The area is perfect and we would eventually buy the building.

ZONING CASE CUP-2022-11

STAFF REPORT

Scheduled Hearings

Planning & Zoning Commission: December 6, 2022

City Council 1st Reading: December 16, 2022

City Council 2nd Reading: January 12, 2023

Applicant

Owner: Cary Hallum

Agent: Art Attack Tattoo

Case Manager

Clarissa Ivey - Planner I

Request

A Conditional Use Permit to approximately 0.08 acres of land in the Central Business District to allow a Tattoo Parlor

Location

Lot 9, Block 8, Old Town Abilene, at 226 Pine Street

Background

The subject property is located in the Original Town of Abilene. The applicant proposes to use a portion of the building at 226 Pine Street as a tattoo parlor. A Plan of Operation from the applicant describing the proposed use of the site is attached with this report.

Zoning, Existing and Proposed Land Use

This property is located in the Central Business district. Surround the subject site are the Abilene ISD building to the east, retail uses to the south, a restaurant to the west, and a brewery further south.

Criteria Assessment

Staff has reviewed the request based upon the factors established in Section 1.4.3.5, Criteria for Approval, of the Land Development Code. These factors are identified and addressed below:

- 1. The proposed use at the specified location is consistent with the policies embodied in the adopted Comprehensive Plan.**
The Future Land Use Map shows the subject site is within the Central Business district which encourages a multitude of different walkable uses.
- 2. The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations**
The proposed use is consistent with the surrounding zoning and is appropriate at this location.

3. **The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes improvements either on-site or within the public rights-of-way to mitigate development-related adverse impacts, such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent development and neighborhoods.**

The use will be conducted indoors and should not negatively affect the surrounding uses.

4. **The proposed use does not generate pedestrian and vehicular traffic which will be hazardous or conflict with the existing and anticipated traffic in the neighborhood.**

The Central Business District encourages walkable, pedestrian oriented uses and development.

5. **The proposed use incorporates roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development-generated traffic on neighborhood streets.**

The proposed use does not generate a level of traffic that would adversely affect the existing road network in the vicinity of the subject site.

6. **The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed conditional use on adjacent properties.**

The use will be conducted indoors and should not generate any visual impacts that would need to be mitigated.

7. **The proposed use meets the standards for the zoning district, or to the extent variations from such standards have been requested, that such variations are necessary to render the use compatible with adjoining development and the neighborhood.**

The use would comply with all applicable LDC requirements. Site plan requirement was waived because all improvements are existing, and no new improvements are proposed.

P&Z Recommendation

The Commission recommends **approval**, subject compliance with the proposed Plan of Operation.

X – Not Applicable

O – Opposed

F – In Favor

Notification

Owner	Property ID	Situs	Response
ABILENE CITY OF	61712	209 CYPRESS ST	X
ABILENE IMPROVEMENT CORP	56726	101 CYPRESS ST	
ABILENE IMPROVEMENT CORP	56726	166 PINE ST	
ABILENE IND SCHOOL DISTRICT	60364	241 PINE ST	O
ABILENE MAJESTIC LLC SERIES J	60795	258 PINE ST	
ALEXANDER TRUST REAL ESTATE LLC	55174	957 N 2ND ST	
ALEXANDER TRUST REAL ESTATE LLC	55174	959 N 2ND ST	
ALEXANDER TRUST REAL ESTATE LLC	55174	101 PINE ST	
ALEXANDER TRUST REAL ESTATE LLC	55174	951 N 2ND ST	
ALEXANDER TRUST REAL ESTATE LLC	55174	189 PINE ST	
ALEXANDER TRUST REAL ESTATE LLC	55174	951 1/2 N 2ND ST	
BOWEN LATIMER M	61058	234 PINE ST	
CASTILLO TRES GENERACIONES LLC	61308	216 PINE ST	
HALLUM CARY E	61181	226 PINE ST	
KEY CITY FOODS LLC	62232	241 CYPRESS ST	F
KEY CITY FOODS LLC	62232	233 CYPRESS ST	F
LE MUSEE IMAGINAIRE INC	61848	1060 N 2ND ST	
MOTIS INVESTMENTS LLC	61436	202 PINE ST	
SILVERTHORNE INVESTMENTS LLC	1085040	244 PINE ST	
STATE NATIONAL BANK	60502	290 PINE ST	
STATE NATIONAL BANK	60656	266 PINE ST	
STATE NATIONAL BANK	62356	257 CYPRESS ST	
STATE NATIONAL BANK	62494	265 CYPRESS ST	
STATE NATIONAL BANK	62620	275 CYPRESS ST	
STATE NATIONAL BANK	62620	1049 N 3RD ST	
THIRD AND PINE LP	60220	993 N 3RD ST	
VAGABOND PIZZA LLC	61972	1056 N 2ND ST	
VLETAS JODY KLOTZ	61847	1080 N 2ND ST	
VLETAS JODY KLOTZ	62096	233 N 2ND ST	

Owner	Property ID	Situs	Response
ALEXANDER TRUST REAL ESTATE LLC	55174	957 N 2ND ST	
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STATE NATIONAL BANK	60656	266 PINE ST	
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CASTILLO TRES GENERACIONES LLC	61308	216 PINE ST	
MOTIS INVESTMENTS LLC	61436	202 PINE ST	
ABILENE CITY OF	61712	209 CYPRESS ST	X
VLETAS JODY KLOTZ	61847	1080 N 2ND ST	
LE MUSEE IMAGINAIRE INC	61848	1060 N 2ND ST	
VAGABOND PIZZA LLC	61972	1056 N 2ND ST	
VLETAS JODY KLOTZ	62096	233 N 2ND ST	
KEY CITY FOODS LLC	62232	241 CYPRESS ST	F
KEY CITY FOODS LLC	62232	233 CYPRESS ST	F
STATE NATIONAL BANK	62356	257 CYPRESS ST	
STATE NATIONAL BANK	62494	265 CYPRESS ST	
STATE NATIONAL BANK	62620	275 CYPRESS ST	
STATE NATIONAL BANK	62620	1049 N 3RD ST	
SILVERTHORNE INVESTMENTS LLC	1085040	244 PINE ST	

LOCATION MAP



ZONING MAP



planning@ablienetx.gov

For the PLANNING & ZONING COMMISSION
Please call (325) 676-6237 if you have any questions about this notice.

CASE #: CUP-2022-11

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.

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

Email: planning@ablienetx.gov

Name: KEY CITY FOODS LLC
Parcel I.D.: 62232
Address: 241 CYPRESS ST

I am in favor ☒ I am opposed ☐

Additional Comments:

Signature: _____

Heather Katelyn



ABILENE IND SCHOOL DISTRICT
BOARD OF TRUSTEES
PO BOX 981
ABILENE, TX 79604-0981

NOTICE OF PUBLIC HEARING

RE: Conditional Use Permit Application Number CUP-2022-11

11/21/2022

The Planning and Zoning Commission will hold a public hearing on **December 6, 2022 at 1:30 PM**, in the Council Chambers at 555 Walnut St. in Abilene, Texas vote to recommend approval or denial to City Council on a request from Cary Hallum, represented by Art Attack Tattoo, for a Conditional Use Permit of approximately 0.08 acres zoned Central Business (CB) to allow a tattoo parlor as a permitted use. Legal description being Lot 9, Block 8, Original Town of Abilene, Abilene in Taylor County, Texas.

This hearing is open to any interested person. Opinions, objections and/or comments relative to this matter may be expressed in writing or in person at the hearing. At the bottom of this letter is a form that you may cut off, fill out, and mail. Comments are also accepted by email as indicated below. All written responses must be signed.

The attached map shows the area of this request. Only the area highlighted by striped lines shown on that map is being considered for a change of zoning. The solid boundary line surrounding this subject area is only a notification area. If approved by the Planning and Zoning Commission, or if denied and promptly appealed to Abilene's City Council, this case will be heard by City Council for 2nd and Final Reading with a public hearing on **January 12, 2023 at 8:30 AM** in Council Chambers on the second floor of City Hall, 555 Walnut Street.

If you have any questions, please contact Clarissa Ivey at telephone 325-676-6382 or by email address planning@abilenetx.gov

For the PLANNING & ZONING COMMISSION
Please call (325) 676-6237 if you have any questions about this notice.

DEC 5 AM 11:42

CASE #: CUP-2022-11

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

Name: ABILENE IND SCHOOL DISTRICT
Parcel I.D.: 60364
Address: 241 PINE ST

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:

A handwritten signature in black ink, appearing to be "J. D. [unclear]", written over the printed name "ABILENE IND SCHOOL DISTRICT". Below the signature, the words "ABILENE IND SCHOOL DISTRICT" are printed in a bold, sans-serif font.



CONDITIONAL USE PERMIT REQUEST

Case:	CUP-2022-11
Owner:	Cary E. Hallum
Agent:	Art Attack Tattoo
Request:	A Conditional Use Permit to allow a tattoo parlor in the CB zoning district
Location:	226 Pine Street
Notification:	2 in Favor, 1 Opposed
Planning & Zoning:	December 6, 2022
City Council Hearing:	December 15, 2022 January 12, 2023

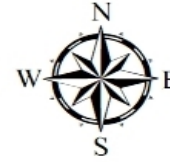




CUP-2022-11 LOCATION MAP



Location Map



Legend

- CUP-2022-11
- CourierParcels



CITY OF
ABILENE
TEXAS



CUP-2022-11 ZONING MAP



Zoning Map



Legend

- CUP-2022-11
- Minor Arterial
- CB: Central Business



CITY OF
ABILENE
TEXAS

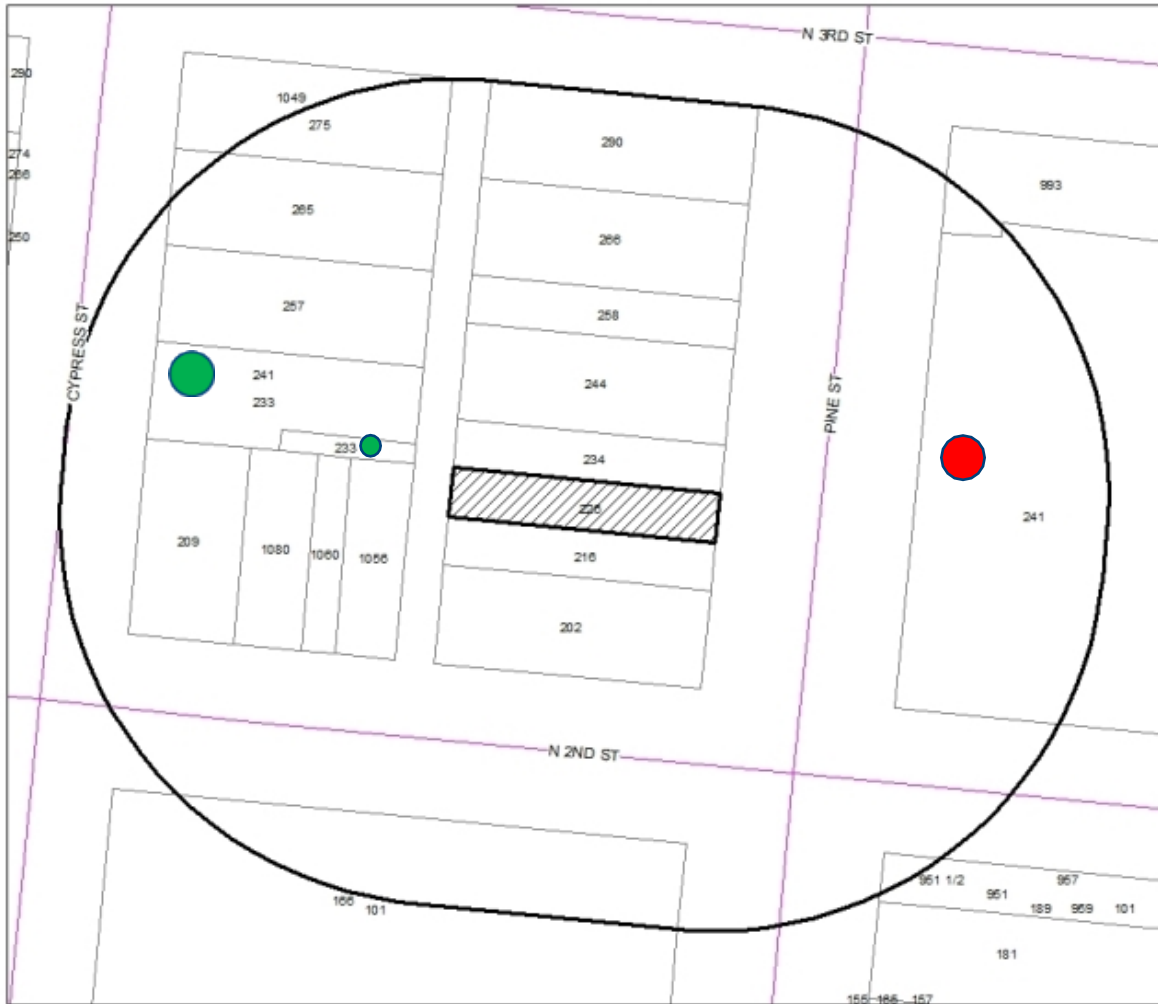


CUP-2022-11 VIEWS OF SUBJECT & NEIGHBORING PROPERTIES





CUP-2022-11 NOTIFICATION AREA MAP



Notification Map



Legend

- 200' Buffer
- CUP-2022-11

2- In Favor- 

1- Opposed- 

11.21% Opposition



CITY OF
ABILENE
TEXAS



FINDINGS AND RECOMMENDATIONS

The proposed request is consistent with:

- The *Comprehensive Plan*;
 - The surrounding uses and zoning;
 - Generally accepted planning principals; and
 - The Criteria for Approval in the LDC.
- P&Z Recommendation: **Approval**





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 1/12/2023

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: **17. Ordinance (Final Reading):** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on AMENDING CHAPTER 8, ARTICLE VI, "CODES AND OTHER REGULATIONS," DIVISION 1, "GENERALLY;" DIVISION 2, "BUILDING CODE;" DIVISION 3, "ELECTRICAL CODE;" DIVISION 4, "PLUMBING CODE;" DIVISION 5, "MECHANICAL CODE;" DIVISION 7, "RESIDENTIAL CODE;" DIVISION 8, "FUEL GAS CODE;" DIVISION 9, "ENERGY CODE;" DIVISION 10, "EXISTING BUILDING CODE;" ADDING DIVISION 11, "PROPERTY MAINTENANCE CODE;" ADDING DIVISION 12, "SWIMMING POOL AND SPA CODE;" AND DELETING IN ITS ENTIRETY CHAPTER 29.5 "SWIMMING POOLS AND SPAS" of the Code of Ordinances . *(Tim Littlejohn)*

GENERAL INFORMATION

An Ordinance adopting, with amendments, the 2021 International Building Code, the 2020 National Electrical Code, the 2021 International Plumbing Code, the 2021 International Mechanical Code, the 2021 International Residential Code, the 2021 International Fuel Gas Code, the 2021 International Energy Conservation Code, the 2021 International Existing Building Code, the 2021 International Property Maintenance Code, and the 2021 International Swimming Pool and Spa Code.

SPECIAL CONSIDERATIONS

The City will be adopting the International Property Maintenance Code and the International Swimming Pool and Spa Code for the first time.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Approval

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 2022 Ordinance Enacting Intl Codes
2. 2021 IBC attachment
3. 2020 NEC Amendments
4. 2021 IPC Amendments
5. 2021 IMC Ammendments
6. 2021 IRC attachments
7. 2021 IFGC Amendments
8. 2021 IECC Amendments
9. 2021 IEBC Amendments
10. 2021 IPMC amendments
11. 2021 ISPSC Amendments
12. Chapter_29.5___SWIMMING_POOLS_AND_SPAS delete redline
13. City Council Presentation Slides 2022 - With Space for Interpreters

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE AMENDING CHAPTER 8, ARTICLE VI, "CODES AND OTHER REGULATIONS," DIVISION 1, "GENERALLY," ADDING SECTION 8-471, "PENALTIES FOR VIOLATION;" DIVISION 2, "BUILDING CODE," SECTION 8-481, "ADOPTED," SECTION 8-482 "AMENDMENTS," SECTION 8-483, "PENALTIES FOR VIOLATION;" DIVISION 3, "ELECTRICAL CODE" SECTION 8-496, "ADOPTED"; DIVISION 4, "PLUMBING CODE" SECTION 8-511 "ADOPTED;" DIVISION 5, "MECHANICAL CODE" SECTION 8-526, "ADOPTED;" DIVISION 7, "RESIDENTIAL CODE" SECTION 8-581, "ADOPTED;" DIVISION 8, "FUEL GAS CODE," SECTION 8-601, "ADOPTED;" DIVISION 9, "ENERGY CODE," SECTION 8-603, "ADOPTED;" DIVISION 10, "EXISTING BUILDING CODE" SECTION 8-612, "ADOPTED," SECTION 8-613, "PENALTIES FOR VIOLATION;" ADDING DIVISION 11, "PROPERTY MAINTENANCE CODE," SECTION 8-616, "ADOPTED;" ADDING DIVISION 12, "SWIMMING POOL AND SPA CODE," SECTION 8-620, "ADOPTED;" AND DELETING IN ITS ENTIRETY CHAPTER 29.5, "SWIMMING POOLS AND SPAS;" AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.

WHEREAS, there is a need to protect the health, safety, and welfare of the citizens of the City of Abilene; and

WHEREAS, the current provisions of the Building Code, Electrical Code, Plumbing Code, Mechanical Code, Residential Code, Fuel Gas Code, Energy Code, and the Existing Building Code, adopting the 2012 International Codes and 2014 National Electrical Code, are no longer adequate to meet the needs of the community; and

WHEREAS, the 2021 International Codes and 2020 National Electrical Code are currently the standard used throughout other cities in Texas; and

WHEREAS, Section 8-482 governing temporary amusement buildings is no longer needed because the requirements for fire sprinklers in temporary amusement buildings are governed by the adopted International Fire Code; and

WHEREAS, Sections 8-483, 8-613 set forth criminal penalties for violations of the Building Code and Existing Building Code, respectively, but it is more expeditious to have one section establish criminal penalties for any violation of Article VI, and delete the text of 8-843 and 8-613; and

WHEREAS, it is in the best interest of the citizens of the City of Abilene to adopt the International Property Maintenance Code; and

WHEREAS, Chapter 29.5, Swimming Pools and Spas, is no longer needed because the adoption of the International Swimming Pool and Spa Code will regulate both public, private and residential facilities.

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

- PART 1:** That Chapter 8, Article VI, Division 1 “Generally,” Division 2, “Building Code” Section 8-481, “Amendments” 8-482; Division 3, “Electrical Code” Section 8-496; “Plumbing Code” Section 8-511, “Mechanical Code” Section 8-526, “Residential Code” Section 8-581, “Fuel Gas Code” Section 8-601, “Energy Code” Section 8-603, and “Existing Building Code” Section 8-612 of the Code of Ordinances, City of Abilene, Texas, are hereby amended as set out in Exhibit A, attached and made a part of this ordinance for all purposes.
- PART 2:** That Chapter 8, Article VI, Division 11, “Property Maintenance Code” Section 8-616 is hereby added as set out in Exhibit B, attached and made part of this ordinance for all purposes.
- PART 3:** That Chapter 29.5, “Swimming Pools and Spas” be deleted in its entirety, and Chapter 8, Article VI, Division 12, “Swimming Pool and Spa Code” Section 8-620 is hereby added as set out in Exhibit C, attached and made part of this ordinance for all purposes
- PART 4:** That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.
- PART 5:** That any person, firm, or corporation violating the provisions of this Ordinance shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.
- PART 6:** Each day such violation shall continue, or be 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 15th day of December, 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 11th day of January, 2023, 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 12th day January, 2023, to permit the public to be heard.

PASSED ON SECOND AND FINAL READING this 12th day of January, 2023.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

EXHIBIT A

CHAPTER 8. CONSTRUCTION REGULATIONS

ARTICLE VI. CODES AND OTHER REGULATIONS

DIVISION 1. GENERALLY

Sec. 8-471 Penalties for violation.

Any person violating the provisions of this article, or any amendment thereto, shall be punished as provided by section 1-9 of this Code.

DIVISION 2. BUILDING CODE

Sec. 8-481. Adopted.

The International Building Code, 2012 2021 edition, published by the International Code Council, Inc., together with a building code pamphlet amending and supplementing that code, are hereby enacted and adopted by reference, as the building code for the City, and is hereby incorporated herein. The building code pamphlet, along with the International Building Code, are on file in the Building Official's and City Secretary's offices.

Sec. 8-482. - ~~Amendments.~~ Reserved.

~~The building code adopted by the provisions of this division has been amended by the City in the following aspects:~~

~~411.9 Temporary Amusement Buildings. Temporary Amusement Buildings are not required to be fire sprinklered if the area does not exceed 5,000 square feet and the maximum travel distance from any point in the area does not exceed 75 feet to a lighted exit way and does not exceed 150 feet to an exterior exit. The areas are required to meet the exit width and door requirements in Chapter 10 of this Code, and the alarm requirements in Amusement Buildings in Section 907.2.1 of the 2000 International Fire Code.~~

Sec. 8-483. - ~~Penalties for violation.~~ Reserved.

~~Any person violating the provisions of the building code adopted by the provisions of this article, or any amendment thereto, shall be punished as provided by section 1-9 of this Code.~~

DIVISION 3. ELECTRICAL CODE

Sec. 8-496. Adopted.

The National Electrical Code, ~~2014~~ 2020 edition, published by the National Fire Protection Association together with standards of the National Electrical Manufacturers Association and the American National Standards Institute, together with an electrical code pamphlet amending and supplementing that code, are hereby enacted and adopted by reference, as the electrical code for the city, and is hereby incorporated herein. The electrical code pamphlet, along with the National Electrical Code, are on file in the building official's and city secretary's offices.

DIVISION 4. PLUMBING CODE

Sec. 8-511. - Adopted.

The International Plumbing Code, ~~2012~~ 2021 edition, published by the International Code Council, Inc., together with a plumbing code pamphlet amending and supplementing that code, are hereby enacted and adopted by reference, as the plumbing code for the City, and is hereby incorporated herein. The plumbing code pamphlet, along with the International Plumbing Code, are on file in the Building Official's and City Secretary's offices.

DIVISION 5. MECHANICAL CODE

Sec. 8-526. - Adopted.

The International Mechanical Code, ~~2012~~ 2021 edition, published by the International Code Council, Inc., together with a mechanical code pamphlet amending and supplementing that code, are hereby enacted and adopted by reference, as the mechanical code for the City, and is hereby incorporated herein. The mechanical code pamphlet, along with the International Mechanical Code, are on file in the Building Official's and City Secretary's offices.

DIVISION 7. RESIDENTIAL CODE

Sec. 8-581. - Adopted.

The International Residential Code, ~~2012~~-2021 edition, published by the International Code Council, Inc., together with a residential code pamphlet amending and supplementing that code, are hereby enacted and adopted by reference, as the residential code for the City, and is hereby incorporated herein. The residential code pamphlet, along with the International Residential Code, are on file in the Building Official's and City Secretary's offices.

DIVISION 8. FUEL GAS CODE

Sec. 8-601. - Adopted.

The International Fuel Gas Code, ~~2012~~ 2021 edition, published by the International Code Council, Inc., together with a fuel gas code pamphlet amending and supplementing that code, are hereby enacted and adopted by reference, as the fuel gas code for the City, and is hereby incorporated herein. The fuel gas code pamphlet, along with the International Fuel Gas Code, are on file in the Building Official's and City Secretary's offices.

DIVISION 9. ENERGY CODE

Sec. 8-603. - Adopted.

The International Energy Conservation Code, ~~2012~~ 2021 Edition, published by the International Code Council, Inc., together with an energy conservation code pamphlet amending and supplementing that code, are hereby enacted and adopted by reference, as the energy conservation code for the City of Abilene, and is hereby incorporated herein. The energy conservation code pamphlet, along with the International Energy Conservation Code, are on file in the Building Official's and City Secretary's offices.

DIVISION 10. EXISTING BUILDING CODE

Sec. 8-612. - Adopted.

The International Existing Building Code, ~~2012~~ 2021 edition, published by the International Code Council, Inc., together with an existing building code pamphlet amending and supplementing that code, are hereby enacted and adopted by reference, as the existing building code for the City, and is hereby incorporated herein. The existing building code pamphlet, along with the International Existing Building Code, are on file in the Building Official's and City Secretary's offices.

Sec. 8-613. - ~~Penalties for violation.~~ Reserved.

~~Any person violating the provisions of the existing building code adopted by the provisions of this article, or any amendment thereto, shall be punished as provided by section 1-9 of this Code.~~

EXHIBIT B

CHAPTER 8. CONSTRUCTION REGULATIONS

ARTICLE VI. CODES AND OTHER REGULATIONS

{add the following}

DIVISION 11. PROPERTY MAINTENANCE CODE

Sec. 8-616. - Adopted.

The International Property Maintenance Code, 2021 edition, published by the International Code Council, Inc., together with a property maintenance code pamphlet amending and supplementing that code, are hereby enacted and adopted by reference, as the property maintenance code for the City, and is hereby incorporated herein. The property maintenance code pamphlet, along with the International Property Maintenance Code, are on file in the Building Official's and City Secretary's offices.

EXHIBIT C

{delete in its entirety}

CHAPTER 29.5 SWIMMING POOLS AND SPAS

{add the following}

CHAPTER 8. CONSTRUCTION REGULATIONS

ARTICLE VI. CODES AND OTHER REGULATIONS

DIVISION 12. SWIMMING POOL AND SPA CODE

Sec. 8-620. - Adopted.

The International Swimming Pool and Spa Code, 2021 edition, published by the International Code Council, Inc., together with a swimming pool and spa code pamphlet amending and supplementing that code, are hereby enacted and adopted by reference, as the swimming pool and spa code for the City, and is hereby incorporated herein. The swimming pool and spa code pamphlet, along with the International Swimming Pool and Spa Code, are on file in the Building Official's and City Secretary's offices.



Amendments to the 2021 International Building Code City of Abilene, Texas

The following sections, paragraphs, and sentences of the 2021 International Building Code are hereby amended as follows:

Also included is Foundation Figure 18-1-E.

Appendices excluded from adoption are as follows: A through O

{Amend to read as follows,}

101.1 Title. These regulations shall be known as the Building code of the City of Abilene, Texas, hereinafter referred to as “this code”.

{Amend to read as follows,}

101.4 Referenced codes. The other codes specified in Sections 101.4.1 through 101.4.7 and referenced elsewhere in this code, when specifically adopted, shall be considered to be part of the requirements of this code to the prescribed extent of each such reference. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered part of the requirements of this code.

(Reason: Legal wording to recognize locally adopted codes and amendments adopted with referenced codes.)

{Amend section heading as follow,}

Section 103 – Department of the Building Inspections Division.

(Reason: To clarify the division responsible for enforcement.)

{Amend to read as follows,}

103.1 Creation of enforcement Division. The Building Inspections Division is hereby created and the Official in charge thereof shall be known as the Building Official.

{Amend #1 and add item #14,}

105.2 Work exempt from permits.

1. Edit last sentence to - 200 square feet.

14. When repairing or replacing roofing 5 squares or less.

(Reason: To match the regulations stated in the International Residential Code.)

{Addition of sections 105.8, 105.9, and 105.10}

105.8 Trash and debris containment. It is the responsibility of each permit holder to make provisions for the containment of building materials, construction debris, and all other trash and debris generated within the property boundaries. Blowing trash, paper, building materials packaging, and other construction site related debris allowed to collect or accumulate outside the property boundaries shall constitute a violation of this section of the code. Such violations shall be subject to enforcement provisions as provided in the code up to and including a stop work order, revocation of permit, and a fine. The particular chosen method, which may include, but not limited to, refuse container, roll offs, and fenced areas or other types of containment shall be provided and maintained by the permit holder.

105.9 Bonds. Any person desiring to engage in the business of general contractor, roofing contractor, or engage in the business of altering, repairing, constructing, demolishing, or moving houses or buildings, or any construction work generally followed by building contractors within the City of Abilene, shall first file with the building inspections division, a surety bond in the penal sum of \$75,000, payable to the City of Abilene and conditioned on a faithful performance of all of the provisions and regulations of the building code, this chapter, and all other ordinances of the city. The surety of such bond shall be a company authorized to transact business in the State of Texas. In the event the City has filed on the contractors bond within the past 3 years, the bond shall increase to the penal sum of \$150,000.

105.10 Contractors registration required. All contractors shall first file with the building inspections division of the City of Abilene as a registered contractor, as per section 8-161 of the Municipal Code, Article IV, License and Registrations.

{Delete 2nd sentence and insert the following,}

107.1 General. The construction documents shall be prepared by a registered design professional in accordance with the State of Texas Board of Architectural Examiners, Title 6, Subtitle B, chapter 1051, Texas Statute Occupational Code, and the Texas Engineering Practice

Act, Title 6, Subtitle A, Chapter 1001, Texas Statute, Occupational Code. In addition, buildings with a clear span exceeding 24' shall have the foundation and structural members designed by a professional engineer.

{Add following at the end of paragraph,}

109.2 Schedule of permit fees. Permit fees are set by Abilene City Council ordinance. Fees are located here: <https://www.abilenetx.gov/business/city-fee-schedule/fee-schedule>. Fees published are subject to change at any time by Council action to ordinance.

{Add following at end of paragraph,}

109.4 Work commencing before permit issuance. Any person who commences work on a building, structure, electrical, gas, mechanical, or plumbing system without first obtaining the required permits shall be subject to an additional fee established by the building official that shall be in addition to the required permit fee. The investigation fee shall be equal to the amount of the permit fee required by the Code, however subsequent work commenced within 12 months of the previous violation shall be assessed a ten times fee.

(Reason: To clarify specific penalties for such violations..)

{Delete paragraph and insert the following,}

109.6 Refunds. The building official shall authorize refunding of any fee paid hereunder in which was erroneously paid or collected. The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The building official shall not authorize refunding of any fee paid except on written application filed by the permit holder not later than 180 days after the date of fee payment.

(Reason: Clarification of interpretation.)

{Addition of section,}

109.7 Re-inspection Fee. A fee as established by city council ordinance may be charged when:

1. The inspection called for is not ready when the inspector arrives;
2. No building address clearly posted;
3. The building is locked or work otherwise not available for inspection when called;
4. The job site is red-tagged twice for the same item;
5. The original red tag has been removed from the job site.

6. Failure to maintain erosion control, trash control or tree protection.

Any re-inspection fees assessed shall be paid before any more inspections are made on that job site.

(Reason: This fee is not a fine or penalty but is designed to compensate for time and trips when inspections are called for when not ready.)

{Amend to read as follows;}

113.1 General. In order to hear and decide appeals of order, decisions or determinations made by the Building official relative to the application and interpretation of this code, appeals may be heard by the Board of Building Standards as established in Chapter 8, Sec. 8-361 of the code of ordinances.

(Reason: To clarify appropriate board set by municipality.)

{115.4; amend last sentence as follows:}

115.4 Failure to Comply. A stop work order release fee in the amount of \$200.00 shall be paid prior to work commencing.

(Reason: To clarify the penalty.)

{Section 202; amend definition of Ambulatory Care Facility as follows:}

AMBULATORY CARE FACILITY. Buildings or portions thereof used to provide medical, surgical, psychiatric, nursing or similar care on a less than 24-hour basis to individuals who are rendered incapable of self-preservation by the services provided ~~or staff has accepted responsibility for care recipients already incapable.~~ This group may include but not be limited to the following:

- Dialysis centers
- Sedation dentistry
- Surgery centers
- Colonic centers
- Psychiatric centers

(Reason: To clarify the range of uses included in the definition. [Explanatory note related to Ambulatory Care Facilities: This group of uses includes medical or dental offices where persons are put under for dental surgery or other services. Section 903.2.2 will now require such uses to be sprinklered if on other than the floor of exit discharge or if four or more persons are put under on the level of exit discharge. Recommend (1.) jurisdictions document any pre-existing non-conforming conditions prior to issuing a new C of O for a change of tenant and, (2.) On any

medical or dental office specify on C of O the maximum number of persons permitted to be put under general anesthesia. It is recommended that before a Certificate of Occupancy is issued, a letter of intended use from the business owner shall be included and a C of O documenting the maximum number of care recipients incapable of self- preservation allowed.)

{Amend last sentence to read as follows:}

603.1.3 Electrical. shall be permitted when installed in accordance with the limitations of the Electrical Code as adopted by the City of Abilene.

{Add following sentence to end of paragraph.}

1010.2.4 Locks and latches.

4. The provision is not applicable when 3.2 of this section is applied, provided the manually operated flush bolts are openable or released without the use of a key or tool. A sign as stated in 3.2 shall be placed on both active and inactive doors.

{Add exception 6.}

1020.2 Construction.

Exceptions: 6. In a group B Office building with more than 1 means of egress, corridor walls and ceilings need not be of fire resistance construction within office spaces of a single tenant when the space is equipped with an approved automatic smoke detection system within the corridor. The actuation of any detector shall activate alarms audible in all areas of the served corridor. The smoke detection system shall be connected to the building fire alarm system where such is provided.

{Delete chapter sections in its entirety and add the following.}

Chapter 11 Accessibility

1101.1 Scope. Accessibility shall be in accordance with the Texas Accessibility Standards.

(Reason: To guide customers to the proper regulatory authority and standards.)

{1404.3.1 add following after exceptions.}

1404.3.1 Class I and II vapor retarders. In all framed walls, floors, and roof/ceilings compromising elements of the building thermal envelope, a vapor retarder, when installed, shall be installed in a manner so as to not trap moisture.

(Reason: To clarify the importance of proper drainage of condensate etc.)

{Insert the following sub-section}

1801.2 Minimum footing and foundation design. Footings and foundations shall be built in accordance with “Figure 18-1.E” for structures not required to be designed by a professional engineer and not exceeding 2 stories in height.

(Reason: To provide a minimum design standard for smaller structures such as accessory buildings etc. that is best suited for the soils located within the boundaries of the City of Abilene.)

Add section.

1804.8 Finish Floor Requirements. All structures shall be constructed in such a manner that the finish floor elevation meets the requirements of the Storm Water Ordinance provisions for the City of Abilene. Structures that lie outside of the flood plain or floodway shall have a finish floor elevation that is 18” above the highest point of the gutter, perpendicular to the footprint of the structure.

Add new sentence to the beginning of section.

1808.7.4 Foundation elevation. *When structures are more than 25 feet from the street gutter on graded sites*

{Delete section and add to read as follows,}

2701.1 Scope. This chapter governs the electrical components, equipment and systems used in buildings and structure covered by this code. Electrical components, equipment and systems shall be designed and constructed in accordance with the provisions of the Electrical Code as adopted by the City of Abilene.

{Chapter 29 – delete sub-section 2902.4.1}

2902.4.1 Directional signage.

(Reason: Not common practice for the Big Country)

{Delete this section and add the following,}

3103.1 General. Reference section 108 of this code.

END



Amendments to the 2020 National Electrical Code City of Abilene, Texas

The following sections, paragraphs, and sentences of the 2020 National Electrical Code are hereby amended as follows:

Annex E, G, H, and J are excluded from adoption.

{Creation of Article 80 as follows:}

Article 80 – Administration

(Reason: To reflect the administration sections of the International Codes for consistency.)

80.1 Title. These regulations shall be known as the “Electrical Code” of the city of Abilene, may be cited as such and will be referred to herein as “this code”.

80.2. Existing Electrical Systems and Equipment.

(a) Additions, Alterations, or Repairs. Additions, alterations, or repairs may be made to an electrical system and equipment to comply with all the requirements of this code, provided the addition, alteration or repair conforms to that required for a new electrical system and equipment, and provided further that no hazard to life, health or safety will be created by such additions, alterations or repairs.

Minor additions, alterations and repairs to existing electrical system and equipment may be made in accordance with the law in effect at the time the original installation was made, when approved by the Electrical Inspector.

(b) Existing Installations. Electrical systems and equipment lawfully in existence at the time of the adoption of this code may have their use, maintenance or repair continued, if the use, maintenance or repair is in accordance with the original design and no hazard to life, health or property has been created by such electrical system and equipment

(c) Changes in Building Occupancy. Electrical systems and equipment which are a part of any building or structure undergoing a change in use or occupancy, as defined in Building Code, shall comply with the requirements of this code which are applicable to the new use or occupancy.

(d) Maintenance. All electrical systems and equipment, both existing and new, and all parts thereof, shall be maintained in a proper operating condition in accordance with the original design and in a safe and hazard-free condition. All devices or safeguards, which are required by this code, shall be maintained in conformance with this code. The owner, or designated agent, shall be responsible for the maintenance of the electrical system. To determine compliance with this subsection, the Building Official may cause any electrical system to be reinspected.

(e) Moved Building. Electrical systems and equipment, which are a part of buildings or structures moved into or within this jurisdiction, shall comply with the provisions of this code for new installations.

(f) Residential Rehabilitated and Condemned Buildings. Existing buildings which have been condemned may have existing serviceable electrical systems left in place, provided these systems were installed in accordance with the standards applicable at the time the building was built, and further provided that the following minimum provisions are met:

1. Services:

- a. All exterior service equipment shall be of weatherproof materials, fittings and devices.
- b. Latest approved service mast heights and points of attachment to structures shall be maintained.

- c. Services shall be of a capacity large enough to carry anticipated load. No service conductor shall be less than 100 amps.

2. Circuits:

- a. Existing two conductor non-metallic sheathed cable, if in safe condition, shall be allowed to remain with the addition of a single grounding conductor run separately to outlets located in bathroom, kitchen countertops, and laundry room areas. In lieu of grounding wire, a GFCI outlet may be substituted.
- b. Other conforming wiring methods, not presently approved by the City of Abilene Electrical Code, may remain, if in safe condition, and not disturbed in any manner, other than reconnection to an electrical panel, provided also that these systems were legal at the time of original installation.
- c. Receptacles shall be sufficient in numbers to serve the desired space in a practical manner, but not less than three (3) duplex receptacles per sleeping room and living areas, such as dens.
- d. These Code requirements are not required to be added to existing serviceable electrical systems:
 - (1) Exterior plugs for residences.

Where there is a question regarding the safety of any installed electrical system in a building which is being rehabilitated, the Electrical Inspector may require that the owner obtain the services of a licensed Master Electrician to completely examine and test the system and report on its safety. When systems are found to be unsafe, they must be replaced in accordance with the requirements of the National Electrical Code, as adopted by the City of Abilene.

80.3. License Requirement. All persons who engage in or work at the actual installation, alteration, repair, renovation and or maintenance of any and all electrical wiring systems and the appurtenances, apparatus, or equipment used in connection with the use of electrical energy in, on outside or attached to a building, residence, structure, property, or premises shall possess the appropriate license in accordance with the State of Texas Electrical Safety and Licensing Act, Title 8, Occupational Code, Chapter 1305.

80.3.1. Homestead Exemption. A homeowner performing electrical work in accordance with Section 1305.003 (6) Exemptions shall additionally comply with the following:

1. The owner shall file with the Building Inspections Division approved plans and specifications, shall satisfy the division as to his/her ability to install electrical wiring, shall apply for and secure a permit, shall pay the required fees, shall do work in accordance with this code and shall request the required inspections for approval.

2. Installation by an owner under this subsection shall be by him/herself, for him/herself on their homestead premises.

80.3.2. On Site Supervision of Apprentices. Apprentices shall not perform work unless they are under direct on-site supervision of a qualified licensed electrician through the Texas Electrical Safety and Licensing Act, Title 8, Occupational Code, Chapter 1305.

80.4. Conflicting Provisions. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern.

80.5. Alternate Materials and Methods of Construction. The provisions of this code are not intended to prevent the use of any material or method of construction not specifically prescribed by this code, provided any alternate has been approved and its use authorized by the Building Official.

The Building Official may approve any alternate, provided that the proposed design is satisfactory and complies with the provisions of this code, and that the material, method or work offered is for the purpose intended, and is at least the equivalent of that prescribed in this code in suitability, strength, effectiveness, fire resistance, durability and safety.

The Building Official shall require that sufficient evidence or proof be submitted to substantiate any claims, regarding the use of alternates. The details of an action granting approval of an alternate shall be recorded and entered in the files of the code enforcement agency.

80.6. Modifications. Whenever there are practical difficulties involved in carrying out the provisions of this code, the Building Official may grant modifications for individual cases, provided that a special individual reason makes the strict letter of this code impractical, and the modification is in conformity with the intent and purpose of this code, and that such modification does not lessen health, life, and fire safety requirements. The detail of actions granting modifications shall be recorded and entered in the files of the code enforcement agency.

80.7. Tests. Whenever there is insufficient evidence of compliance with any of the provisions of this code or evidence that materials or construction do not conform to the requirements of this code, the Building Official may require tests as evidence of compliance to be made at no expense to this jurisdiction.

Test methods shall be as specified by this code or by other recognized test standards. In the absence of recognized and accepted test methods for the proposed alternate, the Building Official shall determine test procedures.

All tests shall be made by an approved agency. Reports of such tests shall be retained by the Building Official for the period required for the retention of public records.

80.8. Schedule of permit fees. Permit fees are set by Abilene City Council ordinance. Fees are located here: <https://www.abilenetx.gov/business/city-fee-schedule/fee-schedule>. Fees published are subject to change at any time by Council action to ordinance.

80.8.1. Work commencing before permit issuance. The investigation fee for work done without a permit shall be equal to the amount of the permit fee required by this code in addition to the approved permit fee; However subsequent work commenced without obtaining a permit within 12 months of the previous violation shall be assessed a ten times fee for re-roofing, plumbing, mechanical, electrical, and irrigation.

80.8.2. Refunds. The building official shall authorize refunding of any fee paid hereunder in which was erroneously paid or collected. The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The building official shall not authorize refunding of any fee paid except on written application filed by the permit holder not later than 180 days after the date of fee payment.

80.9. Re-inspection Fee. A fee as established by city council resolution may be charged when:

1. The inspection called for is not ready when the inspector arrives;
2. The building is locked or work otherwise not available for inspection when called;
3. No address clearly posted;
4. The job site is red-tagged twice for the same item;
5. The original red tag has been removed from the job site.
6. Failure to maintain erosion control, trash control or tree protection.

Any re-inspection fees assessed shall be paid before any more inspections are made on that job site.

80.10. Powers and Duties of the Building Official:

(a) General. The Building Official is hereby authorized and directed to enforce all the provisions of this code. For such purposes, the Building Official shall have the powers of a law enforcement officer.

(b) Deputies. In accordance with prescribed procedures, and with the approval of the appointing authority, the Building Official may appoint electrical inspectors and other related technical officers and inspectors and other employees as shall be authorized from time to time.

(c) Right of Entry. Whenever necessary to make an inspection to enforce the provisions of this code, or whenever the Building Official or an authorized representative has reasonable cause to believe that there exists in a building or upon a premises a condition or code violation which makes such building or premises unsafe, dangerous or hazardous, the Building Official, or an authorized representative, may enter such building or premises at all reasonable times to inspect the same, or to perform any duty imposed upon the Building Official by such codes, provided that if such building or premises be occupied, the Building Official shall first present proper credentials and request entry. If such building or premise is unoccupied, the Building Official or authorized representative, shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If entry is refused, the Building Official, or an authorized representative, shall have recourse to every remedy provided by law to secure entry.

When the Building Official, or an authorized representative, shall have first obtained a proper inspection warrant, or other remedy provided by law, to secure entry, an owner or occupant or other persons having charge, care or control of the building or premises, shall not fail or neglect, after proper request is made as herein provided, to promptly permit entry herein by the Building Official, or authorized representative, for the purpose of inspection and examination, pursuant to this code.

(d) Stop Orders. Whenever work is being done contrary to the provisions of this code, the Electric Inspector may order the work stopped, by notice in writing served on persons engaged in doing the work to be done; and such persons shall forthwith stop such work until authorized by the Electrical Inspector to proceed with the work.

(e) Authority to Disconnect Utilities in Emergencies. The Building Official, or authorized representative, shall have the authority to disconnect electric power or energy service supplied

to the building, structure, or building service equipment therein regulated by this code in case of emergency where necessary to eliminate an immediate hazard to life or property. The Building Official shall, whenever possible, notify the serving utility, the owner and occupant of the building, structure or electrical system, or equipment, of the decision to disconnect prior to taking such action, and shall notify the serving utility, owner and occupant of the building, structure or building service equipment, in writing, of the disconnection immediately thereafter.

(f) Authority to Condemn Electrical System and Equipment. Whenever the Electrical Inspector ascertains that an electrical system or equipment regulated in this code has become hazardous to life, health or property, the Electrical Inspector shall order, in writing, that such electrical system or equipment either be removed or restored to a safe condition, whichever is appropriate. The written notice itself shall fix a time limit for compliance with such order. Persons shall not use or maintain defective electrical system or equipment after receiving notice.

When equipment or an installation is to be disconnected, a written notice of such disconnection and causes therefor shall be given, within twenty-four (24) hours of the order to disconnect to the serving utility, the owner and occupants of the building, structure or premises.

When an electrical system or equipment is maintained in violation of this code and in violation of a notice issued pursuant to the provisions of this section, the Electrical Inspector shall institute appropriate action to prevent, restrain, correct, or abate the violation.

(g) Connection after Order to Disconnect. Persons shall not make connections from an energy or power supply, nor supply power to an electrical system or equipment, which has been disconnected or ordered to be disconnected, by the Electrical Inspector, or the use of which has been ordered to be discontinued by the Electrical Inspector, until the Electrical Inspector authorizes the reconnection and use of the electrical system or equipment.

(h) Liability. The Building Official, or an authorized representative charged with the enforcement of this code, acting in good faith and without malice in the discharge of duties, shall not hereby render the Building Official, or authorized representative, personally liable for any damage that may accrue to persons or property as a result of an act or by reason of an act or omission in the discharge of duties. A suit brought against the Building Official or employee because of an act or omission performed by the Building Official in the enforcement of provisions of this code shall be defended by legal counsel provided by this jurisdiction until final termination of such proceedings.

This code shall not be construed to relieve from or lessen the responsibility of a person owning, operating or controlling any building, structure or building service equipment therein,

for any damages to persons or property caused by defects, nor shall the code enforcement agency be held as assuming such liability by reason of the inspections authorized by this code or approvals issued under this code.

(i) Cooperation of Other Officials and Officers. The Building Official may request, and shall receive, so far as is required in the discharge of duties, the assistance and cooperation of other officials of this jurisdiction.

80.11. Unsafe Electrical Systems or Equipment. Electrical systems or equipment regulated by this code which are unsafe, or which constitute a fire hazard, or are otherwise dangerous to human life are, for the purpose of this section, unsafe. Use of electrical systems or equipment regulated by this code constituting a hazard to safety, health, or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage, or abandonment is, for the purpose of this section, an unsafe use.

Unsafe electrical systems or equipment are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal, in accordance with the procedures set forth in the Current adopted code for the City of Abilene, or an alternate procedure as may be adopted by this jurisdiction. As an alternative, the Building Official, or other employee, or Official of this jurisdiction as designated by the governing body, may institute other appropriate action to prevent, restrain, correct, or abate the violation.

80.12. Violations. It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use or maintain an electrical system or equipment or cause or permit the same to be done in violation with this code.

80.13. Notice of Violation. The building official, or his/her representative, is authorized to serve notice of violation or order on the person responsible for an unlawful act. Such order shall direct the discontinuance of the illegal action and the abatement of the violation.

80.14. Prosecution of Violation. If the notice of the violation is not complied with in the allowed time stated in the notice, the building official, or his/her representative, is authorized to issue citations, or to request legal counsel of the jurisdiction to institute proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful act.

80.20. Permits Required. Except as specified in this section, no electrical system regulated by this code shall be installed, altered, repaired, replaced or remodeled, unless a separate electrical permit for each building or structure has first been obtained from the Building Official.

Exempt Work. An electrical permit shall not be required for the following:

1. Portable motors or other portable appliances energized by means of a cord or cable having an attachment plug end to be connected to an approved receptacle when that cord or cable is permitted by this code.
2. Repair or replacement of fixed motors, transformers or fixed approved appliances of the same type and rating in the same location.
3. Temporary decorative lighting.
4. Repair or replacement of current-carrying parts of any switch, contactor or control device.
5. Reinstallation of attachment plug receptacles, but not the outlets therefor.
6. Repair or replacement of any overcurrent device of the required capacity, in the same location.
7. Repair or replacement of electrodes or transformers of the same size and capacity for signs or gas tube systems.
8. Taping joints.
9. Removal of electrical wiring.
10. Temporary wiring for experimental purposes in suitable experimental laboratories.
11. The wiring for temporary theater, motion picture or television stage sets.
12. Low-energy power, control and signal circuits of Classes II and III, as defined in this code.
13. A permit shall not be required for the installation, alteration or repair of electrical wiring, apparatus, or equipment or the generation, transmission, distribution or metering of electrical energy or in the operation of signals or the transmission of intelligence by a public or private utility in the exercise of its function as a serving utility and placed upon easements of such company.

14. Reference 90-2 (b) (5). Installations, including associated lighting, under the exclusive control of electric utilities for the purpose of communications, metering, generation, control, transformation, transmission, or distribution of electric energy. Such installations shall be located in buildings used exclusively by utilities for such purposes; outdoors on property owned or leased by the utility; on or along public highways, streets, roads, etc.; or outdoors on private property by established rights such as easements. Utility companies shall provide documentation of easements, prior to commencing work for outdoor lighting. At any time a lighting system is no longer under the control of the utility company, the system shall be modified to meet the National Electrical Code. **EXCEPTION:** Single pole guard lights do not require written documentation to be filed with the City of Abilene Building Inspection Department.
15. A permit shall not be required for the installation or repair of electrical wiring, apparatus, or equipment, pertaining to exterior, underground airport lighting and airport signs.

Exemption from the permit requirements of this code shall not be deemed to grant authorization for any work to be done in violation of the provisions of this code, or any other law, or ordinances of this jurisdiction.

80.21. Application. To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the code enforcement agency for that purpose. Every such application shall:

Identify and describe the work to be covered by the permit for which application is made:

1. Describe the land on which the proposed work is to be done, by legal description, street address or similar description, which will readily identify and definitely locate the proposed building or work.
2. Indicate the use or occupancy for which the proposed work is intended.
3. Be accompanied by plans, diagrams, computations and specifications and other data as required in this section.
4. Be signed by permittee, or authorized agent.
5. Give such other data and information as may be required by the Electrical Inspector

Exception: The Electrical Inspector may waive the submission of plans, calculations, etc., if the Electrical Inspector finds that the nature of the work applied for is such that reviewing of plans is not necessary to obtain compliance with this code.

80.21.1 Information on Plans and Specifications. Plans and specifications shall be drawn to scale and shall be of sufficient clarity to indicate the location, nature and extent of the work proposed, and show in detail that it will confirm to the provisions of this code and all relevant laws, ordinances, rules and regulations.

80.22. Permit Issuance. The application, plans and specifications, and other data, filed by an applicant for permit, shall be reviewed by the Electrical Inspector. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the Building Official finds that the work described in an application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this code and other pertinent laws and ordinances, and that the fees specified in Section 304 have been paid, the Electrical Inspector shall issue a permit therefor to the applicant.

When the Building Official issues a permit, the plans and specifications shall be endorsed in writing or stamped "REVIEWED". Such approved plans and specifications shall not be changed, modified or altered without authorizations from the Electrical Inspector, and all work regulated by this code shall be done in accordance with the approved plans.

The Building Official may issue a permit for the construction of part of an electrical system before the entire plans and specifications for the whole system have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this code. The holders of such permits shall proceed at their own risk, without assurance that the permit for the entire building, structure or building service will be granted.

(b) Retention of Plans. One set of approved plans, specifications and computations shall be retained by the Building Official until final approval of the work covered therein. One set of approved plans and specifications shall be returned to the applicant and shall be kept on the site of the building or work at all time during which the work authorized thereby is in progress.

(c) Validity of Permit. The issuance of a permit or approval of plans and specifications shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code, or of any other ordinance of the jurisdiction. Permits presuming to give authority

to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid.

The issuance of a permit based upon plans, specifications and other data shall not prevent the Electrical Inspector from thereafter requiring the correction of errors in said plans, specifications and other data, or from preventing building operations being carried on thereunder when in violation of these codes or any other ordinances of this jurisdiction.

(d) Expiration. Every permit issued by the Building Official under the provisions of this code shall expire by limitation and become null and void, if the building or work authorized by such permit is not commenced within one hundred eighty (180) days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration exceeds one year, the permittee shall pay a new full permit fee.

A permittee holding an unexpired permit may apply for an extension of the time within which work may be commenced under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The Building Official may extend the time for action by the permittee for a period not exceeding one hundred eighty (180) days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken.

(e) Suspension or Revocation. The Electrical Inspector may, in writing, suspend or revoke a permit issued under the provisions of this code whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation of the jurisdiction.



80.23. General. All electrical systems and equipment for which a permit is required by this code shall be subject to inspection by the Electrical Inspector, and the electrical system shall remain accessible and exposed for inspection purposes until approved by the Electrical Inspector.

It shall be the duty of the permit applicant to cause the electrical system to remain accessible and exposed for inspection purposes. Neither the Electrical Inspector nor the

jurisdiction shall be liable for the expense entailed in the removal or replacement of any material required to allow an inspection. When the installation of an electrical system and equipment is complete, an additional and final inspection shall be made.

Electrical systems and equipment regulated by this code shall not be connected to the energy source until authorized by the Electrical Inspector.

Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel provisions of this code or of other ordinances of the jurisdiction shall not be valid.

(a) Inspection Requests. It shall be the duty of the person doing the work authorized by a permit to notify the Electrical Inspector that such work is ready for inspection. The Electrical Inspector may require that every request for inspection be filed at least one working day before such inspection is desired. Such request may be online or by telephone. It shall be the duty of the person requesting inspections required by this code to provide access to and means for inspection of such work.

(b) Operation of Electrical Equipment. The requirements of this section shall not be construed to prohibit the operation of any electrical system or equipment installed to replace existing equipment. The request for inspection of such equipment must have been filed with the Electrical Inspector not more than forty eight (48) hours after such replacement work is completed and before any portion of such electrical system is concealed by any permanent portion of the building.

(c) Other Inspections. In addition to the called inspections required by this code, the Electrical Inspector may make or require other inspections of any work to ascertain compliance with the provisions of this code and other laws, which are enforced by the code enforcement agency.

Article 100

Requirements for Electrical Installations.

The use of aluminum/Copper clad conductors

All NEC articles related to the use of Aluminum/Copper clad aluminum conductors will be restricted to the uses permitted listed below.

110.5 Conductors

Aluminum/copper clad wire will be allowed to be installed as per NEC requirements (110.5, 310.3, Table 310.15 or any other Article for Aluminum/copper clad) for usage as service entrance conductors and/or feeders-wire size is not to be smaller than #2 AL. Aluminum/copper clad wire to be used as branch circuits of any size is not allowed.

When Aluminum/Copper clad conductors are used/installed, the following documentation must be submitted as part of each permit. This includes all projects.

Documentation of UL wire listing to make sure it meets the AA-8000 series AL/Copper clad required by the NEC. (Art. 310.3 A-1)

Documentation of torque sheet, that the torque requirements/recommendations per listing of each aluminum rated terminal is met per NEC. (Art. 110.14 A-D)

Article 200

210.1(a) Aluminum/Copper clad wire used as branch circuits of any size no allowed.

210.11 Branch Circuits Required.

(C) Dwelling Units.

(1) Small-Appliance Branch Circuits. *{Add the following.}*

- (a)** The small appliance circuits, as called for in the National Electrical Code, shall contain no more than six (6) outlets per circuit; provided further, the circuit conductor shall not be smaller than number 12 AWG. Loads shall be balanced.

210.19 Aluminum/Copper clad aluminum conductors used as branch circuit conductors of any type not allowed.

215.2 Aluminum/Copper clad aluminum conductors used as feeder conductors of all types shall not be smaller than #2 AWG.

220.14 Other Loads – All Occupancies

(J) Dwelling Occupancies

{Add the following.}

(4) General purpose circuits for residential wiring shall contain no more than six (6) outlets per circuit.

Exception: Where central heat and air are existing, or are being added, this may be increased to no more than ten (10) outlets per circuit on a fifteen (15) amp breaker, or fourteen (14) outlets per circuit on a twenty (20) amp breaker.

225.5 Outside Branch circuits and feeders. Service conductors

Aluminum/Copper clad conductors used as service conductors of all types shall not be smaller than #2 AWG.

225.6 Conductor Size and Support. *{Amend to add a new sub-article as follows:}*

(C) Aluminum Underground Conductors. For 1000 volts, nominal, or less, aluminum conductors installed underground shall not be smaller than #2 AWG aluminum. Feeders only aluminum/copper clad not allowed as branch circuits of any size.

230.23 (B) Minimum Size. *{Amend to read as follows:}*

The conductors shall not be smaller than 8 AWG copper or #2 aluminum or copper-clad aluminum. Overhead service conductors and service entrance conductors shall be type AA-8000 series electrical grade aluminum alloy conductor material. NEC Articles 310.3 (B) and 110.14 (A) through (D) shall apply.

230.28 (A) Strength. *{Add the following sentence at the end of paragraph.}*

The riser shall be a minimum of two (2) inch rigid steel conduit or IMC.

230.31 (B) Minimum Size. *{Amend to read as follows:}*

The conductors shall not be smaller than 8 AWG copper or #2 aluminum or copper-clad aluminum. Underground service conductors and service entrance conductors shall be type AA-

8000 series electrical grade aluminum alloy conductor material. NEC Articles 310.3 (B) and 110.14 (A) through (D) shall apply.

Article 300

334.12 (A) Uses Not Permitted. *{Add the following.}*

11. In other than residential structures, as defined in the City of Abilene Building Code, that are less than 5,000 square feet that are not constructed of convention wood frame construction.
12. In other than residential structures, as defined in the City of Abilene Building Code, 5,000 square feet or greater or when an addition to an existing structure increases the total building to 5,000 square feet or greater.
13. In other than residential structures, as defined in the City of Abilene Building Code, with a wiring system greater than 250 volts to ground and/or greater than a 400 Amp Service.

334.12 (B) Type NM – Addition of exception:

Exception: NM cable installed in conduit incased in concrete within a single family residence serving islands and floor plugs shall not be considered a wet/damp location.

END



Amendments to the 2021 International Plumbing Code City of Abilene, Texas

The following sections, paragraphs, and sentences of the 2021 International Plumbing Code are hereby amended as follows:

Appendices A, F and plumbing provisions excepted from: ICC A117.1-2017 are excluded from adoption.

{101.1; addition of jurisdiction to the first sentence:}

101.1 Title. These regulations shall be known as the Plumbing Code of the City of Abilene hereinafter referred to as “this code.”

(Reason: To name jurisdiction.)

{Section 102.8; change to read as follows:}

102.8 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Chapter 15 and such codes, when specifically adopted, and standards shall be considered as part of the requirements of this code to the prescribed extent of each such reference. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the adopted amendments. Any reference to NFPA 70 shall mean the Electrical Code as adopted.

(Reason: Legal wording to recognize locally adopted codes and amendments adopted with referenced codes.)

{103.1; amend first sentence as follows:}

103.1 Creation of agency. The Building Inspections Division is hereby created....(remainder unchanged)

(Reason: To identify division in charge of enforcement.)

{109.2; amend to read as follows:}

109.2 Schedule of permit fees. Permit fees are set by Abilene City Council ordinance. Fees are located here: <https://www.abilenetx.gov/business/city-fee-schedule/fee-schedule>. Fees published are subject to change at any time by Council action to ordinance.

(Reason: To direct applicant in the correct location.)

{109.5; amend to read as follows:}

109.5 Refunds. The Building Official shall authorize the refunding of fees as follows:

The building official shall authorize refunding of any fee paid hereunder in which was erroneously paid or collected. The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The building official shall not authorize refunding of any fee paid except on written application filed by the permit holder not later than 180 days after the date of fee payment.

(Reason: Clarification of interpretation.)

{113; amend last sentence as follows:}

113.4 Stop work orders. A stop work order release fee in the amount of \$200.00 shall be paid prior to work commencing.

(Reason: To clarify the penalty.)

{114; Means of appeal, amend to read as follows:}

114.1 General. In order to hear and decide appeals of order, decisions or determinations made by the Building official relative to the application and interpretation of this code, appeals may be heard by the Board of Building Standards as established in Chapter 8, Sec. 8-361.

(Reason: To clarify the appropriate board.)

{114.3; delete this section.}

114.3 Qualifications.

(Reason: To allow the municipality to set up requirements for their board.)

{115.4 Violation Penalties; delete section:}

(Reason: Violation covered within Code of Ordinance.)

{305.4.1; amend to read as follows:}

305.4.1 Sewer depth. Building sewers that connect to private sewage disposal systems shall be installed not less than 12 inches (304 mm) below finish grade.

(Reason: Provides sewer depth that is common in this region.)

{312.10.2; amend section to read as follows:}

312.10.2 Testing.

All testing shall be in conformance with the City of Abilene Cross Connection Ordinance.

(Reason: To provide conformity with the Cross Connection Ordinance as adopted by water utilities)

{314.2.1; add the following at the end of this section:}

314.2.1 Condensate disposal.

Approved places of disposal.

1. The fixture side of a code approved p-trap located within the interior of the structure.
2. Engineered French drain system.

Exception: Existing building may continue to drain onto the roof.

(Reason: To clarify the proper disposal locations.)

{314.2.1.1; fix typo to read as follows:}

314.2.1.1 Condensate discharge.

{Section 413.4; change to read as follows:}

413.4 Required location for floor drains ~~Public laundries and central washing facilities.~~ Floor drains shall be installed in the following areas:

1. In public laundries and in the central washing facilities of multiple family dwellings, the rooms containing automatic clothes washers shall be provided with floor drains located to readily drain the entire floor area. Such drains shall have a minimum outlet of not less than 3 inches (76 mm) in diameter.

2. Commercial kitchens. In lieu of floor drains in commercial kitchens, the Code Official may accept floor sinks.

3. Public restrooms.

(Reason: To make more compatible with local health code practices.)

{421.3; amend first sentence as follows:}

421.3 Shower waste outlet. Waste outlets serving showers shall not be less than 2 inches (52 mm) $1\frac{1}{2}$ in diameter and, (remainder unchanged)

(Reason: Compatible with local practices for this type of fixture.)

{Section 502.3; change to read as follows:}

502.3 Water heaters installed in attics. Attics containing a water heater shall be provided . . . {bulk of paragraph unchanged} . . . side of the water heater. The clear access opening dimensions shall be not less than 20 inches by 30 inches (508 mm by 762 mm) where such dimensions are large enough to allow removal of the water heater. As a minimum, for access to the attic space, provide one of the following:

1. A permanent stair.
2. A pull-down stair with a minimum 300 lb (136 kg) capacity.
3. An access door from an upper floor level.
4. Access Panel may be used in lieu of items 1, 2, and 3 with prior approval of the Code Official due to building conditions.

Exceptions:

1. The passageway and level service space are not required where the appliance is capable of being serviced and removed... {remainder of text unchanged}

(Reason: To provide a safe means of accessibility to appliances in attics and to allow for different types of construction limitations. Consistent with amendment to IMC and IFGC)

{Section 502.6; add Section 502.6 to read as follows:}

502.6 Water heaters above ground or floor. When the attic, roof, mezzanine or platform in which a water heater is installed is more than eight (8) feet (2438 mm) above the ground or floor level, it shall be made accessible by a stairway or permanent ladder fastened to the building.

Exception: A max 10-gallon water heater (or larger with approval) is capable of being accessed through a lay-in ceiling and a water heater is installed is not more than ten (10) feet (3048 mm) above the ground or floor level and may be reached with a portable ladder.

(Reason: To provide safe access to water heaters. (Consistent with regional amendments to IFGC 306.3 and IMC 306.3. Note reference to amendment above.)

{Section 504.6; change to read as follows:}

504.6 Requirements for discharge piping. The discharge piping serving a pressure relief valve, temperature relief valve or combination thereof shall:

1. Not be directly connected to the drainage system.
2. Discharge through an air gap. ~~located in the same room as the water heater.~~
3. Not be smaller than the diameter of the outlet of the valve served and shall discharge full size to the air gap.
4. Serve a single relief device and shall not connect to piping serving any other relief device or equipment.

Exception: Multiple relief devices may be installed to a single T & P discharge piping system when approved by the administrative authority and permitted by the manufacture's installation instructions and installed with those instructions.

5. Discharge ~~to the floor, to the pan serving the water heater or storage tank, to a waste receptor~~ an approved location or to the outdoors.

6 Through 14 to remain the same.

(Reason: To provide a higher degree of safety.)

{703.6: delete this section.}

703.6 Combined sanitary and storm public sewer.

(Reason: not a standard practice in this region)

{Table 709.1; amend bathtub and shower trap size as follows:}

Table 709.1 Drainage fixture units and groups.

Bathtub (with or without shower or whirlpool attachment)

DFU= 2 Min Trap size= 2"

Shower (based on total flow rate through shower head and body part)

5.7gpm or less DFU= 2 Min Trap size= 2"

(Reason: To adequately accommodate load and accommodate local standard practices.)

{Section 713, 713.1; change to read as follows:}

SECTION 713

ENGINEERED ~~COMPUTERIZED~~ DRAINAGE DESIGN

713.1 Design of drainage system. The sizing, design and layout of the drainage system shall be permitted to be designed by approved ~~computer~~ registered engineer using design methods.

(Reason: Code was too restrictive.)

{Section 717.2 change to read as follows:}

717.2 Applicability. The relining of existing building sewers and building drainage piping shall be limited to gravity drainage piping 2 inches (51 mm) ***..remainder of text to stay the same.***

(Reason: common practice with local contractors)

{Section 903.1; change to read as follows:}

903.1.1 Roof extension unprotected. Open vent pipes that extend through a roof shall be terminated not less than six (6) inches (152 mm) above the roof.

(Reason: To provide regional guideline on standard installation method for this area and address reference number correction.)

{1003.3; amend to reference as follows:}

1003.3 Grease Interceptors. Grease interceptors shall adhere to the Fats, Oils, and Grease ordinance as adopted by the City of Abilene. You can access this information here:

<https://abilenetx.gov/DocumentCenter/View/4079/08-18-2017-Exhibit-A-City-of-Abilene-FOG-Ordinance-PDF>.

(Reason: To direct customers to the adopted regulations.)

{Section 1106.1; change to read as follows:}

1106.1 General. The size of the vertical conductors and leaders, building storm drains, building storm sewers, and any horizontal branches of such drains or sewers shall be based on six (6) inches per hour. the 100-year hourly rainfall rate indicated in Figures 1106.1(1) through 1106.1(5) or on other rainfall rates determined from approved local weather data.

(Reason: Specify the roof drain size normally used in the area.)

{Section 1108.3; change to read as follows:}

1108.3 Sizing of secondary drains. Secondary (emergency) roof drain systems shall be sized in accordance with Section 1106. based on the rainfall rate for which the primary system is sized Scuppers shall be sized to prevent the depth of ponding water from exceeding that for which the roof was designed as determined by Section 1101.7. Scuppers shall not have an opening dimension of less than 4 inches (102 mm). The flow through the primary system shall not be considered when sizing the secondary roof drain system.

(Reason: Specify that overflow drainage is to be the same size as the normal roof drains.)

{Section 1109; delete this section.}

*****Section 1202.1; delete Exceptions 1 and 2.**

(Reason: State law already specifies that Med Gas systems must comply with NFPA 99.)



END



Amendments to the 2021 International Mechanical Code City of Abilene, Texas

The following sections, paragraphs, and sentences of the 2021 International Mechanical Code are hereby amended as follows:

Appendices B and C are excluded from adoption.

{Section 101.1; change to read as follows:}

Section 101.1 Title. The regulations shall be known as the Mechanical Code of the City of Abilene, Texas, hereinafter referred to as “this code.”

(Reason: Legal wording to recognize municipality.)

{Section 102.8; change to read as follows:}

102.8 Referenced Codes and Standards. The codes and standards referenced herein shall be those that are listed in Chapter 15 and such codes, when specifically adopted, and standards shall be considered part of the requirements of this code to the prescribed extent of each such reference. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the adopted amendments. Any reference to NFPA 70 shall mean the Electrical Code as adopted.

(Reason: Legal wording to recognize locally adopted codes and amendments adopted with referenced codes.)

{103.1; amend first sentence as follows:}

103.1 Creation of agency. The Building Inspections Division is hereby created... (remainder unchanged)

(Reason: To identify the division in charge of this code.)

{109.2; amend to read as follows:}

109.2 Schedule of permit fees. Permit fees are set by Abilene City Council ordinance. Fees are located here: <https://www.abilenetx.gov/business/city-fee-schedule/fee-schedule>. Fees published are subject to change at any time by Council action to ordinance.6+

(Reason: To direct applicant in the correct location.)

{109.6; amend to read as follows:}

109.6 Fee Refunds. The Building Official shall authorize the refunding of fees as follows:

The building official shall authorize refunding of any fee paid hereunder in which was erroneously paid or collected. The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The building official shall not authorize refunding of any fee paid except on written application filed by the permit holder not later than 180 days after the date of fee payment.

(Reason: Clarification of interpretation.)

{113.2; add last sentence as follows:}

113.2 Stop work orders. A stop work order release fee in the amount of \$200.00 shall be paid prior to work commencing.

(Reason: To clarify the penalty.)

{114.1; Means of Appeal, amend to read as follows:}

114.1 General. In order to hear and decide appeals of order, decisions or determinations made by the Building official relative to the application and interpretation of this code, appeals may be heard by the Board of Building Standards as established in Chapter 8, Sec. 8-361.

(Reason: To clarify the appropriate board.)

{114.3; delete this section.}

114.3 Qualifications.

(Reason: To allow the municipality to set up requirements for their board.)

{115.4; Violation Penalties. Delete Section.}

(Reason: Already covered within the Code of Ordinance.)

{Section 306.3; change to read as follows:}

[M] 306.3 Appliances in attics. Attics containing appliances shall be provided . . . *{bulk of paragraph unchanged}* . . . side of the *appliance*. The clear *access* opening dimensions shall be a minimum of 20 inches by 30 inches (508 mm by 762 mm), and large enough to allow removal of the largest *appliance*. As a minimum, for access to the attic space, provide one of the following:

1. A permanent stair.
2. A pull down stair with a minimum 300 lb (136 kg) capacity.
3. An access door from an upper floor level.
4. Access Panel may be used in lieu of items 1, 2, and 3 with prior approval of the code official due to building conditions.

(Reason: To provide a safe means of accessibility to appliances in attics and to allow for different types of construction limitations.

{Section 306.5; change to read as follows:}

306.5 Equipment and Appliances on Roofs or Elevated Structures. Where *equipment* requiring *access* or appliances are located on an elevated structure or the roof of a building such that personnel will have to climb higher than 16 feet (4877 mm) above grade to access such equipment or appliances, an interior or exterior means of access shall be provided. Exterior ladders providing roof access need not extend closer than 12 feet (2438 mm) to the finish grade or floor level below and shall extend to the equipment and appliances' level service space. Such *access* shall . . . *{bulk of section to read the same}* . . . not require climbing over obstructions greater than 30" in height or walking on roofs having a slope greater than four units vertical in 12 units horizontal (33-percent slope). Such access shall not require the use of portable ladders. Where access involves climbing over parapet walls, the height shall be measured to the top of the parapet wall ... *{remainder of text unchanged}*.

(Reason: To assure access to roof appliances and provide options to not extend exterior ladders to grade. Consistent with IFGC amendments.)

{Section 306.5.1; change to read as follows:}

306.5.1 Sloped Roofs. Where appliances, *equipment*, fans or other components that require service are installed on a roof having a slope of three units vertical in 12 units horizontal (25-percent slope) or greater and having an edge more than 30 inches (762 mm) above grade at such edge, a catwalk at least 16 inches in width with substantial cleats spaced not more than 16 inches apart shall be provided from the roof access to a level platform at the appliance. ...*{remainder of text unchanged}*.

(Reason: To assure safe access to roof appliances. Consistent with IFGC amendments.)

[Section 306; add Section 306.6 to read as follows:]

306.6 Water Heaters Above Ground or Floor. When the mezzanine or platform in which a water heater is installed is more than eight (8) feet (2438 mm) above the ground or floor level, it shall be made accessible by a stairway or permanent ladder fastened to the building.

Exception: A maximum 10 gallon water heater (or larger with approval) is capable of being accessed through a lay-in ceiling and the water heater installed is not more than ten (10) feet (3048 mm) above the ground or floor level and may be reached with a portable ladder.

(Reason: To provide safe access to water heaters and to provide lighting and receptacle for maintenance of equipment. Consistent with regional amendments to IFGC 306.3 and International Plumbing Code (IPC) 502.3.)

{307.2.1; add the following at the end of this section:}

307.2.1 Condensate disposal.

Approved places of disposal.

1. The fixture side of a code approved p-trap located within the interior of the structure.
2. Engineered French drain system.

Exception: Existing building may continue to drain onto the roof.

(Reason: To clarify the proper disposal locations.)

{Section 403.2.1; add an item 5 to read as follows:}

403.2.1 Recirculation of air.

5. Toilet rooms within private dwellings that contain only a water closet, lavatory, or combination thereof may be ventilated with an *approved* mechanical recirculating fan or similar device designed to remove odors from the air.

(Reason: Consistent with common regional practice. Consistent with regional amendment to International Residential Code (IRC) R303.3.)

{Section 501.3; add an exception to read as follows:}

501.3 Exhaust Discharge. The air removed by every mechanical exhaust system shall be discharged outdoors at a point where it will not cause a public nuisance and not less than the distances specified in Section 501.3.1. The air shall be discharged to a location from which it cannot again be readily drawn in by a ventilating system. Air shall not be exhausted into an attic

or crawl space, or be directed onto walkways.

Exceptions:

4. Toilet room exhaust ducts may terminate in a warehouse or shop area when infiltration of outside air is present.

(Reason: Provide a reasonable alternative in areas where a large volume of outside air is present.)

{505.3; amend exceptions 2.3 and 2.4;}

505.3 Exhaust ducts.

- Exceptions:** 2.3. (text unchanged) not more than 4 inch (102 mm) (text unchanged)
- 2.4. (text unchanged) not more than 4 inch (102 mm) (text unchanged)

(Reason: Provide a reasonable alternative in areas, consistent with local practices.)

{1111.1; add the following sentence to the end:}

1111.1 Testing required..... It shall be the owner or owner's representative's responsibility to ensure the following emergency devices:

(Reason: To provide who is responsible for these devices.)

End



Amendments to the 2021 International Residential Code City of Abilene, Texas

The following sections, paragraphs, and sentences of the 2021 International Residential Code are hereby amended as follows:

Also included are Masonry Figure 1, Masonry Figure 2, Foundation Figure 18-1-E, King Truss Figure 502.5 and Handrail Figure R311.7.8.4-A

Appendices excluded from adoption are as follows: AA, AB, AC, AD, AE, AF, AG, AH, AI, AJ, AK, AL, AM, AN, AO, AP, AQ, AR, AS, AT, AU, AV, and AW.

In 2009, the State Legislature enacted SB 1410 prohibiting cities from enacting fire sprinkler mandates in residential dwellings. However, jurisdictions with ordinances that required sprinklers for residential dwellings prior to and enforced before January 1, 2009, may remain in place. Reference; Section R313 Automatic Fire Sprinkler Systems.

The energy provisions in IRC Chapter 11 is deleted in its entirety.

Reference the 2021 IECC for energy code provisions and recommended amendments.

{Amend to read as follow,}

R101.1 Title. These regulations shall be known as the Residential Building code of the City of Abilene, Texas, hereinafter referred to as "this code".

{Section R102.4; change to read as follows:}

R102.4 Referenced codes and standards. The *codes*, when specifically adopted, and standards referenced in this *code* shall be considered part of the requirements of this *code* to the prescribed extent of each such reference and as further regulated in Sections R102.4.1 and R102.4.2. Whenever amendments have been adopted to the referenced *codes* and standards, each reference to said *code* and standard shall be considered to reference the amendments as well. Any reference made to NFPA 70 or the *Electrical Code* shall mean the *Electrical Code* as adopted.

(Reason: Legal wording to recognize locally adopted codes and amendments adopted with referenced codes.)

{Section R103 and R103.1 amend to insert the Department Name}

Building Inspections Division

R103.1 Creation of enforcement agency. The [Building Inspections Division] is hereby created and the official in charge thereof shall be known as the Building Official.

(Reason: Reminder to be sure ordinance reads the same as designated by the city.)

{Section R105.2 add item #11}

R105.2 Work exempt from a permit.

11. When re-roofing 5 squares or less.

(Reason: To accommodate common roofing repairs.)

{Section R105.3.1.1& R106.1.4; delete these sections.}

R1053.1.1 Determination of substantially improved or substantially damaged existing buildings in flood hazard areas.

R106.1.4 Information for construction in flood hazard areas.

(Reason: Floodplain provisions are addressed locally.)

{105.10, 105.11, and 105.12; Addition of the following sections:}

R105.10 Trash and Debris Containment. It shall be the responsibility of each permit holder to make provisions for the containment of building materials, construction debris, and all other trash and debris generated within the property boundaries. Blowing trash, paper, building materials, packaging, and other construction site related debris, allowed to collect or accumulate outside the property boundaries for which a permit has been issued, in other than an approved container, shall constitute a violation of this code. Such violations shall be subject to enforcement provisions as provided for in the adopted code, including a stop work order, revocation of permit, and a possible fine.

R105.11 Bonds. Any person desiring to engage in the business of a general contractor, roofing contractor, or engage in the business of altering, repairing, construction, demolishing, or moving of structures, or any construction work generally followed by building contractors within the City, shall first file with the Building Official, a surety bond in the penal sum of \$75,000, payable to the City of Abilene and conditioned on a faithful performance of all provisions and regulations of the building code, this chapter, and all other ordinances of the City, and the surety of such bond shall be a company authorized to transact business in the State of Texas. In the event the City has filed on a contractors bond within the past 3 years, the bond shall increase to the penal sum of \$150,000.

R105.12 Contractors registration required. All contractors shall first file with the Building Official of the City of Abilene as a registered contractor, as per section 8-161 of the Municipal Code, Article IV, Licenses and Registration.

(Reason: To clarify contractor responsibilities and added protection for the customer.)

{Delete 2nd sentence and insert the following,}

R106.1 Submittal documents. The construction documents shall be prepared by a registered design professional when required in accordance with the Texas Engineering Practice Act, Title 6, Subtitle A, Chapter 1001. In addition, buildings with a clear span exceeding 24' shall have the foundation and structural members designed by a professional engineer.

(Reason: To clarify specific design requirements.)

{Add following at the end of paragraph,}

R108.2 Schedule of permit fees. Permit fees are set by Abilene City Council ordinance. Fees are located here: <https://www.abilenetx.gov/business/city-fee-schedule/fee-schedule>. Fees published are subject to change at any time by Council action to ordinance.

{Delete paragraph and insert the following,}

R108.5 Refunds. The building official shall authorize refunding of any fee paid hereunder in which was erroneously paid or collected. The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The building official shall not authorize refunding of any fee paid except on written application filed by the permit holder not later than 180 days after the date of fee payment.

(Reason: Clarification of interpretation.)

Section R108.6 {Amend to read as follows}

R108.6 Work commencing before permit issuance. Any person who commences work on a building, structure, electrical, gas, mechanical, or plumbing system without first obtaining the required permits shall be subject to an additional fee established by the governing authority that shall be in addition to the required permit fee. The investigation fee shall be equal to the amount of the permit fee required by the Code, however subsequent work commenced within 12 months of the previous violation shall be assessed a ten times fee.

(Reason: To clarify specific penalties for such violations..)

{Addition of section,}

R108.7 Re-inspection Fee. A fee as established by city council ordinance may be charged when:

1. The inspection called for is not ready when the inspector arrives;
2. No building address clearly posted;
3. The building is locked or work otherwise not available for inspection when called;
4. The job site is red-tagged twice for the same item;
5. The original red tag has been removed from the job site.
6. Failure to maintain erosion control, trash control or tree protection.

Any re-inspection fees assessed shall be paid before any more inspections are made on that job site.

(Reason: This fee is not a fine or penalty but is designed to compensate for time and trips when inspections are called for when not ready.)

{Section 112 Means of Appeals. Delete and replace as follows;}

R112.1 General. In order to hear and decide appeals of order, decisions or determinations made by the Building official relative to the application and interpretation of this code, appeals may be heard by the Board of Building Standards as established in Chapter 8, Sec. 8-361.

(Reason: To clarify appropriate board set by municipality.)

{R114.4; add last sentence as follows:}

114.4 Failure to Comply. A stop work order release fee in the amount of \$200.00 shall be paid prior to work commencing.

(Reason: To clarify the penalty.)

{Section R202; change definition of "Townhouse unit" to read as follows:}

TOWNHOUSE UNIT. A single-family dwelling unit in a townhouse, separated by property lines, that extends from foundation to roof and that has a yard or public way on not less than two sides.

(Reason: To distinguish Townhouses on separate lots.)

{Table R301.2 (1); fill in as follows:}

GROUND SNOW LOAD	WIND DESIGN				SEISMIC DESIGN CATEGO RY ^f	SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP ^e	ICE BARRIER UNDER- LAYMENT ^h	FLOOD HAZARDS ^g	AIR FREEZING INDEX ⁱ	MEAN ANNUAL TEMP ^j
	SPEED ^d (MPH)	Topographic Effects ^k	Wind Special Provisions ^l	Windborne Debris ^m		Weathering ^a	Frost Line Depth ^b	Termite ^c					
5 lb/ft	115 (3 sec-gust)/ 76 fastest mile	No	No	No	A	Moderate	6"	Mode- rate- Heavy	20 ⁰ F	No	Ord# 43- 1992	86	64.5 ⁰ F

Delete remainder of table Manual J Design Criteria and footnote N

(Reason: To promote regional uniformity. Manual J is utilized by third party and not part of performed plan reviews. This is reference table only, not needed.)

{Section R302.1; add exception #6 to read as follows:}

Exceptions: {previous exceptions unchanged}

6. Open non-combustible carport structures may be constructed when also approved within adopted ordinances.

(Reason: Refers to other ordinances, such as zoning ordinances.)

{Section R302.5.1; amend to read as follows:}

R302.5.1 Opening protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than 1 3/8 inches (35 mm) in thickness, solid or honeycomb core steel doors not less than 1 3/8 inches (35 mm) thick, or 20-minute fire-rated doors. Doors shall be self-latching. ~~and equipped with a self-closing or automatic-closing device.~~

(Reason: Absence of data linking self-closing devices to increased safety.)

{Section R303.3, Exception; amend to read as follows:}

Exception: {existing text unchanged} Spaces containing only a water closet or water closet and a lavatory may be ventilated with an approved mechanical recirculating fan or similar device designed to remove odors from the air.

(Reason: Consistent with common local practice as recirculating fans are recognized as acceptable air movement.)

Section R303.11; addition of section;}

R303.11 Required cooling. Every dwelling shall be provided with cooling facilities capable of maintaining a room temperature of not higher than 80 degrees at a point 3 feet above the floor and 2 feet from exterior walls in all habitable rooms. This installation of one or more portable cooling devices shall not be used to achieve compliance with this section.

Exception: Window air conditioning units shall not be considered a portable device.

(Reason: To protect the health of habitants due to the high temperatures in this area.)

{Section R304.1; delete and replace as follows;}

R304.1 Minimum area. A dwelling unit shall conform to the minimum area requirements of this code listed herein provided:

1. The unit shall have a separate living room of not less than 120 square feet of gross floor area.
2. The unit shall be provided with a separate sleeping room of not less than 70 square feet of gross area and every bedroom occupied by more than one person shall contain not less than 50 square feet of floor area for each occupant thereof.
3. The unit shall be provided with a kitchen area containing a sink, cooking appliance, and a refrigeration appliance with each having a clear passageway of 3 feet between countertops and appliances or countertops and walls. Kitchens shall be calculated as a separate area with not less than 35 square feet of gross area.
4. The unit shall be provided with a separate bathroom containing a water closet, lavatory, and bathtub or shower.
5. A living room or bedroom shall be not less than 7 feet in any plan dimension.

(Reason: To protect the mental health of habitants.)

{Section R313.2 One and Two Family Dwellings; Delete this section and subsection in their entirety.}

(Reason: In 2009, the State Legislature enacted SB 1410, amending section 1301.551 subsection I of the occupation code, prohibiting cities from enacting fire sprinkler mandates one or two family dwellings only. However, jurisdictions with ordinances that required sprinklers for one or two family dwellings prior to and enforced before January 1, 2009, may remain in place.)

{Section R315.2.2 Alterations, repairs and additions; amend to read as follows:}

Exception:

1. Work involving the exterior surfaces of dwelling, such as the replacement of ~~roofing or~~ siding, or the addition or replacement of window or door, or the addition of a porch or deck.
2. Delete
3. (remains the same)

(Reason: Revised exception for clarity. Code intent is to protect against the products of combustion.)

{Section R401.1 addition of paragraph at the end;}

R401.1 Application..... Standard foundation design acceptable for one and two story buildings exempt from an engineer design, shall be designed in accordance with design figure 18-1-E.

(Reason: To require the City of Abilene's design resulted from a study for this area of high PI soils.)

{Add the following to the end of the section.}

R401.2 Requirements. All structures shall be constructed in such a manner that the finish floor elevation meets the requirements of the Storm Water Ordinance provisions for the City of Abilene. Structures that lie outside of the flood plain or floodway shall have a finish floor elevation that is 18" above the highest point of the gutter, perpendicular to the footprint of the structure.

{Section 403.1.8.1.2 addition of subsection;}

R403.1.8.1.2 Slab on grade foundation. Post tension slabs shall be designed by a professional engineer licensed by the State of Texas in accordance with the International Building Code section 1808.6.2

(Reason: To require an engineer's design on highly expansive soils.)

{Section 502.5 addition of exception}

502.5 Allowable girder and header spans.

Exception. A king truss constructed in accordance with figure R502.5 shall be acceptable.

(Reason: King truss is an engineered design successfully used in the area.)

{Section R703.8.3.3 addition of subsection;}

R703.8 Lintels....

R703.8.3.3. Garage door openings or other masonry openings over 11' and up to and including 18'3" where the masonry height does not exceed 2' may use a 7"x4"x3/8" steel lintel with a bearing of 10" on each end.

(Reason: Clearly lists requirement for this type of application and commonly used in this area.)

{Add section R703.8.4.1.2 Veneer Ties for Wall Studs; to read as follows:}

R703.8.4.1.2 Veneer Ties for Wall Studs. In stud framed exterior walls, all ties may be anchored to studs as follows:

1. When studs are 16 in (407 mm) o.c., stud ties shall be spaced no further apart than 24 in (737 mm) vertically starting approximately 12 in (381 mm) from the foundation; or
2. When studs are 24 in (610 mm) o.c., stud ties shall be spaced no further apart than 16 in (483 mm) vertically starting approximately 8 in (254 mm) from the foundation.

(This amendment had been a carryover amendment for years to provide clear instruction for placement of brick ties. It is now retained with changes to reflect its correct placement and use for clarity when attachment to framing lumber (studs). It should remain for those purposes. It is in addition to the new Table in 2018 which provides for brick ties directly to sheathing.)

{Section R802.11.2; amend first sentence as follows:}

R802.11.1.2 Rafter uplift resistance. Individual rafter spaced not more than 24" on center shall be attached to supporting wall assemblies in accordance with Table R602.3(1)

(Reason: To reflect appropriate fastening table.)

{Section *R905.7.1 Deck Requirements; Amend to read as follows;}

905.7.1 Deck requirements. Wood shingles shall be installed on solid wood sheathing.

(Reason: Common practice in this area.)

{Section R905.8.1 Deck requirements; Amend to read as follows;}

R905.8.1 Deck requirements. Wood shakes shall be installed on solid wood sheathing.

(Reason: Common practice in this area.)

{Chapter 11 [RE] – Energy Efficiency is deleted in its entirety; Reference the 2021 IECC for energy code provisions and recommended amendments.}

(Reason: The recommended energy code changes from the Energy and Green Advisory Board update the amendments for Chapter 11. The 2021 International Energy Conservation Code should be referenced for residential energy provisions. This approach simply minimizes the number of amendments to the IRC.)

{Section M1411.3; amend to read as follows:}

M1411.3 Condensate disposal. Condensate from cooling coils or evaporators shall be conveyed from the drain pan outlet to an ~~approved place of disposal~~ a sanitary sewer through a trap, by means of a direct or indirect drain. *{remaining text unchanged}*

(Reason: Reflects regional practice and to reduce excessive runoff into storm drains.)

{Section M1411.3.1, Items 3 and 4; add text to read as follows:}

M1411.3.1 Auxiliary and secondary drain systems. *{bulk of paragraph unchanged}*

1. *{text unchanged}*
2. *{text unchanged}*
3. An auxiliary drain pan... *{bulk of text unchanged}*... with Item 1 of this section. A water level detection device may be installed only with prior approval of the *building official*.
4. A water level detection device... *{bulk of text unchanged}*... overflow rim of such pan. A water level detection device may be installed only with prior approval of the *building official*.

(Reason: Reflects standard practice in this area.)

{Section M1411.3.1.1; add text to read as follows:}

M1411.3.1.1 Water-level monitoring devices. On down-flow units ...*{bulk of text unchanged}*... installed in the drain line. A water level detection device may be installed only with prior approval of the *building official*.

(Reason: Reflects standard practice in this area.)

{M1505.2 Change the 2nd sentence to read as follows:}

M1505.2 Recirculation of air. Exhaust air from bathrooms, toilet rooms and kitchens shall discharge outdoors, or into a properly ventilated attic at least 18 inches above ceiling joists.

(Reason: Reduce the number of penetrations in a roof)

{Section M2005.2; change to read as follows:}

M2005.2 Prohibited locations. Fuel-fired water heaters shall not be installed in a room used as a storage closet. Water heaters located in a bedroom or bathroom shall be installed in a sealed enclosure so that *combustion air* will not be taken from the living space. Access to such enclosure may be from the bedroom or bathroom when through a solid door, weather-stripped in accordance with the exterior door air leakage requirements of the *International Energy Conservation Code* and equipped with an *approved* self-closing device. Installation of direct-vent water heaters within an enclosure is not required.

(Reason: Corresponds with the provisions of IFGC Section 303.3, exception #5.)

{Section G2415.2.1 (404.2.1) CSST; add a second paragraph to read as follows:}

Both ends of each section of medium pressure gas piping shall identify its operating gas pressure with an *approved* tag. The tags are to be composed of aluminum or stainless steel and the following wording shall be stamped into the tag:

"WARNING: 1/2 to 5 psi gas pressure - Do Not Remove"

(Reason: To protect homeowners and plumbers.)

{Section G2415.12 (404.12) and G2415.12.1 (404.12.1); change to read as follows:}

G2415.12 (404.12) Minimum burial depth. Underground *piping systems* shall be installed a minimum depth of ~~12 inches (305 mm)~~ 18 inches (457 mm) below grade, ~~except as provided for in Section G2415.12.1.~~

G2415.12.1 (404.12.1) Individual Outdoor Appliances; Delete in its entirety

(Reason: To provide increased protection to piping systems.)

{Section G2417.1 (406.1); change to read as follows:}

G2417.1 (406.1) General. Prior to acceptance and initial operation, all *piping* installations shall be visually inspected and *pressure tested* to determine that the materials, design, fabrication, and installation practices comply with the requirements of this *code*. The *permit* holder shall make the applicable tests prescribed in Sections 2417.1.1 through 2417.1.5 to determine compliance with the provisions of this *code*. The *permit* holder shall give reasonable advance notice to the *building official* when the *piping system* is ready for testing. The *equipment*, material, power and labor necessary for the inspections and test shall be furnished by the *permit* holder and the *permit* holder shall be responsible for determining that the work will withstand the test pressure prescribed in the following tests.

(Reason: To utilize language used in the IPC regarding who is responsible for testing procedures.)

{Section G2417.4.1; change to read as follows:}

G2417.4.1 (406.4.1) Test pressure. The test pressure to be used shall be no less than 3 psig (20 kPa gauge), or at the discretion of the Code Official, the piping and valves may be tested at a pressure of at least six (6) inches (152 mm) of mercury, measured with a manometer or slope gauge. For tests requiring a pressure of 3 psig, diaphragm gauges shall utilize a dial with a minimum diameter of three and one half inches (3 ½"), a set hand, 1/10 pound incrementation and pressure range not to exceed 6 psi for tests requiring a pressure of 3 psig. For tests requiring a pressure of 10 psig, diaphragm gauges shall utilize a dial with a minimum diameter of three and one-half inches (3 ½"), a set hand, a minimum of 2/10 pound incrementation and a pressure

range not to exceed 20 psi. For welded piping, and for piping carrying gas at pressures in excess of fourteen (14) inches water column pressure (3.48 kPa) (1/2 psi) and less than 200 inches of water column pressure (52.2 kPa) (7.5 psi), the test pressure shall not be less than ten (10) pounds per square inch (69.6 kPa). For piping carrying gas at a pressure that exceeds 200 inches of water column (52.2 kPa) (7.5 psi), the test pressure shall be not less than one and one-half times the proposed maximum working pressure.

Diaphragm gauges used for testing must display a current calibration and be in good working condition. The appropriate test must be applied to the diaphragm gauge used for testing

(Reason: To provide for lesser pressures to coordinate with the use of more accurate diaphragm gauges.)

{Section G2417.4.2; change to read as follows:}

G2417.4.2 (406.4.2) Test duration. The test duration shall be held for a length of time satisfactory to the *Building Official*, but in no case for be not less than 10 fifteen (15) minutes. For welded piping, and for piping carrying gas at pressures in excess of fourteen (14) inches water column pressure (3.48 kPa), the test duration shall be held for a length of time satisfactory to the *Building Official*, but in no case for less than thirty (30) minutes.

(Reason: To comply with accepted regional practices.)

{Section G2420.1 (406.1); add Section G2420.1.4 to read as follows:}

G2420.1.4 Valves in CSST installations. Shutoff valves installed with corrugated stainless steel (CSST) piping systems shall be supported with an approved termination fitting, or equivalent support, suitable for the size of the valves, of adequate strength and quality, and located at intervals so as to prevent or damp out excessive vibration but in no case greater than 12-inches from the center of the valve. Supports shall be installed so as not to interfere with the free expansion and contraction of the system's piping, fittings, and valves between anchors. All valves and supports shall be designed and installed so they will not be disengaged by movement of the supporting piping.

(Reason: To provide proper security to CSST valves. These standards were established in this region in 1999 when CSST was an emerging technology.)

{Section G2420.5.1 (409.5.1); add text to read as follows:}

G2420.5.1 (409.5.1) Located within same room. The shutoff valve...{bulk of paragraph unchanged}... in accordance with the appliance manufacturer's instructions. A secondary shutoff valve must be installed within 3 feet (914 mm) of the firebox if appliance shutoff is located in the firebox.

(Reason: Reflects regional practice and provides an additional measure of safety.)

{Section G2421.1 (410.1); add text and Exception to read as follows:}

G2421.1 (410.1) Pressure regulators. A line *pressure regulator* shall be ... *{bulk of paragraph unchanged}*... *approved* for outdoor installation. Access to regulators shall comply with the requirements for access to appliances as specified in Section M1305.

Exception: A passageway or level service space is not required when the *regulator* is capable of being serviced and removed through the required *attic* opening.

(Reason: To require adequate access to regulators.)

{Section G2422.1.2.3 (411.1.3.3) Prohibited locations and penetrations; delete Exception 1 and Exception 4.}

(Reason: To comply with accepted regional practices.)

{Section G2445.2 (621.2); add Exception to read as follows:}

G2445.2 (621.2) Prohibited use. One or more *unvented room heaters* shall not be used as the sole source of comfort heating in a *dwelling unit*.

Exception: Existing *approved unvented room heaters* may continue to be used in *dwelling units*, in accordance with the *code* provisions in effect when installed, when *approved* by the *Building Official* unless an unsafe condition is determined to exist as described in *International Fuel Gas Code* Section 115.6 of the *Fuel Gas Code*.

(Reason: Gives code official discretion.)

{Section G2448.1.1 (624.1.1); change to read as follows:}

G2448.1.1 (624.1.1) Installation requirements. The requirements for *water heaters* relative to access, sizing, *relief valves*, drain pans and scald protection shall be in accordance with this *code*.

(Reason: To clarify installation requirements. Also corresponds with amendments regarding water heater access.)

{Section P2603.3; add to read as follows:}

P2603.3 Protection against corrosion. Metallic piping, except for cast iron, ductile iron and galvanized steel, shall not be placed in direct contact with steel framing members, concrete or masonry. Metallic piping shall not be placed in direct contact with corrosive soil. Where sheathing is used to prevent direct contact, the sheathing material thickness shall be not less than 0.008 inch (8 mil) (0.203 mm) and shall be made of an approved material plastic. Where sheathing protects piping that penetrates concrete or masonry walls or floors, the sheathing shall be installed in a manner that allows movement of the piping within the sheathing.

(Reason: Allows for other materials to be accepted.)

{Section P2603.5.1 Sewer Depth; change to read as follows:}

P2603.5.1 Sewer depth. Building sewers that connect to private sewage disposal systems shall be not less than 12 inches below finished grade at the point of septic tank connection. Building sewers shall be not less than 12 inches below grade.

(Reason: Provides sewer depth that is common in this region. Deleted reference to private sewage disposal because a private sewage disposal code is not typically adopted in this region.)

{Section P2604; add to read as follows:}

P2604.2.1 Plastic sewer and DWV piping installation. Plastic sewer and DWV piping installed underground shall be installed in accordance with the manufacturer's installation instructions. Trench width shall be controlled to not exceed the outside the pipe diameter plus 16 inches or in a trench which has a controlled width equal to the nominal diameter of the piping multiplied by 1.25 plus 12 inches. The piping shall be bedded in 4 inches of granular fill and then backfilled compacting the side fill in 6-inch layers on each side of the piping. The compaction shall be to minimum of 85 percent standard proctor density and extend to a minimum of 6 inches above the top of the pipe.

(Reason: To follow manufacturer backfill requirements and to be clear to Inspectors out in the field.)

{Section P2801.6.1; change to read as follows:}

Section P2801.6.1 Pan size and drain. The pan shall be not less than 1 1/2 inches (38 mm) deep and shall be of sufficient size and shape to receive dripping or condensate from the tank or water heater. The pan shall be drained by an indirect waste pipe of not less than 3/4 inch (19 mm). Piping for safety pan drains shall be of those materials listed in Table P2906.5.

Multiple pan drains may terminate to a single discharge piping system when approved by the administrative authority and permitted by the manufactures installation instructions and installed with those instructions. {existing text unchanged}

(Reason: Regionally accepted practice.)

{Section P2804.6.1; change to read as follows:}

Section P2804.6.1 Requirements for discharge piping. The discharge piping serving a pressure relief valve, temperature relief valve or combination thereof shall:

1. Not be directly connected to the drainage system.
2. Discharge through an air gap.

3. Not be smaller than the diameter of the outlet of the valve served and shall discharge full size to the air gap.
4. Serve a single relief device and shall not connect to piping serving any other relief device or equipment.
5. Discharge to an approved location or to the outdoors.

[Remainder unchanged]

(Reason: To ensure the T&P is ran to the exterior.)

{Section P2902.5.3; change to read as follows:}

P2902.5.3 Lawn irrigation systems. The potable water supply to lawn irrigation systems shall be protected against backflow by an atmospheric-type vacuum breaker, a pressure-type vacuum breaker, a double-check assembly or a reduced pressure principle backflow preventer. A valve shall not be installed downstream from an atmospheric vacuum breaker. Where chemicals are introduced into the system, the potable water supply shall be protected against backflow by a reduced pressure principle backflow preventer.

(Reason: To provide clarity.)

{Section P3111Combination waste and vent systems; delete this section in its entirety.}

(Reason: A combination waste and vent system is not approved for use in residential construction.)

{Section P3112.2 Vent Connection; delete and replace with the following:}

P3112.2 Installation. Traps for island sinks and similar equipment shall be roughed in above the floor and may be vented by extending the vent as high as possible, but not less than the drainboard height and then returning it downward and connecting it to the horizontal sink drain immediately downstream from the vertical fixture drain. The return vent shall be connected to the horizontal drain through a wye-branch fitting and shall, in addition, be provided with a foot vent taken off the vertical fixture vent by means of a wye-branch immediately below the floor and extending to the nearest partition and then through the roof to the open air or may be connected to other vents at a point not less than six (6) inches (152 mm) above the flood level rim of the fixtures served. Drainage fittings shall be used on all parts of the vent below the floor level and a minimum slope of one-quarter (1/4) inch per foot (20.9 mm/m) back to the drain shall be maintained. The return bend used under the drain-board shall be a one (1) piece fitting or an assembly of a forty-five (45) degree (0.79 radius), a ninety (90) degree (1.6 radius) and a forty-five (45) degree (0.79 radius) elbow in the order named. Pipe sizing shall be as elsewhere required in this Code. The island sink drain, upstream of the return vent, shall serve no other fixtures. An accessible cleanout shall be installed in the vertical portion of the foot vent.

(Reason: To clarify the installation of island venting and to provide a regional guideline on a standard installation method for this region.)

{Section 3201.7 Amend Table 3201.7 as follows:}

Table 3201.7 Size of traps for plumbing fixtures.

<u>Fixture</u>	<u>Min Trap size</u>
1. Bathtubs	2"
2. Bidet	1.5"
3. Clothes Washer	2"
4. Dishwasher	1.5"
5. Floor Drain	2"
6. Kitchen Sink	1.5"
7. Laundry tub	1.5"
8. Laboratory	1 ¼"
9. Shower up to 12.3 gpm	2"
More than 12.3 gpm	3"



Amendments to the 2021 International Fuel Gas Code City of Abilene, Texas

The following sections, paragraphs, and sentences of the 2021 International Fuel Gas Code are hereby amended as follows:

Appendix E is excluded from adoption.

{101.1; change to read as follows:}

101.1 Title. These regulations shall be known as the Fuel Gas Code of the City of Abilene, hereinafter referred to as “this code”.

(Reason: To reflect jurisdiction in charge.)

{Section 102.8; change to read as follows:}

102.8 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Chapter 8 and such codes, when specifically adopted, and standards shall be considered part of the requirements of this code to the prescribed extent of each such reference.

102.8.1 Conflicts. Where conflicts occur between provisions of this code and the referenced standards, the provisions of this code shall apply. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendments as well. Any reference to NFPA 70 or the ICC *Electrical Code* shall mean the Electrical Code as adopted.

(Reason: Legal wording to recognize locally adopted codes and amendments adopted with referenced codes.)

{109.2; amend to read as follows:}

109.2 Schedule of permit fees. Permit fees are set by Abilene City Council ordinance. Fees are located here: <https://www.abilenetx.gov/business/city-fee-schedule/fee-schedule>. Fees published are subject to change at any time by Council action to ordinance.

{109.6; amend to read as follows:}

109.6 Refunds. The Building Official shall authorize the refunding of fees as follows:

The building official shall authorize refunding of any fee paid hereunder in which was erroneously paid or collected. The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The building official shall not authorize refunding of any fee paid except on written application filed by the permit holder not later than 180 days after the date of fee payment.

(Reason: Clarification of interpretation.)

{113; Means of Appeal, amend first sentence to read as follows:}

113 General. In order to hear and decide appeals of order, decisions or determinations made by the code official relative to the application and interpretation of this code, a person shall have the right to appeal the decision of the code official to the Board of Building Standards. The Board of Building Standards shall be (the rest remains the same)

(Reason: To clarify the appropriate board.)

{114.1; Means of Appeal, amend to read as follows:}

114.1 General. In order to hear and decide appeals of order, decisions or determinations made by the Building official relative to the application and interpretation of this code, appeals may be heard by the Board of Building Standards as established in Chapter 8, Sec. 8-361.

(Reason: To allow the municipality to set up requirements for their board.)

{115.4 Violation Penalties; delete section}

(Reason: This is already covered within the Code of Ordinances.)

{116; add last sentence as follows:}

116 Stop work orders. A stop work order release fee in the amount of \$200.00 shall be paid prior to work commencing.

(Reason: To clarify the penalty.)

{Section 306.3; change to read as follows:}

[M] 306.3 Appliances in attics. Attics containing appliances shall be provided . . . *{bulk of paragraph unchanged}* . . . side of the *appliance*. The clear *access* opening dimensions shall be a minimum of 20 inches by 30 inches (508 mm by 762 mm), and large enough to allow removal of the largest *appliance*. As a minimum, for access to the attic space, provide one of the following:

1. A permanent stair.
2. A pull down stair with a minimum 300 lb (136 kg) capacity.
3. An access door from an upper floor level.
4. Access Panel may be used in lieu of items 1, 2, and 3 with prior approval of the code official due to building conditions.

(Reason: To provide a safe means of accessibility to appliances in attics and to allow for different types of construction limitations. Consistent with regional amendment to IMC 306.3.)

{Section 306.5; change to read as follows:}

[M] 306.5 Equipment and Appliances on Roofs or Elevated Structures. Where *equipment* requiring *access* or appliances are located on an elevated structure or the roof of a building such that personnel will have to climb higher than 16 feet (4877 mm) above grade to access such equipment or appliances, an interior or exterior means of access shall be provided. Exterior ladders providing roof access need not extend closer than 12 feet (2438 mm) to the finish grade or floor level below and shall extend to the *equipment* and appliances' level service space. Such *access* shall . . . *{bulk of section to read the same}* . . . not require climbing over obstructions greater than 30" in height or walking on roofs having a slope greater than four units vertical in 12 units horizontal (33-percent slope). Such access shall not require the use of portable ladders. Where access involves climbing over parapet walls, the height shall be measured to the top of the parapet wall ... *{remainder of text unchanged}*.

(Reason: To assure safe access to roof appliances. Consistent with IMC amendments.)

{Section 306.5.1; change to read as follows:}

[M] 306.5.1 Sloped roofs. Where appliances, *equipment*, fans or other components that require service are installed on a roof having a slope of three units vertical in 12 units horizontal (25-percent slope) or greater and having an edge more than 30 inches (762 mm) above grade at such edge, a catwalk at least 16 inches in width with substantial cleats spaced not more than 16 inches apart shall be provided from the roof access to a level platform at the appliance. ...*{remainder of text unchanged}*.

(Reason: To assure safe access to roof appliances. Consistent with IMC amendments.)

{Section 404.12; change to read as follows:}

404.12 Minimum burial depth. Underground piping systems shall be installed a minimum depth of 12 18 inches (305 458 mm) top of pipe below grade, except as provided for in Section 404.12.1.

404.12.1 Delete in its entirety

(Reason: To provide increased protection to piping systems and address reference number change.)

{Section 406.4.1; change to read as follows:}

406.4.1 Test pressure. The test pressure to be used shall be no less than 3 psig (20 kPa gauge), or at the discretion of the Code Official, the piping and valves may be tested at a pressure of at least six (6) inches (152 mm) of mercury, measured with a manometer or slope gauge. For tests requiring a pressure of 3 psig, diaphragm gauges shall utilize a dial with a minimum diameter of three and one half inches (3 ½"), a set hand, 1/10 pound incrementation and pressure range not to exceed 6 psi for tests requiring a pressure of 3 psig. For tests requiring a pressure of 10 psig, diaphragm gauges shall utilize a dial with a minimum diameter of three and one-half inches (3 ½"), a set hand, a minimum of 2/10 pound incrimination and a pressure range not to exceed 20 psi. For welded piping, and for piping carrying gas at pressures in excess of fourteen (14) inches water column pressure (3.48 kPa) (1/2 psi) and less than 200 inches of water column pressure (52.2 kPa) (7.5 psi), the test pressure shall not be less than ten (10) pounds per square inch (69.6 kPa). For piping carrying gas at a pressure that exceeds 200 inches of water column (52.2 kPa) (7.5 psi), the test pressure shall be not less than one and one-half times the proposed maximum working pressure.

Diaphragm gauges used for testing must display a current calibration and be in good working condition. The appropriate test must be applied to the diaphragm gauge used for testing.

(Reason: To provide for lesser pressures to coordinate with the use of more accurate diaphragm gauges.)

{Section 409.1; add Section 409.1.4 to read as follows:}

409.1.4 Valves in CSST installations. Shutoff valves installed with corrugated stainless steel (CSST) piping systems shall be supported with an *approved* termination fitting, or equivalent support, suitable for the size of the valves, of adequate strength and quality, and located at intervals so as to prevent or damp out excessive vibration but in no case greater than 12-inches from the center of the valve. Supports shall be installed so as not to interfere with the free expansion and contraction of the system's piping, fittings, and valves between anchors. All valves and supports shall be designed and installed so they will not be disengaged by movement of the supporting piping.

(Reason: To provide proper security to CSST valves. These standards were established in this region in 1999 when CSST was an emerging technology.)

{Section 410.1; add a second paragraph and exception to read as follows:}

Access to regulators shall comply with the requirements for access to appliances as specified in Section 306.

Exception: A passageway or level service space is not required when the regulator is capable of being serviced and removed through the required attic opening.

(Reason: To require adequate access to regulators.)

{Section 621.2; add exception as follows:}

621.2 Prohibited use. One or more unvented room heaters shall not be used as the sole source of comfort heating in a dwelling unit.

Exception: Existing *approved* unvented heaters may continue to be used in dwelling units, in accordance with the code provisions in effect when installed, when *approved* by the Code Official unless an unsafe condition is determined to exist as described in Section 108.7.

(Reason: Gives code official discretion.)

END



**Amendments to the
2021 International Energy Conservation Code
IECC – Commercial Provisions
City of Abilene, Texas**

The following sections, paragraphs, and sentences of the 2021 International Energy Conservation Code are hereby amended as follows:

Appendices CA, CB, CC, RA, RB & RC are excluded from adoption.

{Amend to read as follow,}

C101.1 Title. This code shall be known as the Energy Conservation Code of the City of Abilene, Texas, hereinafter referred to as “this code”.

{C101.5.1 Compliance Materials; Add new subsection as follows}

C101.5.1.1 Approved software program. COMcheck or other approved software, 2009 edition or later, is an acceptable computer software program to be used to determine compliance with specific provisions of this code.

(Reason: Allow for more options for compliance.)

{Section C104 Fees; delete entire section and amend as follows}

C104.1 Fees. Permit fees are set by Abilene City Council ordinance. Fees are located here: <https://www.abilenetx.gov/business/city-fee-schedule/fee-schedule>. Fees published are subject to change at any time by Council action to ordinance.

(Reason: To insure consistency)

{Section C109 Stop work order; delete entire section and amend as follows}

C109.1 Stop Work Order. Stop Work orders shall be in accordance with Section 115 of the Building Code.

(Reason: To insure consistency)

{Section C110 Board of Appeals; delete entire section and amend as follows}

C110 .1 General. In order to hear and decide appeals of order, decisions or determinations made by the Building official relative to the application and interpretation of this code, appeals may be heard by the Board of Building Standards as established in Chapter 8, Sec. 8-361.

(Reason: To clarify appropriate board set by municipality)

{Section C202 Definitions.} Add last sentence to paragraph

Wall, Above-Grade. An above-grade wall enclosing conditioned space which is vertical or sloped at an angle of sixty (60) degrees (1.1rad) or greater from the horizontal.

(Reason: Clarification to identify wall as opposed to roof)

{C401.3 Thermal envelope certificate. Delete section in its entirety}

{C402. Building Envelope Requirements}

C402.1 General

#2. Delete.

(Reason: To clarify specific penalties for such violations..)

{Table C402.1.3; Delete table and use Table 502.1.2 from the 2009 IECC.

{Table C402.1.4; Delete table and use Table 502(1) from the 2009 IECC.

{C405.2.3 Light-reduction controls. Amend Exception #3.1 to read as follows}

3.1 Areas that have 4 or fewer luminaires.

Amendments to the 2021 International Energy Conservation Code IECC – Residential Provisions

{Amend to read as follow,}

R101.1 Title. This code shall be known as the Energy Conservation Code of the City of Abilene, Texas, hereinafter referred to as “this code”.

{R101.5.1 Compliance Materials; Add new subsection as follows}

R101.5.1.1 Approved software program. REScheck or IC3 or other approved software, 2009 edition or later editions, are acceptable computer software program to be used to determine compliance with specific provisions of this code.

(Reason: Allow for more options for compliance.)

{Section R104 Fees; delete entire section and amend as follows}

R104.2 Fees. Permit fees are set by Abilene City Council ordinance. Fees are located here: <https://www.abilenetx.gov/business/city-fee-schedule/fee-schedule>. Fees published are subject to change at any time by Council action to ordinance.

(Reason: To insure consistency)

{Section R109 Stop work order; delete entire section and amend as follows}

R109.1 Stop Work Order. Stop Work orders shall be in accordance with Section 114 of the Residential Building Code.

(Reason: To insure consistency)

Section R110 Board of Appeals; delete entire section and amend as follows}

R110 .1 General. In order to hear and decide appeals of order, decisions or determinations made by the Building official relative to the application and interpretation of this code, appeals may be heard by the Board of Building Standards as established in Chapter 8, Sec. 8-361.

(Reason: To clarify appropriate board set by municipality)

{Section R202 Definitions.}

Wall, Above-Grade. An above-grade wall enclosing conditioned space which is vertical or sloped at an angle of sixty (60) degrees (1.1rad) or greater from the horizontal.

(Reason: Clarification to identify wall as opposed to roof)

{Section R402 Building Thermal Envelope; Delete Tables R402.1.2 and R402.1.3 and add Table R402.1.4 to show the following prescriptive method minimum requirements for new construction and additions.

Table R402.1.4

Fenestration U-factor	.30
Skylight U- factor	.55
Glazed fenestration SHGC	.30
Ceiling Value	R-38
Wood frame wall value	R-13
Floor Value (pier and beam)	R-19
Slab on grade	0

Reason: clarify consistent requirements for new construction and additions.

Add new subsection:

R402.1.6 Replacement fenestration. When replacing more than 50% of the area of all glazed fenestration products (where the entire unit, including the frame, sash and glazing, is replaced) they shall meet the prescriptive fenestration criteria in Table R402.1.4.

(Reason: To make replacement of fenestration less restrictive)

{Section R402.4.1.2 Testing; Delete in its entirety and amend as follows}

R402.4.1.2 Testing. Building envelope airtightness and insulation installation shall be demonstrated to comply with one of the following options given by Section R402.4.2.1 or 402.4.2.2.

R402.4.2.1 Testing Option. Building envelope tightness and insulation installation shall be considered acceptable when tested air leakage is less than seven air changes per hour (ACH) when tested with a blower door at a pressure of 50 pascals (1 psf). Testing shall occur after rough in and after installation of penetrations of the building envelope, including penetrations for utilities, plumbing, electrical, ventilation and combustion appliances.

During testing:

1. Exterior windows and doors, fireplace and stove doors shall be closed, but not sealed;
2. Dampers shall be closed, but not sealed, including exhaust, intake, makeup air, backdraft and flue dampers;
3. Interior doors shall be open;
4. Exterior openings for continuous ventilation systems and heat recovery ventilators shall be closed and sealed;
5. Heating and cooling system(s) shall be turned off;
6. HVAC ducts shall not be sealed; and
7. Supply and return registers shall not be sealed.

R402.4.2.2 Visual inspection option. Building envelope tightness and insulation installation shall be considered acceptable when the items listed in Table R402.4.1.1, applicable to the method of construction, are field verified. Where required by the code official, and approved party independent from the installer of the insulation shall inspect the air barrier and insulation.

(Reason: To offer flexibility in testing and inspections)

R403.6.2 Whole-dwelling mechanical ventilation system fan efficacy. {Delete section in its entirety}

{R404.1 Lighting equipment; Amend to read as follows}

R404.1 Lighting equipment. A minimum of 50 percent of the lamps in permanently installed lighting fixtures shall be high efficacy lamps or a minimum of 50 percent of the permanently installed lighting fixtures shall contain only high efficacy lamps.

(Reason: To offer flexibility in construction practices)

R404.2 Interior lighting controls {Delete section in its entirety}

END



Amendments to the 2021 International Existing Building Code City of Abilene, Texas

The following sections, paragraphs, and sentences of the 2021 International Existing Building Code are hereby amended as follows:

Appendices excluded from adoption are as follows: A, B, C, and D.

{Amend to read as follows,}

101.1 Title. These regulations shall be known as the Existing Building code of the City of Abilene, Texas, hereinafter referred to as “this code”.

{Amend to read as follows,}

102.4 Referenced codes and standards. In all cases, local amendments, as adopted, are part of the referenced code.

(Reason: Legal wording to recognize locally adopted codes and amendments adopted with referenced codes.)

{Amend section heading as follow,}

Section 103 – Department of the Building Inspections Division.

(Reason: To clarify the division responsible for enforcement.)

{Amend to read as follows,}

103.1 Creation of enforcement Division. The Building Inspections Division is hereby created and the Official in charge thereof shall be known as the Building Official. All references in this code to the “code official” shall mean the “building official”.

103.3 Deputies. *{Delete in its entirety}*

105.1.1 Annual permit. *{Delete in its entirety}*

105.1.2 Annual permit records. *{Delete in its entirety}*

105.2 Work exempt from permit. *{Amend as follows.}*

Building:

{Add the following to end of paragraph}

7. When repairing or replacing roofing 5 squares or less.

105.7 Placement of permit. *{Delete in its entirety}*

{Addition of sections 105.8, 105.9, and 105.10}

105.8 Trash and debris containment. It is the responsibility of each permit holder to make provisions for the containment of building materials, construction debris, and all other trash and debris generated within the property boundaries. Blowing trash, paper, building materials packaging, and other construction site related debris allowed to collect or accumulate outside the property boundaries shall constitute a violation of this section of the code. Such violations shall be subject to enforcement provisions as provided in the code up to and including a stop work order, revocation of permit, and a fine. The particular chosen method, which may include, but not limited to, refuse container, roll offs, and fenced areas or other types of containment shall be provided and maintained by the permit holder.

105.9 Bonds. Any person desiring to engage in the business of general contractor, roofing contractor, or engage in the business of altering, repairing, constructing, demolishing, or moving houses or buildings, or any construction work generally followed by building contractors within the City of Abilene, shall first file with the building inspections division, a surety bond in the penal sum of \$75,000, payable to the City of Abilene and conditioned on a faithful performance of all of the provisions and regulations of the building code, this chapter, and all other ordinances of the city. The surety of such bond shall be a company authorized to transact business in the State of Texas. In the event the City has filed on the contractors bond within the past 3 years, the bond shall increase to the penal sum of \$150,000.

105.10 Contractors registration required. All contractors shall first file with the building inspections division of the City of Abilene as a registered contractor, as per section 8-161 of the Municipal Code, Article IV, License and Registrations.

{Delete 2nd sentence and insert the following,}

106.1 General. The construction documents shall be prepared by a registered design professional in accordance with the State of Texas Board of Architectural Examiners, Title 6, Subtitle B, chapter 1051, Texas Statute Occupational Code, and the Texas Engineering Practice Act, Title 6, Subtitle A, Chapter 1001, Texas Statute, Occupational Code. In addition, buildings with a clear span exceeding 24' shall have the foundation and structural members designed by a professional engineer.

{Amend 106.5 Retention of Construction documents. to read as follows:}

106.5 Retention of construction documents. One set of approved plans, specifications, and computations shall be retained by the building official, in accordance with the City of Abilene Record Retention Plan.

{Add following at the end of paragraph,}

108.2 Schedule of permit fees. Permit fees are set by Abilene City Council ordinance. Fees are located here: <https://www.abilenetx.gov/business/city-fee-schedule/fee-schedule>. Fees published are subject to change at any time by Council action to ordinance.

{Add following at end of paragraph,}

108.4 Work commencing before permit issuance. The investigation fee for work done without a permit shall be equal to the amount of the permit fee required by this code in addition to the approved permit fee; However subsequent work commenced without obtaining a permit within 12 months of the previous violation shall be assessed a ten times fee for re-roofing, plumbing, mechanical, electrical, and irrigation.

{Delete paragraph and insert the following,}

108.6 Refunds. The building official shall authorize refunding of any fee paid hereunder in which was erroneously paid or collected. The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The building official shall not authorize refunding of any fee paid except on written application filed by the permit holder not later than 180 days after the date of fee payment.

(Reason: Clarification of interpretation.)

{Addition of section,}

108.7 Re-inspection Fee. A fee as established by city council ordinance may be charged when:

1. The inspection called for is not ready when the inspector arrives;

2. No building address clearly posted;
3. The building is locked or work otherwise not available for inspection when called;
4. The job site is red-tagged twice for the same item;
5. The original red tag has been removed from the job site.
6. Failure to maintain erosion control, trash control or tree protection.

Any re-inspection fees assessed shall be paid before any more inspections are made on that job site.

(Reason: This fee is not a fine or penalty but is designed to compensate for time and trips when inspections are called for when not ready.)

{Amend to read as follows;}

112.1 General. In order to hear and decide appeals of order, decisions or determinations made by the Building official relative to the application and interpretation of this code, appeals may be heard by the Board of Building Standards as established in Chapter 8, Sec. 8-361.

(Reason: To clarify appropriate board set by municipality.)

{114.4; amend last sentence as follows:}

114.4 Failure to Comply. A stop work order release fee in the amount of \$200.00 shall be paid prior to work commencing.

(Reason: To clarify the penalty.)

{Delete Section 117 Demolition in its entirety and replace with:}

Section 117 Demolition

117.1 General. Demolition shall comply with Chapter 8, Article VI, Division 6 of the City of Abilene code of ordinances.

{202 – Add definition for Enhanced Classroom Acoustics}

Enhanced Classroom Acoustics. The method to reduce background noise and reverberation in order to obtain a supportive and enhanced acoustic environment that enables students to increase retention and reduce fatigue.

{Delete reference to codes that are not adopted}

302.2 Additional Codes. International Private Sewage Disposal Code.

{Delete section 306 in its entirety and amend as follows:}

306.1 Scope. Accessibility shall be in accordance with the Texas Accessibility Standards..

END



Amendments to the 2021 International Property Maintenance Code

{Section 101.1; change to read as follows:}

Section 101.1 Title. The regulations shall be known as the International Property Maintenance Code of the City of Abilene, Texas, hereinafter referred to as “this code.”

(Reason: Legal wording to recognize municipality.)

{Section 102.8; change to read as follows:}

102.8 Referenced Codes and Standards. The codes and standards referenced herein shall be those that are listed and such codes, when specifically adopted, and standards shall be considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the adopted amendments. Any reference to NFPA 70 shall mean the Electrical Code as adopted.

(Reason: Legal wording to recognize locally adopted codes and amendments adopted with referenced codes.)

{103.1; amend to read as follows:}

103.1 General. Property Maintenance inspections shall be part of the Planning and Developments Services Department and the executive in charge thereof shall be known as the code official.

(Reason: To identify the division in charge of this code.)

{104.1; amend to read as follows:}

104.1 Fees. Permit fees are set by Abilene City Council resolutions. Fees published are subject to change at any time by Council action to resolution. Fee’s are located here:

<https://www.abilenetx.gov/business/city-fee-schedule/fee-schedule>

(Reason: To direct applicant in the correct location and recognize fees are subject to change.)

{104.2; amend to read as follows:}

104.2 Fee Refunds. The Building Official shall authorize the refunding of fees as follows:

The building official shall authorize refunding of any fee paid hereunder in which was erroneously paid, collected, or cancelled. The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The building official shall not authorize refunding of any fee paid except on written application filed by the permit holder not later than 180 days after the date of fee payment.

(Reason: Clarification of interpretation.)

{107.1; amend to read as follows:}

107.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the code official relative to the application and interpretation of this code, there shall be and is hereby created the Board of Building Standards. The Board of Building Standards...
(remainder of text unchanged)

(Reason: To clarify appropriate board for this process)

{108; amend to read as follows:}

Section 108 Board of Building Standards.

108.1 Membership of the Board. The Board of Building Standards –*(remainder unchanged)*

{Reason: To clarify appropriate board}

{109.4; amend to read as follows:}

109.4 Violation Penalties. 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 or repair mechanical work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be subject to penalties as prescribed by law. Any such violation shall be a misdemeanor and upon conviction thereof, shall be punishable by a fine, not to exceed \$500.00. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

(Reason: To clarify the penalty and policy of a violation.)

{113.4; Delete Section.}

{Reason: Controversial practice}

{Chapter 2- Definition added.}

Flexible Cord – A flexible cord shall be known as an extension cord or any cord designed to be used for a temporary basis. Also refer to the National Electrical Code for further reference.

{Section 302.4; Amend to read as follows:}

302.4 Weeds. Shall be in accordance with the City of Abilene current code of ordinances edition within chapter 19 for prohibited acts or conditions which constitute a nuisance.

{Section 304.14; Amend to read as follows:}

Remove first portion of section and start to read as follows.

304.14 Insect screens. Every door (remainder of section unchanged).

{Section 308.3.1; Delete section}

{Section 404.6; Amend section title:}

404.6 Efficiency unit (Apartment unit). Remainder unchanged.

{Section 506.3; Amend to read as follows:}

506.3 Grease Interceptors. Refer to the City of Abilene Code of Ordinance Article VIII – Fats, oils, and grease for requirements.

{Section 602; Amend to read as follows:}

Section 602 Heating and Air Conditioning Facilities

(Reason: To require an air conditioning requirement)

{Section 602.1; Amend to read as follows:}

602.1 Facilities required. Heating and air conditioned facilities shall be provided in structures as required by this section.

{Section 602.2; Amend to read as follows:}

602.2 Residential occupancies. Dwellings shall be provided with heat and air conditioning facilities capable of maintaining a room temperature of 68 degrees F (20 C) within winter months and 80 degrees F (26.67 C) within the summer months in all habitable rooms, bathrooms, toilet rooms. Cooking appliances or portable units shall not be used as a means to provide the required heating and cooling.

Exception: In areas where the average monthly temperature is above 30 degrees F (-1 C), a minimum temperature of 65 degrees F (18 C) shall be maintained.

{Section 602.3; Amend to read as follows:}

602.3 Heat and Air Conditioning supply. Every owner and operator of any building who rents, leases or lets one or more dwelling units or sleeping units on terms, either expressed or implied, to furnish heat and air conditioning to the occupants thereof in all habitable room, bathroom, and toilet rooms.

Exception: When the outdoor temperature is below or above the outdoor design temperature for the locality, maintenance of the room temperature shall not be required provided that the heating and air conditioning system is operating at its full capacity.

{Section 602.4; Amend to read as follows:}

602.4 Occupiable work spaces: Indoor occupiable work spaces shall be supplied with heat and air conditioning during the periods the spaces are occupied which are capable of maintaining a room temperature of 68 degrees F (20 C) within winter months and 80 degrees F (26.67 C) within the summer months. No cooking appliances/units are allowed to be used for heating.

Exceptions: unchanged from original text.

{Section 604.3.1.1; Amend exception #1 to read as follows:}

1. Enclosed switches, rated not more than 600 volts.

{Section 703.3; Amend section paragraph to read as follows:}

703.3 Maintenance. The required fire-resistance rating of fire resistance-rated construction, including walls, firestops, shaft enclosures, partitions, smoke barriers, floors, fire-resistive coatings and sprayed fire-resistant materials applied to structural members and joint systems,

shall be maintained. Such elements shall be visually inspected by the owner and repaired, restored or replaced where damaged, altered, breached or penetrated. Where concealed, such elements shall not be required to be visually inspected by the owner unless the space is accessible by a panel, access door, ceiling tile or entry to the space. **(rest of section unchanged)**

End



Amendments to the 2021 International Swimming Pool and Spa Code City of Abilene, Texas

The following sections, paragraphs, and sentences of the 2021 International Swimming Pool and Spa Code are hereby amended as follows:

Appendices excluded from adoption are as follows: A

{Section 101.1; Amend to read as follows:}

Section 101.1 Title. The regulations shall be known as the Swimming Pool and Spa Code of the City of Abilene, Texas, hereinafter referred to as “this code”.

(Reason: Legal wording to recognize municipality.)

{Section 102.9; Amend to read as follows:}

Section 102.9 Other laws. The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law, to include but not limited to;

1. Texas Department of State Health Services (TDSHS); Standards for Public Pools and Spas;
§265.181 through §265.208, (TDSHS rules do not apply to pools serving one- and two family dwellings or townhouses).
2. Texas Department of Licensing and Regulation (TDLR); 2012 Texas Accessibility Standards (TAS), TAS provide the scoping and technical requirements for accessibility for Swimming Pool, wading pools and spas and shall comply with 2012 TAS, Section 242. (TAS rules do not apply to pools serving one- and two family dwellings or townhouses).

Exception: Elements regulated under Texas Department of Licensing and Regulation (TDLR) and built in accordance with TDLR approved plans, including any

variances or waivers granted by the TDLR, shall be deemed to be in compliance with the requirements of this Chapter.

(Reason: To clarify specific Texas statutes which regulate public pools and spas.)

{Section 103.1; Amend to read as follows:}

Section 103.1 Creation of agency. The Building Inspections Division is hereby created and the official in charge thereof shall be known as the *code official*. Environmental Health Department is hereby created and the official in charge thereof shall be known as the *code official* for operation and maintenance of any *public swimming pool* in accordance this code, local and state law.

(Reason: Reminder to be sure ordinance reads the same as designed by the City & the operation of public pools is enforced through the City's appropriate department procedure.)

{Add following at the end of paragraph,}

108.2 Schedule of permit fees. Permit fees are set by Abilene City Council ordinance. Fees are located here: <https://www.abilenetx.gov/business/city-fee-schedule/fee-schedule>. Fees published are subject to change at any time by Council action to ordinance.

{Substitute "Board of Building Standards" where "board of appeals" is used;}

Section 111

{Delete and replace with the following;}

112.1 General. In order to hear and decide appeals of order, decisions or determinations made by the Building Official relative to the application and interpretation of this code, appeals may be heard by the Board of Building Standards as established in Chapter 8, Sec. 8-361.

(Reason: To clarify appropriate board set by municipality.)

{Section 113.4; Violation penalties. Delete section}

(Reason: Covered within the Code of Ordinance.)

{Section 114.1; Add the following to the first sentence:}

114.1 Authority. . A stop work order release fee in the amount of \$200.00 shall be paid prior to work commencing. *(The remainder to stay the same)*

{Section 114.4; Amend to read as follows}

114.4 Failure to comply. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to preform to remove a violation or unsafe condition shall be in violation of this code.

(Reason: Covered by general provisions of the Municipal Code of Ordinances.)

{Section 202; DEFINITIONS; insert definition; change to read as follows:}

ENVIRONMENTAL HEALTH DEPARTMENT: Environmental Health Department regulates the operation of public pools. Routine inspections on pools and spas open to the public are conducted to document compliance with the standards set forth in State law.

*(Reason: The operation of public pools is enforced through **Environmental Health Department** procedures.)*

SPA.

{Insert the term hot tub in this location for clarification:}

Portable residential spa or hot tub. Definition to remain the same.

{Section 305; Change to read as follows:}

305.1 General.

The provisions of this section shall apply to the design of barriers for restricting entry into areas having pools and spas. Where spas or hot tubs are equipped with a lockable safety cover complying with ASTM F1346 and swimming pools are equipped with a powered safety cover that complies with ASTM F1346, the areas where those spas, hot tubs or pools are located shall not be required to comply with Sections 305.2 through 305.7.

(Reason: To clarify requirements for dwellings and commercial properties and specific Texas statutes which regulate public pools and spas.)

{Section 305.2; Change to read as follows:}

305.2 Outdoor swimming pools and spas. Outdoor pools and spas and indoor swimming pools shall be surrounded by a barrier that complies with Sections 305.2.1 through 305.7 and in accordance with the Texas Administrative Code, Texas Health and Safety Code 757 for public pools.

(Reason: To clarify specific Texas statutes which regulate public pools and spas.)

{Section 305.6; Change to read as follows:}

305.6 Natural barriers used in a one and two family dwelling or townhouse. In the case where the pool or spa area abuts the edge of a lake or other natural body of water, public access is not permitted or allowed along the shoreline, and required barriers extend to and beyond the water's edge a minimum of eighteen (18) inches, a barrier is not required between the natural body of water shoreline and the pool or spa.

(Reason: Specific Texas statutes do not allow the use of natural barriers in lieu of fencing for public pools per Chapter 757.003).

{Section 307.1.4 Accessibility; Add exception to Section to 307.1.4 as follows:}

Exception: Components of projects regulated by and registered with Architectural Barriers Division of Texas Department of Licensing and Regulation shall be deemed to be in compliance with the requirements of this chapter.

(Reason: To accommodate buildings regulated under state law. Further clarified to mean Components that are specifically addressed by TDLR shall be exempt.)

{Section 310; Change to read as follows:}

310.1 General. Suction entrapment avoidance for pools and spas shall be provided in accordance with APSP 7 or for public swimming pools in accordance with State of Texas Rules for Public Swimming Pools and Spas, Title 25 TAC Chapter 265 Subchapter L, Rule §265.190.

[Remainder unchanged]

(Reason: To clarify specific Texas statutes which regulate public pools and spas.)

{Section 313.7; Delete all and insert to read as follows:}

313.7 Emergency shutoff switch for spas and hot tubs. A clearly labeled emergency shutoff or control switch for the purpose of stopping the motor(s) that provide power to the recirculation system and jet system shall be installed at a point readily accessible to the users and not less than 1.5 m (5 ft.) away, adjacent to, and within sight of the spa or hot tub. This requirement shall not apply to one and two family dwellings and townhouses.

Exception: *Delete.*

(Reason: Language is from 2020 NEC Article 680.41.)

{Section 320.1; Change to read as follows.}

320.1 Backwash water or draining water. Backwash water and drainage water shall be

discharged to the sanitary or storm sewer, or into (*Remainder to stay the same*)

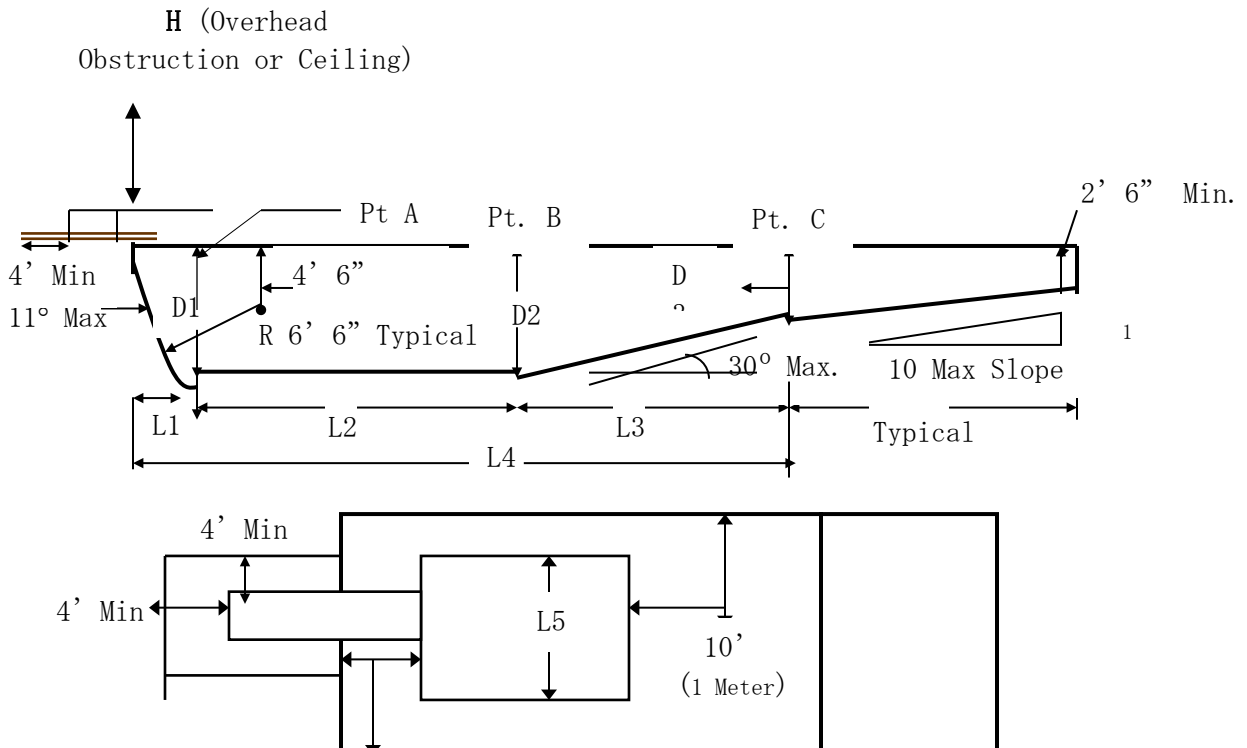
(Reason: To comply with TCEQ regulations)

{Section 402.12; Change to read as follows:}

402.12 Water envelopes. The minimum diving water envelopes shall be in accordance with **Texas department of State Health services, Administrative Code Title 25, Chapter 265, Section 186 (e) and Figure: 25 TAC 265.186 (e) (6).** (*Delete Table 402.12 and Figure 402.12*)

ADD: Figure: 25 TAC §265.186 (e) (6)

Maximum Diving Board Height Over Water	$\frac{3}{4}$ Meter	1 Meter	3 Meters
Max. Diving Board Length	12 ft.	16 ft.	16 ft.
Minimum Diving Board Overhang	2 ft. 6 in.	5 ft.	5 ft.
D1 Minimum	8 ft. 6 in.	11 ft. 2 in.	12 ft. 2 in.
D2 Minimum	9 ft.	10 ft. 10 in.	11 ft. 10 in.
D3 Minimum	4 ft.	6 ft.	6 ft.
L1 Minimum	4 ft.	5 ft.	5 ft.
L2 Minimum	12 ft.	16 ft. 5 in.	19 ft. 9 in.
L3 Minimum	14 ft. 10 in.	13 ft. 2 in.	13 ft. 11 in.
L4 Minimum	30 ft. 10 in.	34 ft. 7 in.	38 ft. 8 in.
L5 Minimum	8 ft.	10 ft.	13 ft.
H Minimum	16 ft.	16 ft.	16 ft.
From Plumbet to Pool Wall at Side	9 ft.	10 ft.	11 ft. 6 in.
From Plumbet to Adjacent Plumbet	10 ft.	10 ft.	10 ft.



(Reason: To avoid conflict with 25 TAC Chapter 265.)

{Section 402.13; Add to read as follows:}

402.13 Ladders for diving equipment. Ladders shall be provided with two grab rails or two handrails. There shall be a uniform distance between ladder treads, with a 7 inch (178 mm minimum) distance and 12 inch (305 mm) maximum distance. Supports, platforms, steps and ladders for diving equipment shall be designed to carry the anticipated loads. Steps and ladders shall be of corrosion-resistant material, easily cleanable and with slip-resistant tread.

Exception: *Delete*

(Reason: To avoid conflict with 25 TAC Chapter 265.186 (c)(8)(d).)

{Section 411.2; Correct to read as follows:}

411.2 Pool stairs.with Sections 411.2.1 through 411.2.5

{Section 411.2.1; Correct to read as follows:}

411.2.1 Tread dimensions and area. and an unobstructed horizontal depth of not less than 12 inches (305 mm) at the centerline.

{Section 411.2.2; Correct to read as follows:}

411.2.2 Risers. Risers, except for the bottom riser, shall have a uniform height of not greater than 10 inches (254 mm) measured at the centerline.

****Section 411.5.1 & 411.5.2; Change to read as follows:**

411.5.1 Swimouts. Swimouts, located in either the deep or shallow area of a pool, shall comply with all of the following:

1. Unchanged
2. Unchanged
3. Unchanged
4. The leading edge shall be visibly set apart and provided with a horizontal solid or broken stripe at least 1 inch wide on the top surface along the front leading edge of each step. This stripe shall be plainly visible to persons on the pool deck. The stripe shall be a contrasting

color to the background on which it is applied, and the color shall be permanent in nature and shall be a slip-resistant surface

411.5.2 Underwater seats and benches. Underwater seats and benches, whether used alone or in conjunction with pool stairs, shall comply with all of the following:

1. Unchanged
2. Unchanged
3. Unchanged
4. Unchanged
5. The leading edge shall be visually set apart and provided with a horizontal solid or broken stripe at least 1 inch wide on the top surface along the front leading edge of each step. This stripe shall be plainly visible to persons on the pool deck. The stripe shall be a contrasting color to the background on which it is applied, and the color shall be permanent in nature and shall be a slip-resistant surface.
6. Unchanged
7. Unchanged

(Reason: To avoid conflict with 25 TAC Chapter 265.184 (u) & 265.186 (c)(10).)

{Section 603.2; Delete in its entirety and replace as follows:}

603.2 ~~Class D-2 pools~~ Class A and B pools: Class A and B pools over 5 feet deep: the transition point of the pool from the shallow area to the deep area of the pool shall be visually set apart with a 4-inch minimum width row of floor tile, a painted line, or similar means using a color contrasting with the bottom; and a rope and float line shall be provided between 1 foot and 2 feet on the shallow side of the 5-foot depth along and parallel to this depth from one side of the pool to the other side. The floats shall be spaced at not greater than 7-foot intervals; and the floats shall be secured so they will not slide or bunch up. The stretched float line shall be of sufficient size and strength to offer a good handhold and support loads normally imposed by users. If the owner or operator of the pool knows or should have known in the exercise of ordinary care that a rope or float is missing, broken, or defective, the problem shall be promptly remedied

(Reason: To avoid conflict with 25 TAC Chapter 265.199.)

{Section 610.5.1; Change to read as follows:}

610.5.1 Uniform height of 9 10 inches. Except for the bottom riser, risers at the centerline shall have a maximum uniform height of 9 10 inches (254 mm). The bottom riser height shall be permitted to vary from the other risers.

(Reason: To avoid conflict with 25 TAC Chapter 265.186 (c)(7)(B).)

{Section 610.5.5; Amend to read as follows:}

610.5.5 Tread horizontal depth. Treads shall have an unobstructed horizontal depth of not less than 12 Inches (305 mm).

611.3 Message delivery.

Delete #4 in its entirety.

{Section 804 Diving Water Envelopes; Change to read as follows:}

Section 804.1 General. The minimum diving water envelopes shall be in accordance with Table 804.1 and Figure 804.1, or the manufacturer's specifications, whichever is greater. Negative construction tolerances shall not be applied to the dimensions of the minimum diving water envelopes given in Table 804.1.

(Reason: To provide minimum standards and to clarify specific manufactures specifications of the diving equipment.)

END

Chapter 29.5 SWIMMING POOLS AND SPAS

Sec. 29.5-1. Purpose and scope.

The purpose of this chapter is to provide standards for the operation and maintenance of public and restricted access pools, spas, and interactive water features and fountains, to minimize health and safety hazards, and to regulate the design and construction of all swimming pools, spas, and interactive water features and fountains. The standards in these sections shall cover public and restricted access pools, spas, and interactive water features and fountains, operated by an owner, licensee, or concessionaire, regardless of whether a fee is charged for use, residential above-ground/in-ground swimming pools, permanently installed residential swimming pools and spas, and residential portable spas. Except where cited otherwise, the standards shall apply to those pools/spas/interactive water features and fountains constructed after the effective date of this chapter. This chapter applies within the corporate boundaries of the City.

(Ord. No. 43-2008, pt. 1(Exh. A), 8-28-08; Ord. No. 17-2012, pt. 1(Exh. A), 4-12-12)

Sec. 29.5-2. Design and construction of residential swimming pools.

The National Spa and Pool Institute "Standard for Residential Swimming Pools," together with a residential swimming pool design and construction pamphlet amending and supplementing those standards, are hereby enacted and adopted by reference as the "City of Abilene Residential Swimming Pool Design and Construction Standards." The code and the pamphlet are on file with the Building Official and City Secretary.

(Ord. No. 43-2008, pt. 1(Exh. A), 8-28-08; Ord. No. 17-2012, pt. 1(Exh. A), 4-12-12)

Sec. 29.5-3. Operation, maintenance, design, and construction of public and restricted access swimming pools, spas, and interactive water features and fountains.

Title 25, Chapter 265, Subchapter L of the Texas Administrative Code, "Standards for Public Pools and Spas," Chapter 265, Subchapter M of the Texas Administrative Code, "Public Interactive Water Features and Fountains," together with an operation, maintenance, design, and construction of public and restricted access pools and spas pamphlet amending and supplementing the Code, are hereby enacted and adopted by reference as the "City of Abilene Operation, Maintenance, Design and Construction of Public and Restricted Access Pools and Spas Standards." The code and the pamphlet are on file with the Building Official and City Secretary.

(Ord. No. 43-2008, pt. 1(Exh. A), 8-28-08; Ord. No. 17-2012, pt. 1(Exh. A), 4-12-12)

Sec. 29.5-4. Appeal.

Any person, firm, or corporation aggrieved by an interpretation or decision regarding the codes and standards adopted or enacted in this chapter may appeal such interpretation or decision. An appeal regarding design and construction of swimming pools and spas shall be to the Mechanical, Plumbing, Electrical, and Swimming Pool Board of Appeals, established in section 8-391 of this Code. The provisions of chapter 8, article V, division 3, regarding the procedures of the Mechanical, Plumbing, Electrical, and Swimming Pool Board of Appeals apply to this section. An appeal regarding the maintenance and operation of public and restricted access pools, spas and interactive water features and fountains shall be to the Public Health Authority and the Director of

Planning and Development Services, as stated in Part I, Article A, Section 4.4 of the Abilene Swimming Pools and Spas Code pamphlet.

(Ord. No. 43-2008, pt. 1(Exh. A), 8-28-08; Ord. No. 17-2012, pt. 1(Exh. A), 4-12-12)

~~Sec. 29.5-5. Violations and penalties.~~

(a) ~~Any person who violates any provision of this section shall be guilty of a misdemeanor, punishable by a fine as set forth in section 1-9 of this Code.~~

(b) ~~Each day a violation occurs shall constitute a separate offense.~~

(Ord. No. 43-2008, pt. 1(Exh. A), 8-28-08; Ord. No. 17-2012, pt. 1(Exh. A), 4-12-12)

~~Sec. 29.5-6. Civil remedies.~~

(a) ~~The City Attorney may enforce any regulation, order, or ruling promulgated under this section by injunction, declaratory relief, or other action at law or in equity.~~

(b) ~~The City Attorney may initiate injunction, mandamus, abatement, or any other action available in law or equity to prevent, enjoin, abate, correct or remove the construction, use, or work done on any swimming pool or spa that is done contrary to the provisions of this chapter.~~

(Ord. No. 43-2008, pt. 1(Exh. A), 8-28-08; Ord. No. 17-2012, pt. 1(Exh. A), 4-12-12)

City Council Meeting

2021 CODE ADOPTION





Codes up for adoption

- **2021 International Building Code with amendments**
- **2021 International Residential Code with amendments**
- **2021 Internationals Existing Building Code with amendments**
- **2021 International Swimming Pool and Spa Code with amendments**
- **2020 National Electrical Code with amendments**
- **2021 International Energy Conservation Code with amendments**
- **2021 International Plumbing Code with amendments**
- **2021 International Fuel and Gas Code with amendments**
- **2021 International Mechanical Code with amendments**
- **2021 International Property Maintenance Code with amendments**





2021 IBC Review Committee

- Bill Newman
- Scot Colley
- Jonathan Schmutz
- Kevin Phillips
- Terry Williams
- Perry Haynes

BMC

RHS

Cadco

Harris Acous.

Hendricks

PH Eng.





2021 IRC Review Committee

- Bill Newman
- Bob Bein
- Gene Lantrip
- Mike Hall
- Jon Loudermilk
- Tim McClarty

BMC

Bein2

Lantrip CH

McCoys

Loudermilk CH

TRM Arch.





2021 IECC Review Committee

- Gene Lantrip
- Bob Bein
- Bill Newman
- Jon Loudermilk
- Ron Smith
- Terry Williams
- Jeremy McBrayer

Lantrip CH

Bein2

Abilene Lumber

Loudermilk CH

Precision Unl.

Hendricks

Lantrip CH



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2021 IPC Review Committee

- Darrin Black
- Sean McNeil
- David Gay
- Steve Parks
- Steve Smith
- Craig Sartor
- Rick Kelly

Black Plbg.

Batjer Assoc.

WTA

BP & Assoc

Morris Supply

Custom Plbg.

Rick's Plbg.





2021 IMC Review Committee

- Kenneth Rich
- Tom Hawkins
- Chris Toponce
- Johnny Rose
- Richard Bryan
- Henry Sanchez

Hall Air

Hawkins A/C

ACS Heat/Air

Bradshaw Eng.

Bryan Parks & Assoc.

HRS





2021 ISPSC Review Committee

- Frank Perez
- Randy Glenn
- Bobby Gilbreth

Southwest Pools

Extreme Exteriors

West Tex Pools





Mayor Appointed Review Committee

- Shane Price
- Lynn Beard
- Robert Hanna
- Michael Rice
- Tim Littlejohn
- Van Watson





Code Adoption

- **Modern, regularly updated building codes and a strong system of code enforcement ensure that individuals and communities are safe in the buildings where they live, work and play — codes build confidence. As we face disasters on an unprecedented scale — from hurricanes and tornados to wildfires and earthquakes — building codes become increasingly important to the safety, health and wellbeing of our families and communities.**
- **“Building safety is about preparing for the future. The Code Council, in partnership with our members and stakeholders, develops model codes that integrate new technologies and the latest advancements in building science.”**
- **The codes before you today are minimum standards, Staff has made some minor adjustments in order to follow standard practices for Abilene, but please be reminded that these are minimal construction standards and requirements. Staff would like to ensure our citizens that any structure built within the corporate city limits of Abilene are built to these standards in order to protect the health and life safety of our community.**





•Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 1/12/2023

TO: Honorable Mayor and City Council Members

FROM: Stanley Smith, City Attorney

SUBJECT: 18. 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. 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
4. 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
5. Sharra Sampson v. City of Abilene; Cause No. 8144-B, In the 104th Judicial District Court, Taylor County, Texas; filed September 14, 2020
6. 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
7. 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
8. 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
9. 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

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