



## 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 26, 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 Travis Craver

### PLEDGE TO THE UNITED STATES FLAG AND THE TEXAS FLAG

### PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS AND ANNOUNCEMENTS

2. Service Awards:

- Russell Antilley - 20 Years - Police Department
- Aron Bryan - 20 Years - Police Department
- David Cox - 20 Years - Police Department
- Charles Richardson - 20 Years - Police Department
- Erin Bennett - 20 Years - Police Department

3. Proclamations:

- National Mentoring Month

### 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 January 12, 2023 **(Shawna Atkinson)**
5. **Resolution:** Receive a Report, Hold a Discussion and Take Action to approve a five year Airport Use Agreement with "Shift S3ctor" **(Don Green)**
6. **Resolution:** Receive a Report, Hold a Discussion and Take Action to Approve a Contract with Goodyear Tire and Rubber Company to provide Tire Sales and Services to City of Abilene **(Don Green)**
7. **Resolution:** Receive a Report, Hold a Discussion and Take Action to approve the Purchase of Two (2) 2023 Autocar ACX64 with Heil Automated Side Load Refuse Body Refuse Trucks **(Don Green)**
8. **Resolution:** Receive a Report, Hold a Discussion and Take Action on the Purchase of Three (3) 2023 Chevrolet Silverado 1500 Half-ton Trucks for Building Inspections and Wastewater Treatment **(Don Green)**
9. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Revising Acceptance of the 2023 Office of the Governor (OOG) Bullet Resistant Shield Grant **(Marcus Dudley)**
10. **Resolution:** Recieve a Report, Hold a Discussion and Take Action on Supporting the Submission of an Application to the 2023 Competitive Housing Tax Credit Program for the Elsie Manor Senior Housing Project Located on 309 S. Pioneer Drive **(Tim Littlejohn)**
11. **Resolution:** Receive a Report, Hold a Discussion, and Take Action on Awarding the Bid to Starks Construction Company, Inc. for the Honey Bee Road Water Line Replacement Project **(Rodney Taylor)**
12. **Resolution:** Receive a Report, Hold a Discussion and Take Action on correcting Resolution No 122-2022 regarding the Agreement with the Texas Department of Transportation to Install Flashing Yellow Arrow Lights Along South 14th Street **(Max Johnson)**
13. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Authorizing the City Manager to enter into an Agreement with Sports Facilities Companies for the Management of Aquatics for the City of Abilene **(Lesli Andrews)**
14. **Ordinance (First Reading):** Receive a Report, Hold a Discussion and Take Action on Amending the Fees and Charges Ordinance changing the Adventure Cove Fees **(Lesli Andrews)**
15. **Ordinance (First Reading):** Receive a Report, Hold a Discussion and Take Action on Amending Chapter 9, "Courts," Article I, "General," Section 9-7, "Rules of Practice and



Procedure," of the Abilene Code of Ordinances (*Stanley Smith*)

## **REGULAR AGENDA - ORDINANCES AND PUBLIC HEARINGS - RESOLUTIONS**

16. **Ordinance (Final Reading)**: Receive a Report, Hold a Discussion and Public Hearing, 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*)
17. **Ordinance (Final Reading) Z-2023-01**: Receive a Report, Hold a Discussion and Public Hearing, 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*)

## **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 20th day of January, 2023, at 3:45 p.m.*

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*Shawna Atkinson, TRMC, CMC*  
City Secretary



**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2023**

**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 January 12, 2023 (*Shawna Atkinson*)

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**GENERAL INFORMATION**

Approval of the Minutes from the Regular meeting held on January 12, 2023

**SPECIAL CONSIDERATIONS**

None.

**FUNDING/FISCAL IMPACT**

None

**STAFF RECOMMENDATION**

Approval of the Minutes

**BOARD OR COMMISSION RECOMMENDATION**

N/A

**ATTACHMENTS:**

1. 01-12-2023 Minutes - Regular - Morning

**CITY COUNCIL MEETING**  
**January 12, 2023 at 8:30 a.m.**

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

The City Council of the City of Abilene, Texas met in Regular Session on January 12, 2023, 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 Shane Price delivered the invocation.

Kaysen Smith, 4<sup>th</sup> grader from Martinez Elementary, led the Pledge of Allegiance to the Flag of the United States of America and State of Texas Flag.

**PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS, ANNOUNCEMENTS**

- Proclamations:
  - Community Health Challenge Days accepted by Annette Lerma and the Public Health Department staff.

**PRESENTATION OF CONSENT AGENDA**

The Consent Agenda consisted of items 4-10. Item #9 was pulled for individual consideration.

Items pulled for individual consideration:

- Councilmember Beard – Item 9

**PUBLIC COMMENTS**

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

- David Swart – spoke about the new cheese factory, West Texas Rehab Telethon, the two breweries in town that are shutting down, and Martin Luther King Day that is coming up.

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

**CONSENT AGENDA**

Mayor Pro-tem Hurt moved to approve the consent agenda now consisting of items 4-8 and 10. 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 & Craver

NAYS (0): None

4. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on December 15, 2022

5. Receive a Report, Hold a Discussion and Take Action on Appointing Members to Various Boards and Commissions per the City Charter  
**[ASSIGNED RESOLUTION NO. 01-2023]**

| 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 Howell                                                     | December 2023 |

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  
**[ASSIGNED RESOLUTION NO. 02-2023]**
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  
**[ASSIGNED RESOLUTION NO. 03-2023]**
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  
**[ASSIGNED RESOLUTION NO. 04-2023]**
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

#### ITEMS PULLED FOR INDIVIDUAL CONSIDERATION

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

Adoption of the item would approve amendments to Chapter 8 of the City Code, dealing with the Board of Building Standards

Having pulled the item, Councilmember Beard stated he had no issues with the composition of the board, but would like to see threshold of votes to overturn the building official be set at 5, instead of 6 that is in the proposed ordinance.

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, with the exception of the alteration of the threshold of votes to overturn the building official being changed from 6 to 5. 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

### **REGULAR AGENDA**

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  
**[ASSIGNED RESOLUTION NO. 05-2023]**

Max Johnson, Director of Public Works, presented the item. Adoption of the item would begin condemnation proceedings for the easements necessary to complete the public improvement project on North 1<sup>st</sup> and South 1<sup>st</sup> Streets in regards to public access sidewalks at the intersections.

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

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)  
**[ASSIGNED RESOLUTION NO. 06-2023]**

Don Green, Director of Transportation, presented the item. Adoption of the item would approve bid number CB-2304 to Teinert Construction in the amount of \$2,660,000 for Airport Terminal modernization, plus \$44,500 for Alternate 1 of painting areas not eligible for FAA grant funding. This project will repaint the interior of the Airport Terminal, and renovate the Lower Level Restrooms and add a Family/Assisted Restroom.

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

Councilmember McAlister moved to approve the item as presented. Deputy Mayor Pro-tem 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

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  
**[ASSIGNED RESOLUTION NO. 07-2023]**

Don Green, Director of Transportation, presented the item. Adoption of the item would approve Change Order 1 to the Teinert Construction contract approved with the previous agenda item. Teinert proposed multiple cost saving changes selected by Airport staff to result in a cost reduction of \$937,276 from the original bid amount.

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 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

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.

**[ASSIGNED RESOLUTION NO. 08-2023]**

Don Green, Director of Transportation, presented the item. Adoption of the item would approve a ground lease and concession agreement with Bowie's ABI, LLC, for a 40 year ground lease to build a fuel station, convenience store and restaurant on City/Airport property along Highway 36.

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

- Brian Blum, representing Bowie's ABI, LLC – thanked the Airport staff for putting this together and stated their excitement to start this project, as it is a great opportunity.

With no other 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

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)

**[ASSIGNED ORDINANCE NO. 01-2023]**

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would rezone the above referenced property from Agricultural Open Space (AO) to Heavy Commercial (HC).

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

Councilmember McAlister moved to approve the item as presented. Deputy Mayor Pro-tem 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) 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  
**[ASSIGNED ORDINANCE NO. 02-2023]**

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would approve a conditional use permit for the above referenced property, to allow for a tattoo parlor.

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

- James Sanders, owner of the tattoo studio – stated his reasoning for wanting to open his studio in this location. Mr. Sanders stated that downtown is a clean and safe environment, and he wants to provide that for his clients who have previously felt unsafe in other locations he has been located at.
- Jacqueline Torres – spoke in support of this item. Ms. Torres thinks it is a great opportunity to make Downtown Abilene more modern and will attract a younger generation.

With no other 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 (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 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  
**[ASSIGNED ORDINANCE NO. 03-2023]**

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would adopt, 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.

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. Councilmember Beard 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

**ADJOURNMENT**

There being no further business, the meeting adjourned at 9:24 a.m.

\_\_\_\_\_  
Shawna Atkinson  
City Secretary

\_\_\_\_\_  
Anthony Williams  
Mayor

Minutes approved on: \_\_\_\_\_



**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2023**

**TO: Robert Hanna, City Manager**

**FROM: Don Green, Director**

**SUBJECT: 5. Resolution: Receive a Report, Hold a Discussion and Take Action to approve a five year Airport Use Agreement with "Shift S3ctor" (Don Green)**

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**GENERAL INFORMATION**

On December 19, 2019, City Council approved a two-year Airport use agreement for Shift S3ctor (pronounced "sector") to hold its Airstrip Attack auto race event on Abilene Regional Airport over a weekend annually. The 2020 event was canceled due to COVID, but the events in 2021 and 2022 were very successful by Shift S3ctor's and Airport staff's perspectives. Shift S3ctor has requested a new agreement that is effective through 2027.

This event draws drivers and racing teams from all over the U.S. and resulted in over 900 hotel room nights during the November 12-13, 2022 event.

While the event occurs on the western portion of the airport and requires coordination with FAA, TSA, and airport tenants, it does not close the airport at any time to aircraft operations.

Individual Airport Use Agreements are signed by both parties prior to each year's event and upon receipt of a valid certificate of insurance and payment of the event fee.

**SPECIAL CONSIDERATIONS**

**FUNDING/FISCAL IMPACT**

Shift S3ctor pays the airport \$8,000.00 for each event.

**STAFF RECOMMENDATION**

Staff recommends approval of this agreement.

**BOARD OR COMMISSION RECOMMENDATION**

The Airport Development Board approved its recommendation for Council approval at its December 14, 2022 meeting.

**ATTACHMENTS:**

1. Shift S3ctor Resolution
2. Shift S3ctor Presentation (1-26-23)

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, ALLOWING FOR TEMPORARY  
USE OF DESIGNATED AREAS AT ABILENE REGIONAL AIRPORT FOR SHIFT S3CTOR'S AIRSTRIP  
ATTACK RACE EVENT**

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

**WHEREAS**, Shift S3ctor (pronounced "sector") seeks to host its Airstrip Attack auto race event on a designated area of the airport (Exhibit A) annually in accordance with a Airport Temporary Use Agreement; and

**WHEREAS**, Shift S3ctor and ABI staff will coordinate with Federal Aviation Administration, Transportation Security Administration and affected Airport Tenants to maintain operational capability throughout the event; and

**WHEREAS**, Shift S3ctor will be responsible for all set up, clean up and repairs to the designated areas and shall hold adequate insurance with the City of Abilene named Additional Insured; and

**WHEREAS**, Shift S3ctor shall contract and arrange for all portable restroom facilities, food and beverage vendors, including TABC-licensed alcohol service, security and medical services; and

**WHEREAS**, Shift S3ctor shall pay \$8,000.00 to the Airport prior to each event under this agreement; 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 Director of Transportation Services is authorized to enter into the Airport Temporary Use Agreement with Shift S3ctor for an annual event effective in 2023 through 2027.
2. That this Resolution takes effect immediately upon Council approval.

**ADOPTED this 26th day of January 2023.**

ATTEST:

\_\_\_\_\_  
Shawna Atkinson, City Secretary

\_\_\_\_\_  
Anthony Williams, Mayor

APPROVED:

\_\_\_\_\_  
Stanley Smith, City Attorney





# City Council Meeting

January 26, 2022







# Airport Use Agreement for Shift S3ctor's Airstrip Attack

- Shift S3ctor (pronounced 'sector') is a company that organizes timed side-by-side auto races on airport runways in the U.S. known as “Airstrip Attack”.
- It has held two successful events at Abilene Regional Airport drawing driving teams from across the U.S.
- Airport Staff coordinated these events with Federal Aviation Administration and Transportation Security Administration and airport tenants whose operations could be affected during the event.
- Debriefings and feedback from these stakeholders has been positive with no expressed opposition to continuing.

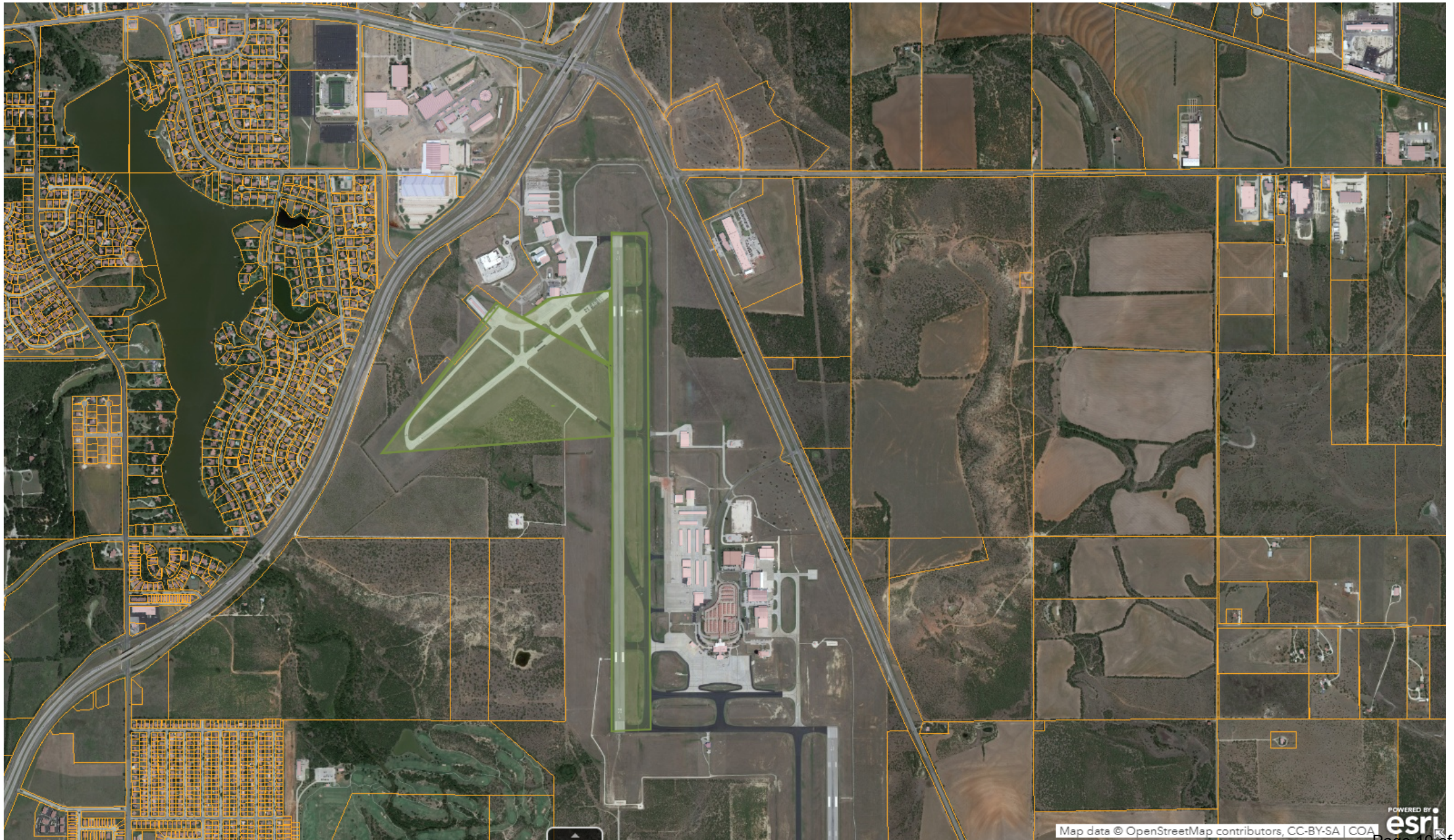




- The event is open to the public with admission into the event area to be charged by Shift S3ctor. Local non-profit groups will be asked by Shift S3ctor to provide volunteers for various functions and will earn funds for their organization for doing so.
- This event uses a similar area (shaded in green in the next slide) with similar operational adjustments as done for Big Country AirFest.

















## City Council Agenda Memo

City Council Meeting Date: 1/26/2023

**TO:** Robert Hanna, City Manager

**FROM:** Don Green, Director

**SUBJECT:** 6. Resolution: Receive a Report, Hold a Discussion and Take Action to Approve a Contract with Goodyear Tire and Rubber Company to provide Tire Sales and Services to City of Abilene (*Don Green*)

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### **GENERAL INFORMATION**

The City conducted a Request For Proposals for tires and tire replacement/repair services (CB-2311) with the goal of providing quality replacement tires for City vehicles and equipment, tire repair and services associated with the Fleet Services' Maintenance Shop and Abilene Fire Department's Maintenance Shop at the best value to the City. Fluctuations in raw materials and manufacturing costs have historically driven swings in tire pricing. Part of the value requested in the proposals is in the stabilization of costs during this inflationary period and in the simplified procurement process during the delivery strains on the supply chain.

This item will award a contract for all four (4) categories to Goodyear Tire and Rubber Company for Tire Sales and Service through CB-2311. Pricing and availability that was provided in the proposal will initially reduce our cost, it will provide predictable costs over time and it meets our warehousing and delivery needs.

### **SPECIAL CONSIDERATIONS**

The RFP was divided into four (4) sections in order to have the ability to award different categories of tires and service to multiple vendors, if needed, to achieve the best result. Seven local, regional and national tire businesses were directly contacted to be made aware of the Request for Proposal.

### **FUNDING/FISCAL IMPACT**

The anticipated spending of between \$250,000 and \$300,000 per year is included in the annual approved budget.

### **STAFF RECOMMENDATION**

Staff recommends awarding the contract to Goodyear Tire and Rubber Company dba Goodyear Commercial Tire and Service Center for all sections of CB-2311.

### **BOARD OR COMMISSION RECOMMENDATION**

### **ATTACHMENTS:**

1. Vehicle Tire Sales and Service CB-2311 Resolution
2. CB-2311 Scoresheet
3. Tire Sales and Services Presentation

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, AWARDING A CONTRACT FOR VEHICLE TIRE SALES AND SERVICES TO GOODYEAR TIRE AND RUBBER COMPANY DBA GOODYEAR COMMERCIAL TIRE AND SERVICE CENTER FOR THREE (3) YEARS.**

**WHEREAS**, the City of Abilene (City) is in need of vehicle tires and related services; and

**WHEREAS**, Goodyear Tire and Rubber Company dba Goodyear commercial Tire and Service Center submitted a proposal to provide tires and tire related service; and

**WHEREAS**, the City of Abilene (City) advertised Request for Proposal CB-2311 and received two (2) vendor responses; and

**WHEREAS**, Goodyear Tire and Rubber Company dba Goodyear Commercial Tire and Service Center received the highest points on the scorecard for Request For Proposal CB-2311; and

**WHEREAS**, this contract will be valid for a term of three (3) consecutive years with the option of two (2) additional annual renewal periods; and

**WHEREAS**, the anticipated spending of between \$250,000 and \$300,000 per year; and

**WHEREAS**, Fleet Services and Abilene Fire Department recommend approval.

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

1. That the City of Abilene is authorized to enter into a contract with Goodyear Tire and Rubber Company dba Goodyear Commercial Tire and Service Center for a period of up to five (5) years effective February 1, 2023.
2. That this Resolution takes effect immediately upon Council approval.

**ADOPTED this 26th day of January 2023.**

ATTEST:

\_\_\_\_\_  
Shawna Atkinson, City Secretary

\_\_\_\_\_  
Anthony Williams, Mayor

APPROVED:

\_\_\_\_\_  
Stanley Smith, City Attorney

## CB-2311 RFP Scoresheet

The City will review the merits of the proposals in accordance with the evaluation criteria listed below. Failure to provide information requested in this RFP may result in disqualification of a proposal. The sole objective of the evaluation will be to evaluate the responsiveness of each Proposer to the requirements of the RFP. Proposal selection criteria shall be evaluated in a selective order of importance as listed below:

**20 Points – Proposed cost of all items in scope.**

**10 Points – City of Abilene Fleet and commercial tire installation experience.**

**20 Points – Proposed products, brands, tread warranty and response time.**

### Section 1 Purchase of Passenger, Light Truck and Trailer and Turf tires.

| Points Award                                                                | Southern Tire Mart | Goodyear Tire and Rubber Company |
|-----------------------------------------------------------------------------|--------------------|----------------------------------|
| Proposed cost of all items in scope 20 points                               | 6                  | 14                               |
| City of Abilene Fleet and commercial tire installation experience 10 points | 10                 | 10                               |
| Proposed products, brands, tread warranty and response time 20 points       | 20                 | 20                               |
| Total Points Awarded                                                        | 36                 | 44                               |

### Section 2 Purchase of Fire Apparatus, ARFF and Law Enforcement Pursuit Tires

| Bid Points Award                                                  | Southern Tire Mart | Goodyear Tire and Rubber Company |
|-------------------------------------------------------------------|--------------------|----------------------------------|
| Proposed cost of all items in scope                               | 0                  | 16                               |
| City of Abilene Fleet and commercial tire installation experience | 10                 | 10                               |
| Proposed products, brands, tread warranty and response time       | 20                 | 20                               |
| Total Points Awarded                                              | 30                 | 46                               |

### Section 3 Purchase of Heavy Truck, Agricultural and Construction Tires and Retread Program.

| Bid Points Award                                                  | Southern Tire Mart | Goodyear Tire and Rubber Company |
|-------------------------------------------------------------------|--------------------|----------------------------------|
| Proposed cost of all items in scope                               | 1                  | 11                               |
| City of Abilene Fleet and commercial tire installation experience | 10                 | 10                               |
| Proposed products, brands, tread warranty and response time       | 20                 | 20                               |
| Total Points Awarded                                              | 31                 | 41                               |

### Section 4 After-hours, Emergency and Field service for tire replacement and tire or jump-start related repairs.

| Bid Points Award                                                  | Southern Tire Mart | Goodyear Tire and Rubber Company |
|-------------------------------------------------------------------|--------------------|----------------------------------|
| Proposed cost of all items in scope                               | 0                  | 10                               |
| City of Abilene Fleet and commercial tire installation experience | 10                 | 10                               |
| Proposed products, brands, tread warranty and response time       | 10                 | 5                                |
| Total Points Awarded                                              | 20                 | 25                               |

# City Council Meeting

January 26, 2023







# Tire Sales and Service RFP CB-2311

- City of Abilene conducted a Request for Proposals (CB-2311) to obtain best pricing and stock levels for three categories of tires and the best service response and pricing for one category of tire related services.
- Seven local, regional and national tire businesses were contacted directly and made aware of the RFP.
- CB-2311 was published 10/27/2022, advertised 10/30/2022 and 11/6/2022, a pre-bid meeting held and 2 addendums issued to answer questions.
- CB-2311 closed at 4:00pm on 11/23/2022.
- Evaluation began immediately following closure.





# Tire Sales and Service RFP CB-2311

- Based on the points awarded for the lowest composite pricing, staff recommends the award of a contract to Goodyear Commercial Tire and Service Center for Sections One, Two and Three of the proposal.
- Based on the points awarded for the lowest service pricing by application, staff recommends the award of a contract to Goodyear Commercial Tire and Service Center for Section Four of the proposal.
- Based on historic spending, the anticipated value of the contract will be between \$250,000 and \$300,000 per year.



# Questions?





**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2023**

**TO: Robert Hanna, City Manager**

**FROM: Don Green, Director**

**SUBJECT: 7. Resolution: Receive a Report, Hold a Discussion and Take Action to approve the Purchase of Two (2) 2023 Autocar ACX64 with Heil Automated Side Load Refuse Body Refuse Trucks (Don Green)**

---

**GENERAL INFORMATION**

Fleet Services seeks the approval to purchase two (2) 2023 Autocar ACX64 with Heil Automated Side Load Refuse Body Refuse trucks to replace two existing units that have met the end of their useful life for Solid Waste Services through BuyBoard Contract # 601-19 from Chastang Enterprises.

**SPECIAL CONSIDERATIONS**

Texas law allows a municipality to purchase goods through a state or local cooperative purchasing program. Buyboard is such a program, and the purchase meets the competitive bidding requirements.

**FUNDING/FISCAL IMPACT**

Funds for the purchase are to be provided by the Fleet Replacement Fund and total \$821,240.00. The funds for this purchase were planned and included in the FY23 Budget. This is \$31,240.00 over budget.

**STAFF RECOMMENDATION**

Fleet staff recommends the purchase of two (2) 2023 Autocar ACX64 with Heil Automated Side Load Refuse Body trucks for Solid Waste Services from Chastang Enterprises.

## **BOARD OR COMMISSION RECOMMENDATION**

### **ATTACHMENTS:**

1. CO-OP Side Loaders Resolution
2. CO-Op Side Loader Addtl Info
3. CO-Op Side Loaders Budget vs Actual
4. CO-OP Heil Sideloader Worksheet
5. CO-OP Side Loader Refuse Truck Presentation PiP



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

**A RESOLUTION OF THE CITY OF ABILENE, TEXAS  
TO PURCHASE TWO SIDE LOADER REFUSE TRUCKS FOR SOLID WASTE FROM CHASTANG  
ENTERPRISES, INC - HOUSTON THROUGH  
BUYBOARD COOPERATIVE CONTRACT 601-19**

**WHEREAS**, City of Abilene's Solid Waste Division has a need for two Side Loader Refuse Trucks; and

**WHEREAS**, City of Abilene budgeted this purchase for Fiscal Year 2023; and

**WHEREAS**, City of Abilene received pricing to purchase two Side Loader Refuse Trucks through BuyBoard Co-Op Contract 601-19 for the chassis and body; and

**WHEREAS**, Each unit is to be a 2023 Autocar ACX64 chassis with a Heil Automated Side Load Refuse body; and

**WHEREAS**, Chastang Enterprises, INC- Houston is the BuyBoard approved vendor for the cab and chassis and is using BuyBoard vendor Heil of Texas to supply the refuse body and system components.

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

**PART 1:** That the City Council approves this purchase from Chastang Enterprises, INC- Houston in the amount of Eight Hundred Twenty One Thousand Two Hundred and Forty Dollars and No Cents (\$821,240.00) for two complete Side Loader Refuse Trucks.

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

**ADOPTED this 26<sup>th</sup> day January, 2023**

**ATTEST:**

\_\_\_\_\_  
Shawna Atkinson, City Secretary

\_\_\_\_\_  
Anthony Williams, Mayor

**APPROVED:**

\_\_\_\_\_  
Stanley Smith, City Attorney

**ADDITIONAL INFORMATION FOR COUNCIL MEETING ITEM**  
**SIDE LOADER REFUSE TRUCKS**

| <b>Unit #</b> | <b>Assignment</b> | <b>Year</b> | <b>Make</b>   | <b>Model</b>    | <b>Mileage</b> | <b>Hours</b> | <b>Total<br/>Maintenance<br/>Costs</b> | <b>Disposal<br/>Method</b> | <b>Replacement Reasoning</b>    |
|---------------|-------------------|-------------|---------------|-----------------|----------------|--------------|----------------------------------------|----------------------------|---------------------------------|
| 4548          | Solid Waste       | 2016        | Autocar/Dadee | ACXR64/Scorpion | 110,543        | 11,637       | \$215,633.36                           | Auction                    | Meets four of four requirements |
| 4549          | Solid Waste       | 2016        | Autocar/Dadee | ACXR64/Scorpion | 112,743        | 11,207       | \$258,081.61                           | Auction                    | Meets four of four requirements |

**BUDGET vs ACTUAL COSTS****Side loader Refuse Trucks**

| Repl For Unit # | Division # | Division Name | Type Equipment | Budgeted<br>Cost    | Actual<br>Cost      | Budgeted vs Actual<br>Variance |
|-----------------|------------|---------------|----------------|---------------------|---------------------|--------------------------------|
| 4548            | 4060       | Solid Waste   | Side loader    | \$395,000.00        | \$410,620.00        | \$15,620.00                    |
| 4549            | 4060       | Solid Waste   | Side loader    | \$395,000.00        | \$410,620.00        | <u>\$15,620.00</u>             |
|                 |            |               |                | <u>\$790,000.00</u> | <u>\$821,240.00</u> | \$31,240.00                    |

Over Budget



Chastang Enterprises, Inc.  
P.O.Box 21127  
Houston, TX 77226-1127  
713.678.5000



## TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE



|           |                                                                                      |
|-----------|--------------------------------------------------------------------------------------|
| CUSTOMER: | City of Abilene                                                                      |
| CONTACT   | Cassandra Lambert                                                                    |
| PHONE:    | 325-437-4525                                                                         |
| EMAIL:    | <a href="mailto:Cassandra.Lambert@abilenetx.gov">Cassandra.Lambert@abilenetx.gov</a> |

|             |                                                                            |
|-------------|----------------------------------------------------------------------------|
| QUOTE DATE: | 01/12/2023                                                                 |
| QUOTED BY:  | John Chastang                                                              |
| PHONE:      | Office: 713-678-5042 Cell: 281-460-7518                                    |
| EMAIL:      | <a href="mailto:jchastang@chastangford.com">jchastang@chastangford.com</a> |

|                   |                                                              |  |  |
|-------------------|--------------------------------------------------------------|--|--|
| ITEM DESCRIPTION: | 2023 Autocar ACX64 with Heil Automated Side Load Refuse Body |  |  |
|-------------------|--------------------------------------------------------------|--|--|

|           |          |              |        |          |   |             |       |
|-----------|----------|--------------|--------|----------|---|-------------|-------|
| CONTRACT: | BuyBoard | PROPOSAL NO. | 601-19 | ITEM NO. | 3 | ITEM PRICE: | 51782 |
|-----------|----------|--------------|--------|----------|---|-------------|-------|

### CHASSIS EQUIPMENT

| STANDARD EQUIPMENT                                             |
|----------------------------------------------------------------|
| 12 Month Chassis Warranty                                      |
| Tilt/Telescope steering column; Integral Heat & A/C w/ defrost |
| 5 Min. Engine idle shutdown                                    |

| STANDARD EQUIPMENT                           |
|----------------------------------------------|
| Technician Training                          |
| Service Manuals, Electrical & Air Schematics |
| Autocar Solutions 24/7 Tech Support          |

| PUBLISHED OPTIONS                                   |
|-----------------------------------------------------|
| Right hand drive cab                                |
| Two Stage Air Cleaner                               |
| Allison 4500 Series Transmission                    |
| Pre-Engineered Chassis Layout                       |
| Double Frame                                        |
| Cummins X12 350HP Diesel                            |
| 46,000 Rear Axle                                    |
| Black heated remote mirrors                         |
| Trans Auto Neutral                                  |
| Steel front tow cable ,                             |
| 8" Upper & lower convex mirrors                     |
| 66,000 Gross Vehicle Weight Rating                  |
| Transmission retarder                               |
| Dual evaporator A/C with radiator mounted condenser |
| Central manifold air drain                          |
| Advanced diagnostic dash display w/ schematics      |
| Dual fire extinguishers                             |
| Engine block heater                                 |

| PUBLISHED OPTIONS                                      |        |
|--------------------------------------------------------|--------|
| Trans PTO Prep Kit                                     |        |
| High back air ride driver's seat                       |        |
| Floorplan expense while getting body built & installed |        |
| 4 Wheel axle lock                                      |        |
| LH Vertical Exhaust                                    |        |
| Synthetic Rear Axle Lube                               |        |
| Overhang over 56"                                      |        |
| Integrated Body Control Compartment                    |        |
| 5 Year Transmission Warranty                           |        |
| 5 Year Cummins Warranty                                |        |
| 5 Year aftertreatment warranty                         |        |
| 46,000 # rear suspension                               |        |
| 1810 Series main driveshaft                            |        |
| 315/80R22.5 tires front & rear                         |        |
| Fuel water seperator                                   |        |
| Center console with wire basket storage container      |        |
| Keyed alike to fleet                                   |        |
| automated sideloader body                              |        |
| CHASSIS OPTIONS                                        | 169418 |
| CHASSIS TOTAL                                          | 221200 |

### BODY EQUIPMENT

|              |                    |              |            |          |           |             |        |
|--------------|--------------------|--------------|------------|----------|-----------|-------------|--------|
| BODY VENDOR: | Heil of Texas      | PROPOSAL NO. |            | ITEM NO. |           | ITEM PRICE: | 189220 |
| BODY MFG:    | Heil Environmental | MODEL:       | Rapid Rail | TYPE:    | Automated | CAPACITY:   | 30 yd  |

| OPTIONAL EQUIPMENT | COST |
|--------------------|------|
|                    |      |
|                    |      |
|                    |      |
|                    |      |

| OPTIONAL DISCOUNT INCLUDED                                                                                                                                                                       | COST   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| Early pay discount of \$8000.00 per truck for paying approximately 90% the chassis when it is delivered to body company is included in this pricing. Pay balance after final delivery with body. |        |
| BODY OPTIONS                                                                                                                                                                                     | 0      |
| BODY TOTAL                                                                                                                                                                                       | 189220 |

#### Submit Approved Quote to BuyBoard:

Fax: 800-211-5454 Email: [info@buyboard.com](mailto:info@buyboard.com)

|                    |                     |
|--------------------|---------------------|
| ESTIMATED DELIVERY | Currently 24 months |
|--------------------|---------------------|

|                        |               |
|------------------------|---------------|
| UNIT PRICE             | 410420        |
| QUANTITY               | 2             |
| CONTRACT FEE (Per PO)) | 400           |
| TOTAL PURCHASE         | \$ 821,240.00 |



# City Council Meeting

1/26/2022





# Side Loader Refuse Trucks

- CO-OP Purchase for Two Side Loader Refuse Trucks assigned to Solid Waste.
- Two units to be replacements for 4548 and 4549.
- Units to be 2023 Autocar ACX64 with Heil Automated Side Load Rapid Rail Refuse Body.
- BuyBoard Cooperative purchase to coordinate the build and delivery process.





# Side Loader Refuse Trucks



CITY OF  
**ABILENE**  
TEXAS



**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2023**

**TO: Robert Hanna, City Manager**

**FROM: Don Green, Director**

**SUBJECT: 8. Resolution: Receive a Report, Hold a Discussion and Take Action on the Purchase of Three (3) 2023 Chevrolet Silverado 1500 Half-ton Trucks for Building Inspections and Wastewater Treatment (Don Green)**

---

**GENERAL INFORMATION**

Fleet Services seeks the approval to purchase three (3) 2023 Chevrolet Silverado 1500 half-ton trucks to replace three existing units that have met the end of their useful life for Building Inspections and Wastewater Treatment through BuyBoard Contract # 601-19, Quote BL2313 from Caldwell Country Chevrolet.

**SPECIAL CONSIDERATIONS**

Texas law allows a municipality to purchase goods through a state or local cooperative purchasing program. Buyboard is such a program, and the purchase meets the competitive bidding requirements.

**FUNDING/FISCAL IMPACT**

Funds for the purchase are to be provided by the Fleet Replacement Fund and total \$105,637.00. The funds for this purchase were planned and included in the FY21 Budget. This is \$27,637.00 over budget.

**STAFF RECOMMENDATION**

Fleet staff recommends the purchase of three (3) 2023 Chevrolet Silverado 1500 half-ton trucks for Building Inspections and Wastewater Treatment from Caldwell Country Chevrolet.

## **BOARD OR COMMISSION RECOMMENDATION**

### **ATTACHMENTS:**

1. Caldwell Country Chevrolet Half Ton Pickups Purchase Resolution
2. Half Ton Reg Cab Addtl Info
3. Half Ton Pickups Budget vs Actual
4. Co-Op -2023 CHEVROLET 1500 REGULAR CAB 4X2 CC10903-X3-JAN 13-QUOTE#  
BL2313
5. Co-Op Half Ton Pickups Presentation PiP

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

**A RESOLUTION OF THE CITY OF ABILENE, TEXAS**

**TO PURCHASE THREE 2023 CHEVROLET SILVERADO 1500 REGULAR CAB 2WD HALF-TON PICKUP TRUCKS FROM CALDWELL COUNTRY CHEVROLET, CALDWELL TX THROUGH BUYBOARD CONTRACT 60119, QUOTE BL 2313**

**WHEREAS**, City of Abilene has a need for three half-ton pickup trucks; and

**WHEREAS**, City of Abilene budgeted this purchase for Fiscal Year 2021; and

**WHEREAS**, Each unit is to be a 2023 Chevrolet Silverado 1500 Regular Cab; and

**WHEREAS**, City of Abilene received pricing to purchase three half-ton pickup trucks through BuyBoard Co-Op Contract 601-19, Quote BL-2313; and

**WHEREAS**, Caldwell Country Chevrolet is the BuyBoard approved vendor for the 2023 Chevrolet Silverado 1500 Regular Cab half-ton trucks;

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

**PART 1:** That the City Council approves this purchase from Caldwell Country Chevrolet of Caldwell, Texas in the amount of One Hundred Five Thousand Six Hundred Thirty Seven Dollars and Zero Cents (\$105,637.00) for three half-ton pickup trucks.

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

**ADOPTED this 26<sup>th</sup> day January, 2023**

**ATTEST:**

\_\_\_\_\_  
Shawna Atkinson, City Secretary

\_\_\_\_\_  
Anthony Williams, Mayor

**APPROVED:**

\_\_\_\_\_  
Stanley Smith, City Attorney



**ADDITIONAL INFORMATION FOR COUNCIL MEETING ITEM****Half Ton Pickups**

| <b>Unit #</b> | <b>Assignment</b>    | <b>Year</b> | <b>Make</b> | <b>Model</b> | <b>Mileage</b> | <b>Hours</b> | <b>Total<br/>Maintenance<br/>Costs</b> | <b>Disposal<br/>Method</b> | <b>Points</b> | <b>Replacement Reasoning</b>        |
|---------------|----------------------|-------------|-------------|--------------|----------------|--------------|----------------------------------------|----------------------------|---------------|-------------------------------------|
| 3894          | Building Inspection  | 2008        | Ford        | F-150        | 152,505        | 0            | \$ 18,345.42                           | TBD                        | 4 of 4        | Met 4 of the 4 replacement criteria |
| 4225          | Building Inspection  | 2011        | Chevrolet   | Silverado    | 146,754        | 0            | \$ 13,282.61                           | TBD                        | 3 of 4        | Met 3 of the 4 replacement criteria |
| 3644          | Wastewater Treatment | 2006        | Chevrolet   | Silverado    | 128,566        | 0            | \$ 51,991.16                           | TBD                        | 4 of 4        | Met 4 of the 4 replacement criteria |

**BUDGET vs ACTUAL COSTS****Half Ton Pickup**

| <b>Repl For Unit #</b> | <b>Division #</b> | <b>Division Name</b> | <b>Type Equipment</b> | <b>Budgeted<br/>Cost</b> | <b>Actual<br/>Cost</b> | <b>Budgeted vs Actual<br/>Variance</b> |             |
|------------------------|-------------------|----------------------|-----------------------|--------------------------|------------------------|----------------------------------------|-------------|
| 3894                   | 3530              | Building Inspection  | Half Ton Pickup       | \$26,000.00              | \$35,212.34            | \$9,212.34                             |             |
| 4225                   | 3530              | Building Inspection  | Half Ton Pickup       | \$26,000.00              | \$35,212.33            | \$9,212.33                             |             |
| 3644                   | 8040              | Wastewater Treatment | Half Ton Pickup       | \$26,000.00              | \$35,212.33            | \$9,212.33                             |             |
|                        |                   |                      |                       | \$78,000.00              | \$105,637.00           | \$27,637.00                            | Over Budget |

\*\*\*

Units 3894, 4225, and 3644 were budgeted for in FY21. These units were approved by council and a purchase order issued. The vendor cancelled the purchase order in November of 2021 noting semiconductor/supply chain issues.

**CALDWELL COUNTRY CHEVROLET**

800 HWY. 21 E. CALDWELL, TEXAS 77836

BUYBOARD 601-19

End User: CITY OF ABILENE Caldwell Rep: BEN LAUREANO QUOTE# BL2313  
 Contact: CASSANDRA LAMBERT Phone: 979-567-6155  
 Phone/email: CASSANDRA.LAMBERT@ABILENETX.GOV Date: Friday, January 13, 2023  
 Product Description: CHEVROLET 1500 email: ben@caldwellcountry.com

A. Bid Series: 25 A. Base Price: \$ 34,595.00

**B. Published Options [Itemize each below]**

| Code    | Options                           | Bid Price | Code | Options                 | Bid Price |
|---------|-----------------------------------|-----------|------|-------------------------|-----------|
| CC10903 | 2023 SILVERADO 1500 REG 2WD       | INCL      | 9L7  | UPFITTER SWITCHES       | INCL      |
| AE7     | SEATS, FRONT 40/20/40 SPLIT BENCH | INCL      | Z82  | TRAILERING PACKAGE      | INCL      |
| JL1     | TRAILER BRAKE CONTROLLER          | INCL      |      | FLOOR, VINYL COVERING   | INCL      |
| E63     | DURABED, PICKUP BED               | INCL      |      | CORNERSTEP, REAR BUMPER | INCL      |
| GU5     | REAR AXLE, 3.23 RATIO             | INCL      |      | A/C, SINGLE ZONE        | INCL      |
| H2G     | JET BLACK, VINYL SEAT TRIM        | INCL      |      | POWER WINDOW/LOCK       | INCL      |
| IOR     | CHEV INFOTAINMENT 3 SYSTEM        | INCL      |      |                         | INCL      |
| K34     | CRUISE CONTROL                    | INCL      |      |                         |           |
| L84     | ENGINE, 5.3L ECOTEC V8            | INCL      |      |                         |           |
| MHT     | TRANSMISSION, 10-SPEED AUTO       | INCL      |      |                         |           |
| ZLQ     | WT FLEET CONVENIENCE PACKAGE      | INCL      |      |                         |           |

Total of B. Published Options:

**C. Unpublished Options [Itemize each below, not to exceed 25%]**

| Disclaimer                                                                                                                                                                                                 | Unpublished Options                                          | Bid Price        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|------------------|
| <b>**PRICES/QUOTES ARE VALID FOR THIRTY (30) DAYS DUE TO SUPPLY CHAIN CONSTRAINTS. REVERIFY PRICING BEFORE ISSUING A PURCHASE ORDER. COMMODITY SURCHARGES MAY APPLY AFTER A PURCHASE ORDER IS ISSUED**</b> | GAZ - SUMMIT WHITE / IN STOCK - PG151151, PG151152, PG151154 | COLOR / DELIVERY |

Total of C. Unpublished Options:

D. Registration, Inspection, Paperwork, Postage cost, Courthouse time, & Runner time: \$ -

E. UPFITTERS:

F. Manufacturer Destination/Delivery:

G. Floor Plan Interest (for in-stock and/or equipped vehicles): \$ -

H. Lot Insurance (for in-stock and/or equipped vehicles): \$ -

I. Contract Price Adjustment:  \$ -

J. Additional Delivery Charge: 242 miles \$ 484.00

K. Subtotal: \$ 35,079.00

L. Quantity Ordered 3 x K = \$ 105,237.00

M. Trade in:

N. BUYBOARD FEE PER PURCHASE ORDER \$ 400.00

O. **TOTAL PURCHASE PRICE WITH BUYBOARD FEE (PRICES AND AVAILABILITY ARE SUBJECT TO CHANGE WITHOUT NOTICE)** \$ 105,637.00

# City Council Meeting

1/26/2022





# 1/2-Ton Pickup Trucks

- Three units to be a 2023 Chevrolet Silverado 1500 Reg Cab.
- Replacing units 3894 and 4225 for Building Inspection. Replacing unit 3644 for Wastewater Treatment.
- Buyboard Cooperative purchase through Caldwell Country Chevrolet, contract #601-19, Quote BL-2313.





# 1/2-Ton Pickup Trucks







**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2023**

**TO:** Robert Hanna, City Manager

**FROM:** Marcus Dudley, Chief of Police

**SUBJECT:** 9. Resolution: Receive a Report, Hold a Discussion and Take Action on Revising Acceptance of the 2023 Office of the Governor (OOG) Bullet Resistant Shield Grant (Marcus Dudley)

---

**GENERAL INFORMATION**

The original Resolution passed October 27th, 2022 and was submitted. The Abilene Police Department was awarded funds on December 9th, 2023. The Office of the Governor is requesting a revised Resolution to include return of funds in the event of loss or misuse, and designating an authorized official. The application submitted by the police department to the Office of the Governor is to obtain 83 Level 3 (rifle) bullet resistant shields to be placed in officer marked units and school resource officer marked units. Total expenses of \$327,468.42 with no matching funds from the City of Abilene.

**SPECIAL CONSIDERATIONS**

None

**FUNDING/FISCAL IMPACT**

No Impact to the city as there are no matching funds required.

**STAFF RECOMMENDATION**

**BOARD OR COMMISSION RECOMMENDATION**

**ATTACHMENTS:**

1. 2023 Resolution OOG Bullet Resistant Shield Grant
2. 2023 OOG PD Budget Narrative to Council
3. 194-2022 - Authorizing the Grant Application for the 2023 Governor OOG Bullet Resistant Shield Grant
4. 2023 OOG Budget Narrative to Council Powerpoint

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS  
APPROVING THE 2023 GOVERNOR (OOG) BULLET RESISTANT SHIELD GRANT.**

**WHEREAS**, the City of Abilene, Abilene Police Department, was awarded the 2023 Office of the Governor (OOG) Bullet Resistant Shield Grant in the amount of \$327,468.42; and

**WHEREAS**, the City of Abilene, Abilene Police Department, finds it in the best interest of the citizens of Abilene, Texas to accept the Grant; and

**WHEREAS**, the City of Abilene agrees to provide applicable matching funds for the said project as required by the Grant application; and

**WHEREAS**, the City of Abilene agrees that in the event of loss or misuse of the Office of the Governor funds, the City of Abilene assures that the funds will be returned to the Office of the Governor in full; and

**WHEREAS**, the City Council designates Deputy City Manager, Mindy Patterson, as the Grantee's authorized official, and the authorized official is given the power to apply for, accept, reject, alter or terminate the Grant on behalf of the City of Abilene, Abilene Police Department.

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

PART 1:       The City Council approves submission and acceptance of the grant application for the 2023 Office of the Governor Bullet Resistant Shield Grant.

PART 2:       This Resolution is effective immediately upon adoption

**ADOPTED this 26<sup>th</sup> day of January, 2023**

ATTEST:

\_\_\_\_\_  
Shawna Atkinson, City Secretary

\_\_\_\_\_  
Anthony Williams, Mayor

APPROVED:

\_\_\_\_\_  
Stanley Smith, City Attorney



# ABILENE POLICE

**FROM:** Marcus Dudley, Jr. Chief of Police  
**DATE:** October 17, 2022  
**SUBJECT:** 2023 Office of the Governor Solicitation (OOG) FY 23  
Bullet Resistant Shield Grant Program

## Purpose

This grant is made available in the wake of the Uvalde mass casualty incident that occurred earlier this year. The Abilene Police Department intends to use the money acquired through this grant to purchase Level III bullet resistant shields, to include protective shield hoods. Level III shields protect against multiple rounds of rifle ammunition.

The equipment will be placed into 83 marked police units, to include 10 marked units that are permanently assigned to School Resource Officers on school campuses. The Department will provide training to its personnel in the use this safety equipment.

In an unprecedented year of active threat situations, it is imperative to equip personnel with the equipment needed as well as train them.

Abilene Police Department  
4565 South 1st Street  
Abilene, Texas 79605  
325.673.8331  
[ABILENEPOLICE.ORG](http://ABILENEPOLICE.ORG)





# ABILENE POLICE

## Plan

**The Abilene Police Department intends to use the funds in the following manner:**

### **Equipping and Training of Personnel**

Support the Department's response to active threat situations by placing bullet resistant shields in first responder and school resource officer vehicles.

- (83) Level III NIJ 0108.01 bullet resistant shields, 20x36 (or similar items). Each shield is equipped with a viewport. Each shield was quoted at \$3,826.53 for a total of \$317,601.99.
- (83) Protective shield hoods to prevent damage to view port, each quoted \$70.68 for a total of \$5,866.44.
- Total shipping cost of \$3,999.99.

**Total Expenses:** \$327,468.42.

We are thankful for the Office of the Governor Grant Program and the opportunities it provides.

Grant#4638101

Abilene Police Department  
4565 South 1st Street  
Abilene, Texas 79605  
325.673.8331  
**ABILENEPOLICE.ORG**





# ABILENE POLICE



Abilene Police Department  
4565 South 1st Street  
Abilene, Texas 79605  
325.673.8331  
[ABILENEPOLICE.ORG](http://ABILENEPOLICE.ORG)



**RESOLUTION NO. 194-2022**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS  
AUTHORIZING THE GRANT APPLICATION FOR THE 2023 GOVERNOR (OOG)  
BULLET RESISTANT SHIELD GRANT.**

**WHEREAS**, the Abilene Police Department is applying for the 2023 Office of the Governor (OOG) Bullet Resistant Shield Grant in the amount of \$327,468.42; and

**WHEREAS**, the grant requires City Council approval of the grant and the application thereof; and

**WHEREAS**, there are no matching fund requirements;

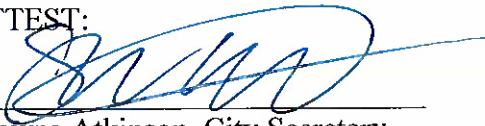
**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY  
OF ABILENE, TEXAS:**

PART 1: The City Council authorizes the City Manager to execute any grant documents to secure the 2023 OOG Bullet Resistant Shield Grant.

PART 2: This Resolution is effective immediately upon adoption

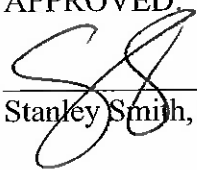
**ADOPTED this 27<sup>th</sup> day of October, 2022**

ATTEST:

  
Shawna Atkinson, City Secretary

  
Weldon Hurt, Deputy Mayor Pro-tem

APPROVED:

  
Stanley Smith, City Attorney



# City Council Meeting

10-27-2022





# OOG (Officer of the Governor) FY 2023 Bullet Resistant Shield Grant

- Purchase NIJ Level III (rifle rated) Bullet resistant shields.
- 83 shields to be placed in all marked patrol units to include 10 units assigned to School Resource Officers assigned to AISD and WISD campuses.
- Total cost is \$327,468.42.
  - Shields- \$317,601.99.
  - Protective Hood - \$5,866.44
  - Shipping - \$3,999.99





# OOG (Officer of the Governor) FY 2023 Bullet Resistant Shield Grant

- One Time Purchase
- No matching funds required by the City of Abilene.
- Questions?





**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2023**

**TO:** Robert Hanna, City Manager

**FROM:** Tim Littlejohn, Director of Planning & Development Services

**SUBJECT:** **10. Resolution:** Recieve a Report, Hold a Discussion and Take Action on Supporting the Submission of an Application to the 2023 Competitive Housing Tax Credit Program for the Elsie Manor Senior Housing Project Located on 309 S. Pioneer Drive *(Tim Littlejohn)*

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**GENERAL INFORMATION**

**A RESOLUTION OF THE CITY OF COUNCIL OF THE CITY OF ABILENE, TEXAS IN SUPPORT OF THE SUBMISSION OF AN APPLICATION TO THE 2023 COMPETITIVE HOUSING TAX CREDIT (HTC) PROGRAM THROUGH THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (TDHCA) BY ELSIE MANOR, L.P. FOR THE NEW CONSTRUCTION OF AFFORDABLE SENIOR HOUSING; AND PROVIDING AN EFFECTIVE DATE**

**SPECIAL CONSIDERATIONS**

**FUNDING/FISCAL IMPACT**

**STAFF RECOMMENDATION**

Approval

**BOARD OR COMMISSION RECOMMENDATION**

**ATTACHMENTS:**

1. FINAL Resolution
2. Elsie Manor Packet Item
3. Presentation

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY OF COUNCIL OF THE CITY OF ABILENE, TEXAS IN SUPPORT OF THE SUBMISSION OF AN APPLICATION TO THE 2023 COMPETITIVE HOUSING TAX CREDIT (HTC) PROGRAM THROUGH THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (TDHCA) BY ELSIE MANOR, L.P. FOR THE NEW CONSTRUCTION OF AFFORDABLE SENIOR HOUSING; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, Elsie Manor, L.P. ("Applicant") has requested support from the City of Abilene for the new construction of affordable senior housing units named Elsie's Manor, located at 309 South Pioneer Drive, Abilene, Taylor County, Texas (the "Development"); and

**WHEREAS**, the Applicant intends to submit an application to the Texas Department of Housing and Community Affairs ("TDHCA") for an allocation of 2023 Competitive 9% Housing Tax Credits ("HTC") for the construction of Elsie Manor; and

**WHEREAS**, pursuant to the rules that govern the allocation of HTCs by TDHCA, an applicant who provides a resolution of support from the governing body of a local political subdivision to the Development will improve the overall success of its application; and

**WHEREAS**, pursuant to the rules that govern the allocation of HTCs by TDHCA, an applicant who provides a resolution from the governing body of a local political subdivision agreeing to commit a minimum of \$500.00 of funding assistance to the Development will improve the overall success of its application; and

**WHEREAS**, the Applicant has requested a commitment of required funding assistance for \$500.00 for its application in the form of a reduced fees for the benefit of the Development from the City of Abilene for its application to TDHCA for the new development of affordable senior housing.

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

1. The City of Abilene, acting through its governing body, hereby confirms its support for an affordable senior housing development by Elsie Manor, L.P., to be named Elsie's Manor, at 309 South Pioneer Drive, Taylor County, Texas, and that this formal action has been taken to put on record the opinion expressed by the City Council on this date.

2. In accordance with 10 Texas Administrative Code Section 11.9(d)(2), the City hereby commits to an in-kind contribution to the Housing in the form of a loan, grant, reduced fee, or combination of other value for the benefit of the Housing in the amount of no less than \$500.00.

**FURTHER RESOLVED**, that for and on behalf of the Governing Body, Anthony Williams, Mayor is hereby authorized, empowered, and directed to certify these resolutions to the Texas Department of Housing and Community Affairs.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS ON THIS 26<sup>TH</sup> DAY OF JANUARY 2023.**

**APPROVED:**

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**Anthony Williams, Mayor**

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**Stanley Smith, City Attorney**

**ATTEST:**

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**Shawna Atkinson, City Secretary**

**APPROVED:**



# **STAFF REPORT**

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## **Scheduled Hearings**

City Council: January 26, 2023

## **Applicant**

Owner: New Dairy Texas

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

## **Case Manager**

Randy Anderson

## **Request**

A resolution supporting the construction of an affordable senior housing development named Elsie's Manor, located at 309 South Pioneer Drive and agreeing to commit a minimum of \$500.00 of funding assistance toward the development to enhance the success of its application to the Texas Department of Housing and Community Affairs for an allocation of 2023 Competitive 9% Housing Tax Credits.

## **Location**

Approximately 2.4 acres of land as 309 South Pioneer Drive, commonly referred to as the Borden Building.

## **Background**

Applications seeking *2023 Competitive 9% Tax Credits* are "scored" by the Texas Department of Housing and Community Affairs based on scoring criteria. Applications receive a project score and compete against the scores assigned to similar state-wide projects.

The purpose of the resolution is to demonstrate community support for the development and the willingness of the community to offer financial credit, for a minimal amount of \$500.00, to help to ensure the success of the project if the grant is approved. Resolutions of this variety are typical when requesting State or Federal credits and grants to ensure that any granted funds are not wasted.

A detailed description of the project is provided is attached with this report.

## **Additional Steps**

If the applicant is awarded the requested funding, the applicant will also seek approval from the National Park Service (NPS) to designate the existing building as a National Historic Site in order to obtain additional development funding. The applicant has retained an architect with extensive

expertise at maintaining the historic character of the exterior and interior portions of the building in a manner that would allow the repurposed use of the building while complying with all NPS criteria for historic designation. The applicant also proposes to request Historic Overlay zoning of the site in order to request local tax credits.

**Staff Recommendation:**

Staff recommends **approval**.

1

**Attachments**

Proposed Development Standards

Concept Plan

Elsie’s Manor Description

**Concept Plan**



**S. PIONEER DR.**

**CONCEPTUAL SITE PLAN**

November 14, 2022

scale: 1"=40'

PRINTED ON 11x17 PAPER

rosemann & ASSOCIATES

# ELSIE'S MANOR

## A 36-UNIT SENIOR DEVELOPMENT

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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

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

# GENERAL CONTRACTOR

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**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

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- 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

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**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 Elevatored 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  
Elevatored 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

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# HIDDEN GLEN

SALADO, TX

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# BLUFF VIEW SENIOR VILLAGE



## CRANDALL, TX

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# DA HOLMES SENIOR HOUSING

## KANSAS CITY, MO

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# LOFTS AT LANDMARK

## ST JOSEPH, MO

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# MARY LEILA LOFTS



## GREENSBORO, GA

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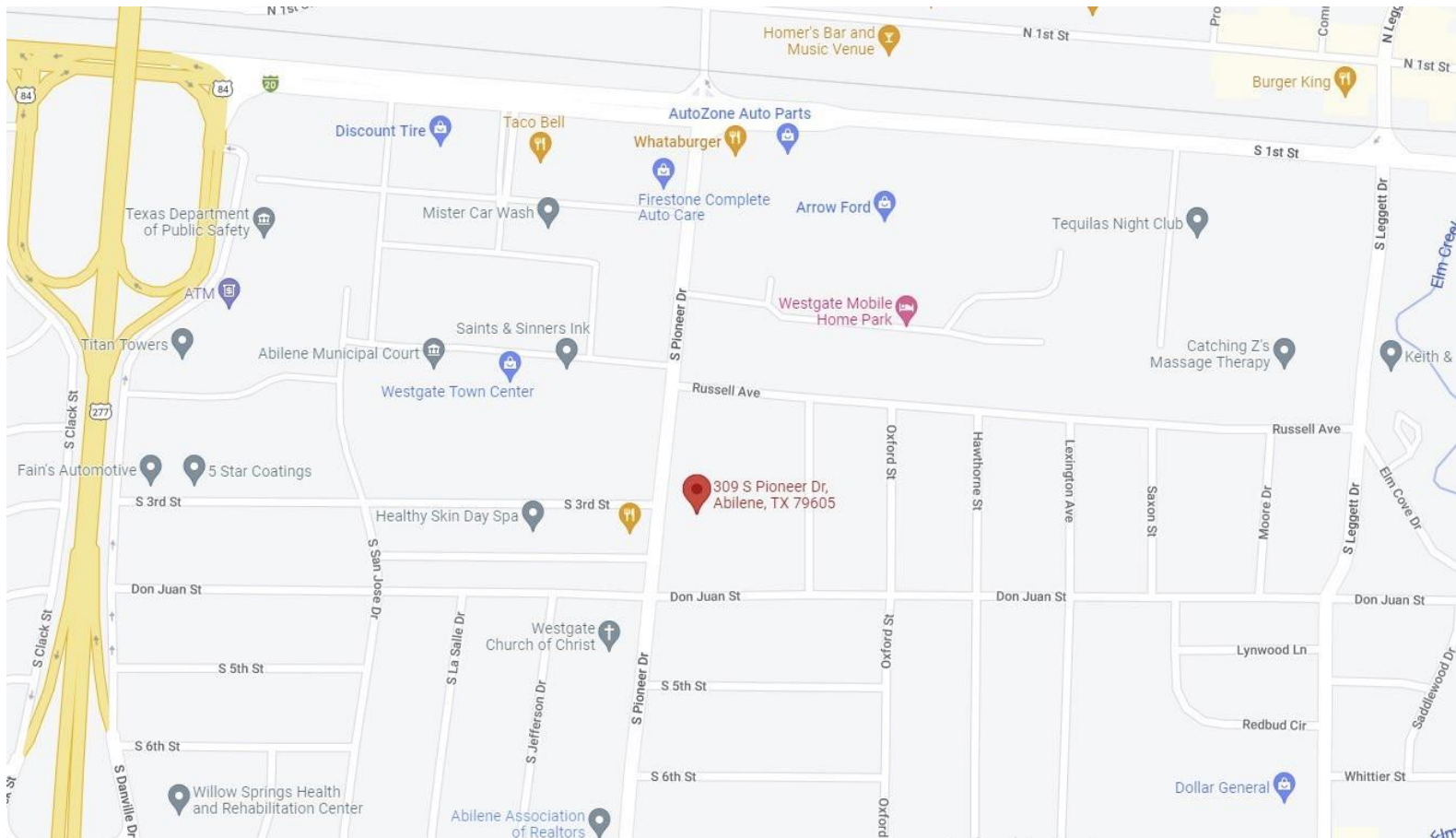


# SITE INFORMATION

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# SITE LOCATION



# SITE AERIAL





# SITE LAYOUT



# COMMUNITY FEATURES

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# COMMUNITY FEATURES

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



Recent property completed by the proposed development team.

# UNIT FEATURES & RESIDENT PROFILE

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# RESIDENTIAL UNIT FEATURES

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## 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

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# PROPOSED RESIDENT SERVICES

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- 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

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Michael Ash, Development Manager

- 737-228-4962
- [mash@aepartners.com](mailto:mash@aepartners.com)

## Ryan Garcia, Development Manager

- 573-397-2105
- [rgarcia@jesholdings.com](mailto:rgarcia@jesholdings.com)



# Resolution of Support

**Owner:** New Dairy Texas, LLC

**Agent:** JES Dev. Company, Inc., by Mike Ash

**Request:** Resolution of Support for Elsie's Manor

**Location:** 309 South Pioneer Drive

**City Council:** January 26, 2023







# Applicant/Developer



JES Dev Co, Inc.

- 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





# Location



CITY OF  
**ABILENE**  
TEXAS





# Proposed Concept Plan



S. PIONEER DR.

CONCEPTUAL SITE PLAN

Abilene, TX

November 14, 2022

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



rosemann  
& ASSOCIATES



CITY OF  
**ABILENE**  
TEXAS



# Project Description

## 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

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- In Unit Washer/Dryer Carpet and vinyl flooring





# Project Description

## RESIDENT PROFILE



### Age and Income Requirements

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- 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







# Project Description

## COMMUNITY FEATURES

---

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





# Findings and Recommendation

Elsie's Manor will:

- Maintain the historic character of the creamery;
- Reduce the intensity of use on the subject property;
- Reduce the impact from the use of this site on the adjoining residences;
- Provide affordable quality housing for Seniors; and
- Be subject to all PDD requirements, including the Concept Plan.

Staff Recommendation: **Approval**







# Questions?





## City Council Agenda Memo

City Council Meeting Date: 1/26/2023

**TO:** Robert Hanna, City Manager

**FROM:** Rodney Taylor, Director

**SUBJECT:** **11. Resolution:** Receive a Report, Hold a Discussion, and Take Action on Awarding the Bid to Starks Construction Company, Inc. for the Honey Bee Road Water Line Replacement Project (*Rodney Taylor*)

---

### **GENERAL INFORMATION**

Water Utilities staff is recommending that the Abilene City Council award the bid to Starks Construction Company, Inc. (Starks) of Abilene, TX in the amount of \$823,696.00 for the Honey Bee Road Water Line Replacement Project, CB-2320 (Project). The bid was advertised in the Abilene Reporter News on December 4th and 11th, 2022. A total of five bids were received on January 10, 2023. The bids were evaluated using the "best value" competitive bidding method. City staff and the Project Engineer evaluated the bids and determined that the bid by Starks provides the best value for the City of Abilene.

The bid item includes an "Owners Allowance" in the amount of \$80,000.00 for work directed in writing by the City. The owner's allowance is for work not required within the Plans and Specifications and may be used in the event additional (or less) work from that shown on the Plans and Specifications is required.

### **SPECIAL CONSIDERATIONS**

The Honey Bee Road Water Line Replacement Project is for the replacement of an existing 10inch AC pipeline with a 10inch PVC pipeline. The project will include the relocation of several customer water meters to the edge of the new property line boundaries established during the process of selling the previously leased lake lots. The water line replacement project is done in preparation for a roadway improvement project for the realignment of Honey Bee Road that will improve the roadway surface and citizens access to the reconfigured residential lake lots.

### **FUNDING/FISCAL IMPACT**

Funding for this project will utilize water utility funds designated for capital improvement projects.

## **STAFF RECOMMENDATION**

Staff recommends that the Abilene City Council award the bid for the Honey Bee Road Water Line Replacement Project to Starks Construction Company, Inc. in the amount of \$823,696.00.

## **BOARD OR COMMISSION RECOMMENDATION**

## **ATTACHMENTS:**

1. WrittenResolution-WtrDpt-Award Bid-Starks Construction Co-Honey Bee Road Water Line Replacment-1-26-2023
2. Letter of Recommendation-Bid Tab-Honey Bee Road Water Line Replacement-Starks Construction Co-1-26-2023
3. Contract-Starks Construction Co-Honey Bee Road Water Line Replacement-1-26-2023
4. Presentation-Award Bid-Starks Construction Co-Honey Bee Road Water Line Replacement-1-26-2023

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,  
AWARDING THE BID TO STARKS CONSTRUCTION COMPANY, INC. FOR THE  
HONEY BEE ROAD WATER LINE REPLACEMENT PROJECT.**

**WHEREAS**, the City of Abilene (City) owns and operates a Public Water Supply System that includes the water distribution system; and

**WHEREAS**, the City has coordinated with the lease holders of lake lots surrounding Lake Fort Phantom Hill for the surveying, reconfiguration, and selling of the lease lots to the lease holders; and

**WHEREAS**, the City has initiated certain public works improvements along Honey Bee Road that includes the replacement of water mains and related appurtenances, the relocation of water meters, drainage improvements, and the realignment and a new roadway surface along Honey Bee Road; and

**WHEREAS**, Jacob and Martin, LLC (JM) was hired to provide plans and contract documents, bidding assistance, general project supervision, and contract administration for the needed improvements for the Honey Bee Road Water Line Replacement Project; and

**WHEREAS**, Starks Construction Company, Inc. (Starks) submitted the lowest priced qualifying bid in the amount of \$823,696.00, and JM has evaluated the bids for best value criteria and for conformity with the advertisement for bids and does recommend awarding the bid to Starks in the amount of \$823,696.00; and

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

That the City Manager is authorized to execute a construction contract with Starks Construction Company, Inc. for the Honey Bee Road Water Line Replacement Project in the amount of \$823,696.00.

**ADOPTED this 26th day of January, 2023.**

ATTEST:

\_\_\_\_\_  
Shawna Atkinson, City Secretary

\_\_\_\_\_  
Anthony Williams, Mayor

APPROVED:

\_\_\_\_\_  
Stanley E. Smith, City Attorney



INTEGRITY  
EXCELLENCE  
TRUST

January 16, 2023

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

Re: Honey Bee Road Water Line Replacement  
Letter of Recommendation for Award

Sent: Via Email

Dear Mr. Taylor:

On January 10, 2023, the City of Abilene received bids for the Honey Bee Road Water Line Replacement Project. Five bids were received for this project. A bid tabulation sheet summarizing the bids is included as an attachment to this letter. The five bids have been evaluated based on the "Best Value" criteria included in the Contract Documents. Based on our evaluation of the bids it is our conclusion that Starks Construction Co. provides the "Best Value" competitive bid at a contract amount of \$823,696.00.

Jacob and Martin has evaluated the Starks Construction Co. bid for conformity with the Contract Documents and checked their references. It is recommended that the contract be awarded to Starks Construction Co. for the contract amount of \$823,696.00. If the Water Department and City Council agrees with the recommendation for award, Jacob and Martin will prepare contract documents for execution by the Contractor and the City. Feel free to contact me if you have any questions.

Sincerely,

**JACOB | MARTIN**

Kirt Harle, P.E.  
Attachments – Best Value Bid Evaluation, Bid Tabulation



info@jacobmartin.com  
www.jacobmartin.com



3465 Curry Lane  
Abilene, TX 79606  
325.695.1070

1508 Santa Fe, Suite 203  
Weatherford, TX 76086  
817.594.9880

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

Bid Tabulation

Engineer: Jacob & Martin, LLC  
Abilene, Texas

| For all Labor, Materials, Equipment, and Incidentals to Furnish and Install the Following: |                                                                                                            |          |      |              |               | Starks Construction Co. |              | Bo Simon, Inc.   |              | Blackrock Construction      |              | Western Municipal Construction of Texas, LLC |              | MH Civil Constructors, Inc. |  |
|--------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|----------|------|--------------|---------------|-------------------------|--------------|------------------|--------------|-----------------------------|--------------|----------------------------------------------|--------------|-----------------------------|--|
|                                                                                            |                                                                                                            |          |      |              |               | 8013 US Hwy 277 N.      |              | 28700 Hwy 87     |              | 1475 Heritage Pkwy, STE 113 |              | 402 Golf Ave                                 |              | 621 SW 6th Ave              |  |
|                                                                                            |                                                                                                            |          |      |              |               | Abilene, TX 79601       |              | Canyon, TX 79015 |              | Mansfield, TX 76063         |              | Justin, TX 76247                             |              | Amarillo, TX 79101          |  |
| Item #                                                                                     | Item Description                                                                                           | Quantity | Unit | Unit Price   | Total         |                         | Unit Price   | Total            | Unit Price   | Total                       | Unit Price   | Total                                        | Unit Price   | Total                       |  |
| 1                                                                                          | Mobilization, Bonds, and Insurance                                                                         | 1        | LS   | \$ 17,000.00 | \$ 17,000.00  |                         | \$ 50,000.00 | \$ 50,000.00     | \$ 50,095.00 | \$ 50,095.00                | \$ 50,000.00 | \$ 50,000.00                                 | \$ 72,761.00 | \$ 72,761.00                |  |
| 2                                                                                          | 10" DR18 C900 PVC Water Line                                                                               | 4,376    | LF   | \$ 69.15     | \$ 302,600.40 |                         | \$ 100.00    | \$ 437,600.00    | \$ 128.50    | \$ 562,316.00               | \$ 125.00    | \$ 547,000.00                                | \$ 177.00    | \$ 774,552.00               |  |
| 3                                                                                          | 6" DR18 C900 PVC Water Line                                                                                | 312      | LF   | \$ 45.00     | \$ 14,040.00  |                         | \$ 40.00     | \$ 12,480.00     | \$ 117.50    | \$ 36,660.00                | \$ 75.00     | \$ 23,400.00                                 | \$ 156.00    | \$ 48,672.00                |  |
| 4                                                                                          | 10" Gate Valve and Box                                                                                     | 3        | EA   | \$ 7,100.00  | \$ 21,300.00  |                         | \$ 3,100.00  | \$ 9,300.00      | \$ 3,885.00  | \$ 11,655.00                | \$ 5,900.00  | \$ 17,700.00                                 | \$ 5,000.00  | \$ 15,000.00                |  |
| 5                                                                                          | 6" Gate Valve and Box                                                                                      | 8        | EA   | \$ 1,900.00  | \$ 15,200.00  |                         | \$ 2,300.00  | \$ 18,400.00     | \$ 2,175.00  | \$ 17,400.00                | \$ 3,660.00  | \$ 29,280.00                                 | \$ 2,500.00  | \$ 20,000.00                |  |
| 6                                                                                          | Fire Hydrant Assembly                                                                                      | 6        | EA   | \$ 5,000.00  | \$ 30,000.00  |                         | \$ 7,200.00  | \$ 43,200.00     | \$ 7,410.00  | \$ 44,460.00                | \$ 6,700.00  | \$ 40,200.00                                 | \$ 7,600.00  | \$ 45,600.00                |  |
| 7                                                                                          | 10" Water Line Connection                                                                                  | 2        | EA   | \$ 4,000.00  | \$ 8,000.00   |                         | \$ 2,500.00  | \$ 5,000.00      | \$ 2,330.00  | \$ 4,660.00                 | \$ 8,500.00  | \$ 17,000.00                                 | \$ 8,200.00  | \$ 16,400.00                |  |
| 8                                                                                          | 6" Water Line Connection                                                                                   | 1        | EA   | \$ 3,500.00  | \$ 3,500.00   |                         | \$ 2,000.00  | \$ 2,000.00      | \$ 2,165.00  | \$ 2,165.00                 | \$ 8,400.00  | \$ 8,400.00                                  | \$ 1,400.00  | \$ 1,400.00                 |  |
| 9                                                                                          | 1" Service Reconnect (Including main line tap, service line, service reconnect & relocating meter and box) | 33       | EA   | \$ 750.00    | \$ 24,750.00  |                         | \$ 3,000.00  | \$ 99,000.00     | \$ 3,465.00  | \$ 114,345.00               | \$ 3,000.00  | \$ 99,000.00                                 | \$ 1,400.00  | \$ 46,200.00                |  |
| 10                                                                                         | Remove Existing Valve and Box                                                                              | 2        | EA   | \$ 500.00    | \$ 1,000.00   |                         | \$ 1,000.00  | \$ 2,000.00      | \$ 500.00    | \$ 1,000.00                 | \$ 1,900.00  | \$ 3,800.00                                  | \$ 900.00    | \$ 1,800.00                 |  |
| 11                                                                                         | Remove Existing Fire Hydrant                                                                               | 2        | EA   | \$ 500.00    | \$ 1,000.00   |                         | \$ 1,500.00  | \$ 3,000.00      | \$ 1,000.00  | \$ 2,000.00                 | \$ 2,100.00  | \$ 4,200.00                                  | \$ 1,100.00  | \$ 2,200.00                 |  |
| 12                                                                                         | Remove Existing 10" AC Water Line                                                                          | 4,505    | LF   | \$ 35.00     | \$ 157,675.00 |                         | \$ 60.00     | \$ 270,300.00    | \$ 25.00     | \$ 112,625.00               | \$ 32.00     | \$ 144,160.00                                | \$ 45.00     | \$ 202,725.00               |  |
| 13                                                                                         | Remove Existing 6" AC Water Line                                                                           | 503      | LF   | \$ 35.00     | \$ 17,605.00  |                         | \$ 60.00     | \$ 30,180.00     | \$ 25.00     | \$ 12,575.00                | \$ 24.00     | \$ 12,072.00                                 | \$ 40.00     | \$ 20,120.00                |  |
| 14                                                                                         | Metal Detectable Tape                                                                                      | 4,688    | LF   | \$ 0.60      | \$ 2,812.80   |                         | \$ 1.00      | \$ 4,688.00      | \$ 0.50      | \$ 2,344.00                 | \$ 1.00      | \$ 4,688.00                                  | \$ 1.00      | \$ 4,688.00                 |  |
| 15                                                                                         | Tracer Wire                                                                                                | 4,688    | LF   | \$ 0.60      | \$ 2,812.80   |                         | \$ 1.00      | \$ 4,688.00      | \$ 0.50      | \$ 2,344.00                 | \$ 1.00      | \$ 4,688.00                                  | \$ 1.00      | \$ 4,688.00                 |  |
| 16                                                                                         | Pavement Repair (Water Main)                                                                               | 1,505    | LF   | \$ 50.00     | \$ 75,250.00  |                         | \$ 44.00     | \$ 66,220.00     | \$ 75.00     | \$ 112,875.00               | \$ 55.00     | \$ 82,775.00                                 | \$ 63.00     | \$ 94,815.00                |  |
| 17                                                                                         | Pavement Repair (Service Line)                                                                             | 633      | LF   | \$ 50.00     | \$ 31,650.00  |                         | \$ 44.00     | \$ 27,852.00     | \$ 50.00     | \$ 31,650.00                | \$ 40.00     | \$ 25,320.00                                 | \$ 63.00     | \$ 39,879.00                |  |
| 18                                                                                         | SWPPP                                                                                                      | 1        | LS   | \$ 5,500.00  | \$ 5,500.00   |                         | \$ 7,000.00  | \$ 7,000.00      | \$ 5,000.00  | \$ 5,000.00                 | \$ 15,000.00 | \$ 15,000.00                                 | \$ 3,500.00  | \$ 3,500.00                 |  |
| 19                                                                                         | Traffic Control                                                                                            | 1        | LS   | \$ 12,000.00 | \$ 12,000.00  |                         | \$ 7,000.00  | \$ 7,000.00      | \$ 15,000.00 | \$ 15,000.00                | \$ 15,000.00 | \$ 15,000.00                                 | \$ 15,000.00 | \$ 15,000.00                |  |
| 20                                                                                         | Lump Sum Item for Additional Work                                                                          | 1        | LS   | \$ 80,000.00 | \$ 80,000.00  |                         | \$ 80,000.00 | \$ 80,000.00     | \$ 80,000.00 | \$ 80,000.00                | \$ 80,000.00 | \$ 80,000.00                                 | \$ 80,000.00 | \$ 80,000.00                |  |
| TOTAL BASE BID (Items 1 - 20)                                                              |                                                                                                            |          |      |              | \$ 823,696.00 | *                       |              | \$ 1,179,908.00  |              | \$ 1,221,169.00             |              | \$ 1,223,683.00                              |              | \$ 1,510,000.00             |  |

(\*) - Extension Error

## CONSTRUCTION CONTRACT

### BACKGROUND

THIS CONTRACT, made on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and Starks Construction Co. 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 – Honey Bee Road Water Line Replacement.

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 **\$823,696.00.**

**2. Timely Work.** The Contractor must begin and fully complete Work in the days stated in the Notice to Proceed. The time allows for normal delays associated with weather conditions, crew coordination, etc. Time is of the essence, and liquidated damages as set forth in the General Conditions (Paragraph 16) apply for late Work.

**3. Payment.** If Performance and Payment Bonds are required, the City will pay Contractor according to the General Conditions (Paragraph 20). If Performance and Payment Bonds are not required, the City will pay Contractor according to the Instructions to Bidders.

**4. No liens.** No mechanic, contractor, subcontractor, supplier, or other person can or will contract for, or in any other manner have or acquire any lien upon the work of this Contract, or the land upon which it is situated. The laws of the State of Texas govern this Contract.

**5. Venue.** Venue for any legal proceeding is Taylor County, Texas.

**6. Indemnity.**

#### A. Definitions

For the purpose of this section the following definitions apply:

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



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

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

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

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

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

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

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

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

## **B. Indemnity**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CONTRACTOR**

Name of Contractor:

Starks Construction Co.



Signature

Business Address: 8013 US Hwy 277 N.

Abilene, TX 79601

Business Phone No. 325-673-7762

Federal Tax I.D. # 75-2143891

Name – Typed or Printed

Bill Starks

Title – Typed or Printed

President

ATTEST: (If Corporation)

Corporate Seal  
(If none, write "None")

**CITY OF ABILENE**

Robert Hanna, City Manager

APPROVED:

City Attorney

ATTEST:

City Secretary

Seal



Award the bid to Starks Construction Company Inc.  
for the  
Honey Bee Road Water Line Replacement Project.





# Honey Bee Road Water Line Replacement

- Starks Construction Company, Inc. (Starks) submitted the lowest priced bid of \$823,696.00, and City staff and the design engineer have determined that the low bid is the best value for the City of Abilene.
- The bid item includes an “Owner’s Allowance” in the amount of \$80,000 for work directed in writing by the City. The owner’s allowance is for work not required within the Plans and Specifications and may be used in the event additional (or less) work from that shown on the Plans or Specifications is required.





# Honey Bee Road Water Line Replacement

- The Honey Bee Road Water Line Replacement Project is the construction of a new replacement 10inch PVC water pipeline and related appurtenances along a new alignment for Honey Bee Road.
- Existing customer water meters will be relocated to the edge of the realigned lots resulting from the the City's sale of leased lots.
- The water line relocation precedes a pending Public Works project for drainage and roadway improvements along a new roadway alignment.





# Honey Bee Road Water Line Replacement



NEW WATER LINE WILL BE PLACED  
WITHIN THE RIGHT OF WAY OF THE  
REALIGNED HONEY BEE ROAD.





Award the bid to Starks Construction Company Inc.  
for the  
Honey Bee Road Water Line Replacement Project.

QUESTIONS?





**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2023**

**TO: Robert Hanna, City Manager**

**FROM: Max Johnson, Director of Public Works**

**SUBJECT: 12. Resolution: Receive a Report, Hold a Discussion and Take Action on correcting Resolution No 122-2022 regarding the Agreement with the Texas Department of Transportation to Install Flashing Yellow Arrow Lights Along South 14th Street (*Max Johnson*)**

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**GENERAL INFORMATION**

Public Works submitted City Council Item on July 28, 2022, which was approved and created Resolution No. 122-2022. This item referenced a TxDOT Highway Safety Improvement Program (HSIP) project to install yellow flashing arrows into several signals along the S14th Street corridor. The original information received from TxDOT funded the entire project with no required City contribution. Following the approval of the resolution, TxDOT reviewed the project (including funding sources) and found a discrepancy. In accordance with TxDOT rules and policy, the State is not authorized to fund a portion of the project which equates to \$5,878.30 for this project. This item modifies Resolution No. 122-2022 to include \$5,878.30 City contribution funds for completion of the yellow flashing arrow project on S14th Street.

**SPECIAL CONSIDERATIONS**

**FUNDING/FISCAL IMPACT**

Increases City contribution to this TxDOT project by \$5,878.30.

**STAFF RECOMMENDATION**

Staff recommends approval of City contribution of \$5,878.30 for yellow flashing arrow project.

## **BOARD OR COMMISSION RECOMMENDATION**

### **ATTACHMENTS:**

1. 2023 Corrected Resolution for TXDOT Yellow Flashing Arrows
2. Redline Changes for Resolution No. 122-2022
3. Corrected - Blackline - AFA for Yellow Flashing Arrow Project
4. Resolution Correction to FYA project - 1-26-2023 ppt

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

**RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE TEXAS DEPARTMENT OF TRANSPORTATION AND THE CITY OF ABILENE TO PARTICIPATE WITHIN THE INSTALLATION OF FLASHING YELLOW ARROW SIGNAL HEADS AND INTERCONNECTED SIGNAL SYSTEM ALONG S 14TH ST THROUGH THE HIGHWAY SAFETY IMPROVEMENT PROGRAM ADMINISTERED BY THE TEXAS DEPARTMENT OF TRANSPORTATION.**

**WHEREAS**, the Highway Safety Improvement Program (HSIP) is administered by the Texas Department of Transportation (the State) to achieve the goal of a significant reduction in fatalities and serious injuries on Texas roadways, including both on-system and off-system roads; and,

**WHEREAS**, a project to install flashing yellow arrow signal heads and interconnected signal system along the corridor of South 14th Street, from US83/84 to Ross Avenue is included in the currently approved program of projects as authorized by Texas Transportation Commission Minute Order Number 116073 dated August 21, 2021; and,

**WHEREAS**, the usual fund participation ratio for project on such program is 90 percent federal, 0 percent state and 10 percent Local Government. This safety project qualified for increased federal funding to 100 percent; and,

**WHEREAS**, the estimated local match fund participation requirement on the approved HSIP project is \$0. However, the City of Abilene will still be responsible for an administration fee to TxDOT of \$5,878.30 as well as any overages that may occur on the project.

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

- PART 1:** That the City of Abilene confirms its agreement with the State to secure all funding for the approved highway safety improvement project, that all requirements of TAC 43 will be implemented, and the City Manager, in consideration of the foregoing premises and the mutual benefits to be derived therefrom, is hereby authorized and directed to execute and attest on behalf of the City of Abilene, and agreement to Contribute Funds for the above referenced project, reference by the date of January 26, 2023.
- PART 2:** That the sum of FIVE THOUSAND EIGHT HUNDRED SEVENTY EIGHT DOLLARS AND THIRTY CENTS (\$5,878.30), which represents the administration fee to TxDOT, is hereby appropriated and the City Manager is hereby authorized and directed to pay the sum indicated from the funds available in the budget accounts.
- PART 3:** This Resolution corrects and replaces Resolution 122-2022, dated July 28, 2022, and is effective as of July 28, 2022.

**ADOPTED** this 26<sup>th</sup> day of January, 2023.

ATTEST:

\_\_\_\_\_  
Shawna Atkinson, City Secretary

\_\_\_\_\_  
Anthony Williams, Mayor

APPROVED:

\_\_\_\_\_  
Stanley Smith, City Attorney

**RESOLUTION NO. 122-2022**

**RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE TEXAS DEPARTMENT OF TRANSPORTATION AND THE CITY OF ABILENE TO PARTICIPATE WITHIN THE INSTALLATION OF FLASHING YELLOW ARROW SIGNAL HEADS AND INTERCONNECTED SIGNAL SYSTEM ALONG S 14<sup>TH</sup> ST THROUGH THE HIGHWAY SAFETY IMPROVEMENT PROGRAM ADMINISTERED BY THE TEXAS DEPARTMENT OF TRANSPORTATION.**

WHEREAS, the Highway Safety Improvement Program (HSIP) is administered by the Texas Department of Transportation (the State) to achieve the goal of a significant reduction in fatalities and serious injuries on Texas roadways, including both onsystem and off-system roads.; and

WHEREAS, a project to install flashing yellow arrow signal heads and interconnected signal system along the corridor of South 14th Street, from US83/84 to Ross Avenue is included in the currently approved program of projects as authorized by Texas Transportation Commission Minute Order Number 116073. Dated August 21, 2021; and

WHEREAS, the usual fund participation ratio for projects on such program is 90 percent federal, 0 percent state and 10 percent Local Government. This safety project qualified for increased federal funding to 100 percent; and

WHEREAS, the estimated local match fund participation requirement on the approved HSIP project is \$0. However the City of Abilene will still be responsible for an administration fee to TxDOT of \$0, as well as any overages that may occur on the project.

\$5,878.30

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

**PART 1:** That the City of Abilene confirms its agreement with the State to secure all funding for the approved highway safety improvement project, that all requirements of TAC 43 will be implemented, and the City Manager, in consideration of the foregoing premises and the mutual benefits to be derived therefrom, is hereby authorized and directed to execute and attest on behalf of the City of Abilene, and agreement to Contribute Funds for the above referenced project, referenced by the date of July 28, 2022.

Five Thousand-Eight Hundred-Seventy-Eight Dollars and Thirty Cents

\$5,878.30

**PART 2:** That the sum of ~~Zero Dollars and Zero Cents (\$0.00)~~, which represents the administration fee to TxDOT, is hereby appropriated and the City Manager is hereby authorized and direct to pay the sum indicated from the funds available in the budget accounts.

**ADOPTED:** this 28<sup>th</sup> day of July, 2022.

**ATTEST:**

  
Shawna Atkinson, City Secretary

  
Anthony Williams, Mayor

**APPROVED:**

  
Stanley Smith, City Attorney





|                        |                                |               |           |                                                    |                                   |
|------------------------|--------------------------------|---------------|-----------|----------------------------------------------------|-----------------------------------|
| <b>TxDOT:</b>          |                                |               |           | <b>Federal Highway Administration:</b>             |                                   |
| <b>CSJ #</b>           | 0908-33-105                    |               |           | <b>CFDA No.</b>                                    | 20.205                            |
| <b>District #</b>      | Abilene - 08                   | <b>AFA ID</b> | Z00003546 | <b>CFDA Title</b>                                  | Highway Planning and Construction |
| <b>Code Chart 64 #</b> | 00150                          |               |           |                                                    |                                   |
| <b>Project Name</b>    | S 14 TH FYA ABILENE OFF SYSTEM |               |           | <i>AFA Not Used For Research &amp; Development</i> |                                   |

STATE OF TEXAS       §

COUNTY OF TRAVIS   §

**ADVANCE FUNDING AGREEMENT**  
**For**  
**Highway Safety Improvement Program**  
**Off-System**

**THIS AGREEMENT** (Agreement) is made by and between the State of Texas, acting by and through the **Texas Department of Transportation** called the "State", and the **City of Abilene, Texas**, acting by and through its duly authorized officials, called the "Local Government". The State and Local Government shall be collectively referred to as "the parties" hereinafter.

**WITNESSETH**

**WHEREAS**, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

**WHEREAS**, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

**WHEREAS**, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

**WHEREAS**, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

**WHEREAS**, the Texas Transportation Commission passed Minute Order Number **116073** authorizing the State to undertake and complete a highway improvement or other transportation project generally described as **Signal Improvements**. The portion of the project work covered by this Agreement is identified in the Agreement, Article 3, Scope of Work (Project), and

**WHEREAS**, the Governing Body of the Local Government has approved entering into this Agreement by resolution, ordinance, or commissioners court order dated **7/28/2022**, which is attached to and made a part of this Agreement as Attachment C, Resolution, Ordinance, or Commissioners Court Order (Attachment C). A map showing the Project location appears in Attachment A, Location Map Showing Project (Attachment A), which is attached to and made a part of this Agreement.

|                        |                                       |               |                  |                                                    |                                          |
|------------------------|---------------------------------------|---------------|------------------|----------------------------------------------------|------------------------------------------|
| <b>TxDOT:</b>          |                                       |               |                  | <b>Federal Highway Administration:</b>             |                                          |
| <b>CSJ #</b>           | <b>0908-33-105</b>                    |               |                  | <b>CFDA No.</b>                                    | <b>20.205</b>                            |
| <b>District #</b>      | <b>Abilene - 08</b>                   | <b>AFA ID</b> | <b>Z00003546</b> | <b>CFDA Title</b>                                  | <b>Highway Planning and Construction</b> |
| <b>Code Chart 64 #</b> | <b>00150</b>                          |               |                  |                                                    |                                          |
| <b>Project Name</b>    | <b>S 14 TH FYA ABILENE OFF SYSTEM</b> |               |                  | <b>AFA Not Used For Research &amp; Development</b> |                                          |

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this Agreement, it is agreed as follows:

## **AGREEMENT**

### **1. Responsible Parties:**

For the Project covered by this Agreement, the parties shall be responsible for the following work as stated in the article of the Agreement referenced in the table below:

|    |                  |                                         |            |
|----|------------------|-----------------------------------------|------------|
| 1  | N/A              | Utilities                               | Article 8  |
| 2. | N/A              | Environmental Assessment and Mitigation | Article 9  |
| 3. | Local Government | Architectural and Engineering Services  | Article 11 |
| 4. | State            | Construction Responsibilities           | Article 12 |
| 5. | N/A              | Right of Way and Real Property          | Article 14 |

### **2. Period of the Agreement**

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.

### **3. Scope of Work**

The scope of work for the Project consists of the Installation of Flashing Yellow Arrow (FYA) Signal Heads and Interconnected Signal System along the corridor of South 14<sup>th</sup> Street, from US83/84 to Ross Avenue.

### **4. Project Sources and Uses of Funds**

The total estimated cost of the Project is shown in Attachment B, Project Budget (Attachment B) which is attached to and made a part of this Agreement.

- A. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled "Local Government Project Procedures and Qualification for the Texas Department of Transportation" and retains qualification in accordance with applicable TxDOT procedures. Upon request, the Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

|                        |                                       |               |                  |                                                    |                                          |
|------------------------|---------------------------------------|---------------|------------------|----------------------------------------------------|------------------------------------------|
| <b>TxDOT:</b>          |                                       |               |                  | <b>Federal Highway Administration:</b>             |                                          |
| <b>CSJ #</b>           | <b>0908-33-105</b>                    |               |                  | <b>CFDA No.</b>                                    | <b>20.205</b>                            |
| <b>District #</b>      | <b>Abilene - 08</b>                   | <b>AFA ID</b> | <b>Z00003546</b> | <b>CFDA Title</b>                                  | <b>Highway Planning and Construction</b> |
| <b>Code Chart 64 #</b> | <b>00150</b>                          |               |                  |                                                    |                                          |
| <b>Project Name</b>    | <b>S 14 TH FYA ABILENE OFF SYSTEM</b> |               |                  | <b>AFA Not Used For Research &amp; Development</b> |                                          |

- B. The expected cash contributions from the federal government, the State, the Local Government, or other parties are shown in Attachment B. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission. For projects with federal funds, the State and the federal government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration (FHWA). After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- C. Attachment B shows, by major cost categories, the cost estimates and the party responsible for performing the work for each category. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- D. The State will be responsible for securing the federal and State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- E. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State and federal participation specified in Attachment B and for overruns in excess of the amount specified in Attachment B to be paid by the Local Government.
- F. The budget in Attachment B will clearly state all items subject to fixed price funding, specified percentage funding, and the periodic payment schedule, when periodic payments have been approved by the State.
- G. When the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State's written notification of additional funds being due.
- H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment B. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government's requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.
- I. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment B. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering performed or reviewed by the State for



|                        |                                       |               |                  |                                                    |                                          |
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- the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction cost.
- J. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
  - K. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.
  - L. The State will not pay interest on any funds provided by the Local Government.
  - M. If a waiver for the collection of indirect costs for a service project has been granted under 43 TAC §15.56, the State will not charge the Local Government for the indirect costs the State incurs on the Project, unless this Agreement is terminated at the request of the Local Government prior to completion of the Project.
  - N. If the Local Government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
  - O. Where the Local Government is authorized to perform services under this Agreement and be reimbursed by the State, the Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice, in a form and containing all items required by the State, no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
  - P. Upon completion of the Project, the State will perform a final accounting of the Project costs for all items of work with specified percentage funding. Any funds due by the Local Government, the State, or the federal government for these work items will be promptly paid by the owing party.
  - Q. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
  - R. Payment under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.

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## 5. Termination of This Agreement

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;
- B. The Agreement is terminated by one party because of a breach, in which case any costs incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or
- D. The Agreement is terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or a more thorough definition of the Local Government's proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination; or
- E. The Project is inactive for thirty-six (36) consecutive months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this Agreement.

## 6. Amendments

Amendments to this Agreement due to changes in the character of the work, terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

## 7. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

## 8. Utilities

The party named in Article 1, Responsible Parties, under AGREEMENT shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or State funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is commenced.

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**9. Environmental Assessment and Mitigation**

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects. The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. The identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- B. The cost of any environmental problem's mitigation and remediation.
- C. Providing any public meetings or public hearings required for the environmental assessment process. Public hearings will not be held prior to the approval of the Project schematic.
- D. The preparation of the NEPA documents required for the environmental clearance of this Project.

If the Local Government is responsible for the environmental assessment and mitigation, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

**10. Compliance with Accessibility Standards**

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

**11. Architectural and Engineering Services**

The party named in Article 1, Responsible Parties, under AGREEMENT has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable State's *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. For projects on the State highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the State highway system, the design shall, at a minimum, conform to applicable American Association of State Highway and Transportation Officials (AASHTO) design standards.

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the Project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters. If the Local Government is the responsible party, the Local Government shall submit its procurement selection process for prior approval by the State. All professional services contracts must be reviewed and approved by the State prior to execution by the Local Government.



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## 12. Construction Responsibilities

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. Advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- B. If the State is the responsible party, the State will use its approved contract letting and award procedures to let and award the construction contract.
- C. If the Local Government is the responsible party, the Local Government shall submit its contract letting and award procedures to the State for review and approval prior to letting.
- D. If the Local Government is the responsible party, the State must concur with the low bidder selection before the Local Government can enter into a contract with the vendor.
- E. If the Local Government is the responsible party, the State must review and approve change orders.
- F. Upon completion of the Project, the party responsible for constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion and submit certification(s) sealed by a professional engineer(s) licensed in the State of Texas.
- G. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

## 13. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the State highway system after completion of the work if the work was on the State highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

## 14. Right of Way and Real Property

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the provision and acquisition of any needed right of way or real property.

The Local Government shall be responsible for the following:

- A. Right of way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be



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- acceptable to the State before funds may be expended for the improvement of the right of way or real property.
- B. If the Local Government is the owner of any part of the Project site under this Agreement, the Local Government shall permit the State or its authorized representative access to occupy the site to perform all activities required to execute the work.
  - C. All parties to this Agreement will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.
  - D. The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
  - E. In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. The State will not reimburse the Local Government for any real property acquired before execution of this Agreement and the obligation of federal spending authority.
  - F. The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
  - G. The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with

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a copy of information or reports used in calculating all determined values. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.

- H. Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed eighty percent (80%) of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed eighty percent (80%) of the State's predetermined value of each parcel, or the net cost of the parcel, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to appraisers, expenses incurred in order to assure good title, and costs associated with the relocation of displaced persons and personal property as well as incidental expenses.
- I. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this Agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than 10 (ten) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. The separate agreement must be approved by the State prior to its execution. A copy of the executed agreement shall be provided to the State.

#### 15. Insurance

If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

#### 16. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

| <b>Local Government:</b>                                                           | <b>State:</b>                                                                                                                   |
|------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| City of Abilene<br>ATTN: Public Works Director<br>P.O. Box 60<br>Abilene, TX 79604 | Texas Department of Transportation<br>ATTN: Director of Contract Services<br>125 E. 11 <sup>th</sup> Street<br>Austin, TX 78701 |

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All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this Agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

**17. Legal Construction**

If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

**18. Responsibilities of the Parties**

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party, and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

**19. Ownership of Documents**

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data and information prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State, in the format directed by the State, on a monthly basis or as required by the State. The originals shall remain the property of the Local Government. .

**20. Compliance with Laws**

The parties to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

**21. Sole Agreement**

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

**22. Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the cost principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

**23. Procurement and Property Management Standards**

The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative



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Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government's procurement procedures for purchases to be eligible for state or federal funds.

#### **24. Inspection of Books and Records**

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

#### **25. Civil Rights Compliance**

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local

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Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
  2. cancelling, terminating, or suspending of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

## 26. Pertinent Non-Discrimination Authorities

During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the

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| <b>CSJ #</b>           | <b>0908-33-105</b>                    |               |                  | <b>CFDA No.</b>                                    | <b>20.205</b>                            |
| <b>District #</b>      | <b>Abilene - 08</b>                   | <b>AFA ID</b> | <b>Z00003546</b> | <b>CFDA Title</b>                                  | <b>Highway Planning and Construction</b> |
| <b>Code Chart 64 #</b> | <b>00150</b>                          |               |                  |                                                    |                                          |
| <b>Project Name</b>    | <b>S 14 TH FYA ABILENE OFF SYSTEM</b> |               |                  | <b>AFA Not Used For Research &amp; Development</b> |                                          |

- programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
  - I. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
  - J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
  - K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
  - L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

## 27. **Disadvantaged Business Enterprise (DBE) Program Requirements**

If federal funds are used:

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall incorporate into its contracts with subproviders an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall submit its proposed scope of services and quantity estimates to the State to allow the State to establish a DBE goal for each Local Government contract with a subprovider. The Local Government shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address [http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou\\_attachments.pdf](http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf).
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE



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| <b>TxDOT:</b>          |                                       |               |                  | <b>Federal Highway Administration:</b>             |                                          |
| <b>CSJ #</b>           | <b>0908-33-105</b>                    |               |                  | <b>CFDA No.</b>                                    | <b>20.205</b>                            |
| <b>District #</b>      | <b>Abilene - 08</b>                   | <b>AFA ID</b> | <b>Z00003546</b> | <b>CFDA Title</b>                                  | <b>Highway Planning and Construction</b> |
| <b>Code Chart 64 #</b> | <b>00150</b>                          |               |                  |                                                    |                                          |
| <b>Project Name</b>    | <b>S 14 TH FYA ABILENE OFF SYSTEM</b> |               |                  | <b>AFA Not Used For Research &amp; Development</b> |                                          |

program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.*

## 28. Debarment Certifications

If federal funds are used, the parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, the Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

## 29. Lobbying Certification

If federal funds are used, in executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the

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| <b>TxDOT:</b>          |                                |               |           | <b>Federal Highway Administration:</b>             |                                   |
| <b>CSJ #</b>           | 0908-33-105                    |               |           | <b>CFDA No.</b>                                    | 20.205                            |
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awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### 30. Federal Funding Accountability and Transparency Act Requirements

If federal funds are used, the following requirements apply:

- A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This Agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
  1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
  2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
  3. Report the total compensation and names of its top five executives to the State if:
    - i. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000; and
    - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

|                        |                                |               |           |                                                    |                                   |
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| <b>TxDOT:</b>          |                                |               |           | <b>Federal Highway Administration:</b>             |                                   |
| <b>CSJ #</b>           | 0908-33-105                    |               |           | <b>CFDA No.</b>                                    | 20.205                            |
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| <b>Code Chart 64 #</b> | 00150                          |               |           |                                                    |                                   |
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### 31. Single Audit Report

If federal funds are used:

- A. The parties shall comply with the single audit report requirements stipulated in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division by email at [singleaudits@txdot.gov](mailto:singleaudits@txdot.gov).
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as follows: "We did not meet the \$\_\_\_\_\_ expenditure threshold and therefore, are not required to have a single audit performed for FY \_\_\_\_\_."
- D. For each year the Project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the Agreement, unless otherwise amended or the Project has been formally closed out and no charges have been incurred within the current fiscal year.

|                        |                                       |               |                  |                                                    |                                          |
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| <b>TxDOT:</b>          |                                       |               |                  | <b>Federal Highway Administration:</b>             |                                          |
| <b>CSJ #</b>           | <b>0908-33-105</b>                    |               |                  | <b>CFDA No.</b>                                    | <b>20.205</b>                            |
| <b>District #</b>      | <b>Abilene - 08</b>                   | <b>AFA ID</b> | <b>Z00003546</b> | <b>CFDA Title</b>                                  | <b>Highway Planning and Construction</b> |
| <b>Code Chart 64 #</b> | <b>00150</b>                          |               |                  |                                                    |                                          |
| <b>Project Name</b>    | <b>S 14 TH FYA ABILENE OFF SYSTEM</b> |               |                  | <b>AFA Not Used For Research &amp; Development</b> |                                          |

### 32. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

Each party is signing this Agreement on the date stated under that party's signature.

#### THE STATE OF TEXAS

#### THE LOCAL GOVERNMENT

\_\_\_\_\_  
Signature

Kenneth Stewart  
Typed or Printed Name

Director of Contract Services  
Typed or Printed Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Robert Hanna  
Typed or Printed Name

City Manager  
Typed or Printed Title

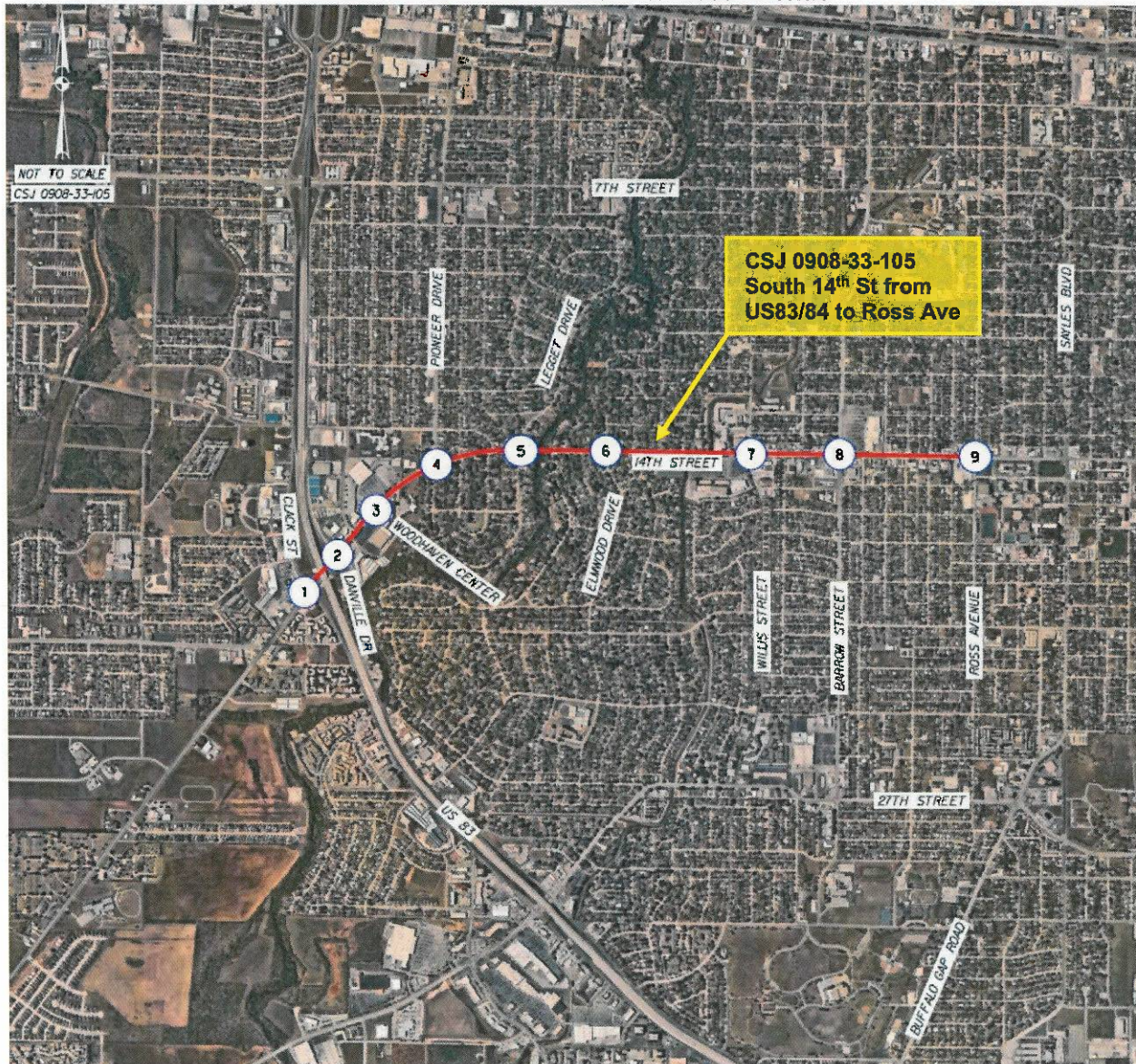
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Date



|                 |                                |        |           |                                         |                                   |
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| TxDOT:          |                                |        |           | Federal Highway Administration:         |                                   |
| CSJ #           | 0908-33-105                    |        |           | CFDA No.                                | 20.205                            |
| District #      | Abilene - 08                   | AFA ID | Z00003546 | CFDA Title                              | Highway Planning and Construction |
| Code Chart 64 # | 00150                          |        |           |                                         |                                   |
| Project Name    | S 14 TH FYA ABILENE OFF SYSTEM |        |           | AFA Not Used For Research & Development |                                   |

## ATTACHMENT A LOCATION MAP SHOWING PROJECT

South 14<sup>th</sup> St from US83/84 to Ross Avenue



- PROJECT CORRIDOR AND INTERSECTIONS
- 1) 14TH STREET AT CLACK STREET (US 83 SB)
  - 2) 14TH STREET AT DANVILLE DRIVE (US 83 NB)
  - 3) 14TH STREET AT WOODHAVEN CENTER DRIVEWAY
  - 4) 14TH STREET AT PIONEER DRIVE
  - 5) 14TH STREET AT LEGGETT DRIVE
  - 6) 14TH STREET AT ELMWOOD DRIVE
  - 7) 14TH STREET AT WILLIS STREET
  - 8) 14TH STREET AT BARROW STREET
  - 9) 14TH STREET AT ROSS AVENUE



|                        |                                |               |           |                                                    |                                   |
|------------------------|--------------------------------|---------------|-----------|----------------------------------------------------|-----------------------------------|
| <b>TxDOT:</b>          |                                |               |           | <b>Federal Highway Administration:</b>             |                                   |
| <b>CSJ #</b>           | 0908-33-105                    |               |           | <b>CFDA No.</b>                                    | 20.205                            |
| <b>District #</b>      | Abilene - 08                   | <b>AFA ID</b> | Z00003546 | <b>CFDA Title</b>                                  | Highway Planning and Construction |
| <b>Code Chart 64 #</b> | 00150                          |               |           |                                                    |                                   |
| <b>Project Name</b>    | S 14 TH FYA ABILENE OFF SYSTEM |               |           | <i>AFA Not Used For Research &amp; Development</i> |                                   |

## ATTACHMENT B PROJECT BUDGET

Costs will be allocated based on 100% Federal funding and 0% Local Government funding until the federal funding reaches the maximum obligated amount. The Local Government will then be responsible for 100% of the costs.

| Description                       | Total Estimated Cost | Federal Participation |                 | State Participation |                  | Local Participation |                    |
|-----------------------------------|----------------------|-----------------------|-----------------|---------------------|------------------|---------------------|--------------------|
|                                   |                      | %                     | Cost            | %                   | Cost             | %                   | Cost               |
| Engineering (by Local Government) | \$15,645             | 0%                    | \$0             | 0%                  | \$0              | 100%                | \$15,645           |
| Construction (by State)           | \$83,856             | 100%                  | \$83,856        | 0%                  | \$0              | 0%                  | \$0                |
| <b>Subtotal</b>                   | <b>\$100,501</b>     |                       | <b>\$83,856</b> |                     | <b>\$0</b>       |                     | <b>\$15,645</b>    |
| Environmental Direct State Costs  | \$734.78             | 0%                    | \$0             | 0%                  | \$0              | 100%                | \$734.78           |
| Right of Way Direct State Costs   | \$734.79             | 0%                    | \$0             | 0%                  | \$0              | 100%                | \$734.79           |
| Engineering Direct State Costs    | \$734.79             | 0%                    | \$0             | 0%                  | \$0              | 100%                | \$734.79           |
| Utility Direct State Costs        | \$734.79             | 0%                    | \$0             | 0%                  | \$0              | 100%                | \$734.79           |
| Construction Direct State Costs   | \$2939.15            | 0%                    | \$0             | 0%                  | \$0              | 100%                | \$2939.15          |
| Indirect State Costs              | \$3790.29            | 0%                    | \$0             | 100%                | \$3790.29        | 0%                  | \$0                |
| <b>TOTAL</b>                      | <b>\$109,169.59</b>  |                       | <b>\$83,856</b> |                     | <b>\$3790.29</b> |                     | <b>\$21,523.30</b> |

Initial payment by the Local Government to the State: \$2,939.15

Payment by the Local Government to the State before construction: \$2,939.15

Estimated total payment by the Local Government to the State \$5,878.30

This is an estimate. The final amount of Local Government participation will be based on actual costs.



**Agenda Item:**  
**Adjustment to Approved Resolution**  
**No 122-2022 signed July 28, 2022**

*(Max Johnson)*





# Adjustment to Approved Resolution No 122-2022 signed July 28, 2022

- Resolution No. 122-2022 approved July 28, 2022
- Original TxDOT information funded entire project with \$0 contribution from City
- Following final review by TxDOT found discrepancy in funding
- City contribution corrected to \$5,878.30 in resolution and AFA to TxDOT
- Staff recommends approval of City's contribution to project





# Questions?





**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2023**

**TO: Robert Hanna, City Manager**

**FROM: Lesli Andrews, Director**

**SUBJECT: 13. Resolution: Receive a Report, Hold a Discussion and Take Action on Authorizing the City Manager to enter into an Agreement with Sports Facilities Companies for the Management of Aquatics for the City of Abilene (*Lesli Andrews*)**

---

**GENERAL INFORMATION**

The City of Abilene recognizes the need for management of aquatics facilities, including Adventure Cove and splash pads in the City of Abilene. On October 2022, the City of Abilene issued a Request for Proposals for the purpose of managing Adventure Cove and five splash pads. Three companies submitted proposals and were evaluated by a committee of five. The primary objective of the proposal is to operate Adventure Cove for the duration of the season. Manage and maintain, to date, five (with a sixth coming in 2023) splash pads located throughout the City.

Sports Facilities Companies (SFC) was selected and staff started negotiations. The proposed management fee for 2023 is \$222,000 and they believe they can manage Adventure Cove within the currently approved budget.

**SPECIAL CONSIDERATIONS**

**FUNDING/FISCAL IMPACT**

The 2023 Sports Facilities Companies management fee will be funded by the FY23 General Fund.

**STAFF RECOMMENDATION**

Staff recommends approval; authorizing the City Manager to enter into an agreement with Sports Facilities Companies for the Management of Aquatics for the City of Abilene.

### **BOARD OR COMMISSION RECOMMENDATION**

The Parks and Recreation Board approved the recommendation authorizing the City Manager to enter into an agreement with Sports Facilities Companies for the Management of Aquatics for the City of Abilene at their January 17, 2023 meeting.

### **ATTACHMENTS:**

1. 1\_26\_23 Resolution Management of Aquatics Facilities
2. SFM Facility Management Agreement Abilene Texas final
3. Abilene, TX\_Aquatics ManagementFinal Presentation

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS TO ENTER INTO A CONTRACT WITH SPORTS FACILITY COMPANIES FOR THE MANAGEMENT OF ADVENTURE COVE AND SPLASH PAD FACILITIES.**

**WHEREAS**, the City Council of the City of Abilene recognizes the need for management of aquatics facilities including Adventure Cove and splash pads in the City of Abilene; and

**WHEREAS**, in October 2022, the City of Abilene issued a Request for Proposals for the purpose of managing Adventure Cove and five splash pads; and

**WHEREAS**, three companies submitted proposals and were evaluated by a committee of five; and

**WHEREAS**, Sports Facility Companies was selected; and

**WHEREAS**, the primary objective of the proposal is to operate Adventure Cove for the duration of the season. Manage and maintain, to date, five (with a sixth coming in 2023) splash pads located throughout the City; and

**WHEREAS**, the Parks and Recreation Board approved the proposal on January 17, 2023;

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

**Part 1:** The City Manager is hereby authorized to enter into a contract with Sports Facility Companies for management of Adventure Cove and splash pads.

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

**ADOPTED this 26th day of January, 2023.**

ATTEST:

\_\_\_\_\_  
Shawna Atkinson, City Secretary

\_\_\_\_\_  
Anthony Williams, Mayor

APPROVED:

\_\_\_\_\_  
Stanley Smith, City Attorney



**FACILITIES MANAGEMENT AGREEMENT**

**between**

**CITY OF ABILENE**

**and**

**SPORTS FACILITIES MANAGEMENT, LLC**

Dated: January 26, 2023

## **FACILITIES MANAGEMENT AGREEMENT**

THIS FACILITIES MANAGEMENT AGREEMENT (the "Agreement") is made and entered into this 26th day of January, 2023 (the "Effective Date"), by and between the City of Abilene, a Texas municipality (referred to herein collectively as the "Owner") and Sports Facilities Management, LLC, a Florida limited liability company (the "Manager").

### **RECITALS**

WHEREAS, Owner owns the infrastructure, buildings, parking, lighting, and all other hard assets associated with the athletic complex as the same exist now or may exist in the future including improvements related thereto specifically located at aquatic center located at 2742 South 9th Street and the five (5) splash pads located at 2070 Zoo Lane, at 3125 South 32nd Street, at 5402 Hartford Street, at 2250 Ambler Avenue, 441 East North 7th Street, all in Abilene, Texas, as the same exist now or may exist in the future, known as the "Adventure Cove Aquatic Center", "Nelson Splash", "Redbud Splash", "Scarborough Splash", "Sears Splash", "Stevenson Splash" or any other name that the facilities may be identified as in the future (hereinafter collectively referred to as the "Facility");

WHEREAS, Manager has expertise in providing management services for athletic complex facilities throughout the United States;

WHEREAS, Owner and Manager desire for Sports Facilities Management, LLC to open, operate, and manage the Facility subject to the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the promises and covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner and Manager agree as follows:

### **ARTICLE 1 DEFINITIONS**

1.1. **Definitions.** For purposes of this Agreement, the following terms have the meanings referred to in this Section:

**Affiliate:** A person or company that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person or company.

**Agreement:** The "Agreement" shall mean this Management Agreement, together with all exhibits attached hereto (each of which are incorporated herein as an integral part of this Agreement), as amended, supplemented or restated from time to time.

**Capital Expenditures:** All expenditures for building additions, alterations, repairs or improvements and for purchases of additional or replacement furniture, machinery, or equipment, where the cost of such expenditure is greater than Five Thousand Dollars (\$5,000) and the depreciable life of the applicable item is, according to generally accepted accounting principles, in excess of five (5) years.

**Commencement Date:** shall have the meaning given to such term in Section 4.1 below.

**Commercial Rights:** Pouring rights, advertising, sponsorships, the branding of food and beverage products for resale and memorial gifts at or with respect to the Facilities.

**Early Termination Fee:** The term "Early Termination Fee" shall have the meaning ascribed to such term in Section 4.3(a) of this Agreement.

**Effective Date:** "Effective Date" shall have the meaning ascribed to such term in the preamble of this Agreement.

**Emergency Repair:** The repair of a condition which, if not performed immediately, creates an imminent danger to persons or property and/or an unsafe condition at the Facility threatening persons or property.

**Event of Force Majeure:** An act of God, fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, terrorist threat, storm, washout, wind, lightning, landslide, explosion, epidemic, inability to obtain materials or supplies, accident to machinery or equipment, any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities or war, a labor dispute which results in a strike or work stoppage affecting the Facility or services described in this Agreement, or any other cause or occurrence outside the reasonable control of the party claiming an inability to perform and which by the exercise of due diligence could not be reasonably prevented or overcome.

**Existing Contracts:** Service Contracts, Revenue Generating Contracts, and other agreements relating to the day-to-day operation of the Facilities existing as of the Effective Date.

**Facility:** The "Facility" shall have the meaning ascribed to such term in the Recitals to this Agreement.

**FF&E:** Furniture, fixtures and equipment to be procured for use at the Facilities.

**General Manager:** The employee of Manager acting as the full-time on-site general manager of the Facilities.

**Laws:** Means all applicable laws, statutes, rules, regulations and ordinances.

**Manager:** The term "Manager" shall have the meaning ascribed to such term in the Recitals to this Agreement.

**Operating Account:** A separate interest-bearing account in the name of the Manager's special purpose entity, ACA SFM, LLC or other affiliated entity, at a licensed bank, where Revenue is deposited and from which Operating Expenses are paid.

**Operating Budget:** A line-item budget for the Facility that includes a projection of Revenues and Operating Expenses, presented on a monthly and annual basis.

**Operating Expenses:** All expenses incurred by Manager in connection with its operation, promotion, maintenance and management of the Facilities, including but not limited to the following:

(i) employee payroll, bonuses and benefits (including payments to any national benefit system, relocation costs, termination costs (including severance costs and payments in lieu of termination), and

related costs, (ii) cost of operating supplies, including general office supplies, (iii) advertising, marketing, group sales, and public relations costs, (iv) cleaning expenses, (v) data processing costs, (vi) dues, subscriptions and membership costs, (vii) the Fixed Management Fee, (viii) printing and stationary costs, (ix) postage and freight costs, (x) equipment rental costs, (xi) minor repairs, maintenance, and equipment servicing, not including expenses relating to performing capital improvements or repairs, (xii) security expenses, (xiii) telephone and communication charges, (xiv) travel and entertainment expenses of Manager employees, (xv) cost of employee uniforms and identification, (xvi) exterminator and trash removal costs, if applicable (xvii) computer, software, hardware and training costs, (xviii) parking expenses, (xix) utility expenses, (xx) office expenses, (xxi) audit and accounting fees, (xxii) legal fees, (xxiii) all bond and insurance costs, including but not limited to personal property, general liability, professional liability and worker's compensation insurance, (xxiv) commissions and all other fees payable to third parties (*e.g.* commissions relating to food, beverage and merchandise concessions services and commercial rights sales), (xxv) cost of complying with any Laws, (xxvi) costs incurred by Manager to settle or defend any claims asserted against Manager arising out of its operations at the Facilities on behalf of Owner; (xxvii) loss, costs, damage, liability and any other obligations arising under or incurred under Service Contracts and other agreements relating to Facility operations, and (xxviii) Taxes. The term "Operating Expenses" does not include any debt service on the Facility, Capital Expenditures or any Incentive Fees (all of which shall be the responsibility of the Owner).

**Operating Year:** Each twelve (12) month period during the Term, commencing on January 1 and ending on December 31, provided that the first Operating Year shall be a shortened year commencing on the Commencement Date and ending on December 31<sup>st</sup> of that year and the last Operating Year shall be a shortened year, ending upon the expiration of this Agreement.

**Operations Manual:** The document has been developed by Manager, which shall contain terms regarding the management and operation of the Facility including detailed policies and procedures to be implemented in operating the Facility, as agreed upon by both the Owner and the Manager.

**Owner:** The term "Owner" shall have the meaning ascribed to such term in the Recitals to this Agreement.

**Payroll Account:** A separate account in the name of Manager at a licensed bank through which all Facility staff and other personnel employed by Manager (including related payroll taxes), or engaged by Manager as an independent contractor, are paid.

**Recruitment Fee:** The term "Recruitment Fee" shall have the meaning ascribed to such term in Section 6.4 of this Agreement.

**Regulatory Approvals:** All applicable governmental or regulatory approvals, authorizations, consents, licenses or permits.

**Revenue:** All revenues generated by Manager's operation of the Facility, including but not limited to event ticket proceeds income, rental and license fee income, merchandise income, gross food and beverage income, gross income from any sale of Commercial Rights, gross service income, equipment rental fees, box office income, and miscellaneous operating income, but shall not include event ticket proceeds held by Manager in trust for a third party and paid to such third party.

**Revenue Generating Contracts:** Vendor, concessions and merchandising agreements, user/rental agreements, booking commitments, licenses, and all other contracts or agreements generating revenue for the

Facility and entered into in the ordinary course of operating the Facility.

**Service Contracts:** Agreements for services to be provided in connection with the operation of the Facility, including without limitation agreements for consulting services, ticketing, web development and maintenance, computer support services, FF&E purchasing services, engineering services, electricity, steam, gas, fuel, general maintenance, HVAC maintenance, telephone, staffing personnel including guards, ushers and ticket-takers, extermination, elevators, stage equipment, fire control panel and other safety equipment, snow removal and other services which are deemed by Manager to be either necessary or useful in operating the Facility.

**Taxes:** Any and all governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of, (i) activities conducted on behalf of the Owner at the Facility, including without limitation the sale of concessions, the sale of tickets, and the performance of events (such as any applicable sales and/or admissions taxes, use taxes, excise taxes, occupancy taxes, employment taxes, and withholding taxes), or (ii) any payments received from any holders of a leasehold interest or license in or to the Facility, from any guests, or from any others using or occupying all or any part of the Facility.

**Term:** The term "Term" shall have the meaning ascribed to such term in Section 4.1 of this Agreement.

## **ARTICLE 2 SCOPE OF SERVICES**

### **2.1    Engagement.**

(a) Owner hereby engages Manager during the Term to act as the sole and exclusive manager and operator of the Facility, subject to and as more fully described in this Agreement, and, in connection therewith, to perform the services described herein and in Exhibits A and B attached hereto.

(b) Manager hereby accepts such engagement, and shall perform the services described herein, subject to the limitations expressly set forth in this Agreement.

**2.2    Limitations on Manager's Duties.** Manager's obligations under this Agreement are contingent upon and subject to the Owner making available, in a timely fashion, the funds budgeted for and/or reasonably required by Manager to carry out such obligations during the Term. Manager shall not be considered to be in breach or default of this Agreement and shall have no liability to the Owner or any other party, in the event Manager does not perform any of its obligations hereunder due to failure by the Owner to timely provide such funds.

## **ARTICLE 3 COMPENSATION**

**3.1    Management Fees.** In consideration of Manager's performance of its services hereunder, Owner shall pay Manager those payments as further set forth in Exhibit B attached hereto.

#### **ARTICLE 4**

#### **TERM; TERMINATION**

4.1 **Term.** The term of this Agreement (the "Term") shall begin on the Effective Date and, unless sooner terminated pursuant to the provisions of Section 4.2 below, shall expire on the fifth (5th) anniversary of the Effective Date. The Agreement shall renew, however, for additional five (5) year periods (each a "Renewal Term") unless either party gives the other party notice of its intention not to renew at least One Hundred Eighty (180) days prior to the expiration of the Term or any Renewal Term.

4.2 **Early Termination.** This Agreement may be terminated by Owner or Manager, with or without cause, at any time by providing the other party with written notice on or before the date such terminating party wishes to terminate this Agreement (the "Termination Date").

(a) For Owner's Convenience: Owner shall have the right to terminate this Agreement for any reason or no reason subject to section 4.3 below.

(b) For Manager's Convenience: Manager shall have the right to terminate this Agreement for any reason or no reason upon twelve (12) months' notice to Owner.

(c) For Cause by Owner: Owner shall have the right to terminate this Agreement for Cause at any time. Upon termination by Owner for cause, Manager shall promptly vacate the Facility and no Early Termination Fee or other compensation, damages or lost profits related to early termination shall be due or payable to Manager. Cause for termination shall include, but not be limited to, Manager's failure to cure the breach of any material provision in this Agreement within twenty (20) days after receipt of written notice to cure from Owner detailing that breach; except that in the event that a cure is not objectively possible within twenty (20) days after that notice, Owner shall not be entitled to terminate for cause where Manager shall commence to cure the noticed breach as fully as possible within that twenty (20) day period and thereafter diligently and continuously pursue that cure to a successful completion within sixty (60) days after that notice.

(d) For Cause by Manager: Manager shall have the right to terminate this Agreement for Cause at any time. Upon termination for cause by Manager shall be contingent upon Manager promptly vacating the Facility and taking nothing of value from Owner without owner's written permission. Manager expressly waives any possessory lien rights or right of set-off it might have against any of Owner's property or assets. Cause for termination shall include, but not be limited to, Owner's (i) repeated failure to timely pay into the Operating Account budgeted Owner contributions; (ii) Owner's failure to cure the breach of any material provision in this Agreement within twenty (20) days after receipt of written notice to cure from Manager detailing that breach; except that in the event that a cure is not objectively possible within twenty (20) days after that notice, Manager shall not be entitled to terminate for cause where Owner shall commence to cure the noticed breach as fully as possible within that twenty (20) day period and thereafter diligently and continuously pursue that cure to a successful completion within sixty (60) days after that notice.

4.3 **Effect of Early Termination.**

(a) Upon termination by the Owner for any reason other than for "cause" due to Manager's breach of any material provision herein, without cure by Manager following written notice from Owner



detailing such breach of this Agreement, Owner shall pay to Manager a termination fee (the "Early Termination Fee") on the Termination Date that is equal to (a) the greater of: (i) the trailing twelve (12) months' fees due to Manager hereunder or (ii) twelve (12) times the average monthly payment due to Manager during the Term; plus (b) any bonus or incentive payments that the Manager has earned through the Termination Date; plus (c) twelve (12) months' salary for all full-time employees of Manager that have been employed pursuant to the terms of this Agreement; plus (d) any severance payments and/or relocation expenses which are incurred by Manager related to the Manager's terminating or relocating full-time employees that have been assigned to the Facility. In the event that Owner terminates this Agreement, Owner shall have the right to request that Manager vacate the property and cease all management activities related to the Facility, in which case Owner shall pay Manager the Termination Fee as set forth above.

(b) Upon termination or expiration of this Agreement for any reason, (i) Manager shall promptly discontinue the performance of all services hereunder, (ii) the Owner shall promptly pay Manager all fees due Manager up to the date of termination or expiration (subject to proration if the Term ends other than at the end of the Operating Year), (iii) Manager shall make available to the Owner all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Facilities as may have been accumulated by Manager in performing its obligations hereunder, whether completed or in process, and (iv) without any further action on part of Manager or Owner, the Owner shall, or shall cause the successor Facility manager to, assume all obligations arising after the date of such termination or expiration, under any Service Contracts, Revenue Generating Contracts, booking commitments and any other Facility agreements entered into by Manager in furtherance of its duties hereunder. Notwithstanding the foregoing, Manager is under no duty to provide certain proprietary confidential materials or intellectual property to the Owner, including but not limited to national benchmarking formulas, key performance indicators reports, employee manuals, employee training materials, employee performance evaluations, financial forecasting formulas, Manager's internal databases or contact lists, Manager's operations manuals, and/or other intellectual property developed by and maintained by the Manager and which it may use in its regular course of business to provide services to clients similar to Owner. Any obligations of the parties that are specifically intended to survive expiration or termination of this Agreement shall survive expiration or termination hereof.

## **ARTICLE 5**

### **OWNERSHIP; USE OF THE FACILITY**

5.1 **Ownership of Facility, Data, Equipment and Materials.** The Owner will at all times retain ownership of the Facilities, including but not limited to real estate, technical equipment, furniture, displays, fixtures and similar property, including improvements made during the Term, at the Facility. Any data, equipment or materials furnished by Owner to Manager or acquired by Manager as an Operating Expense shall remain the property of Owner and shall be returned to Owner when no longer needed by Manager to perform under this Agreement. Notwithstanding the above, Owner shall not have the right to use any third-party software licensed by Manager for general use by Manager at the Facility and other facilities managed by Manager, the licensing fee for which is proportionately allocated and charged to the Facility as an Operating Expense; such software may be retained by Manager upon expiration or termination hereof. Furthermore, Owner recognizes that the Operations Manual to be developed and used by Manager hereunder is proprietary to Manager and shall belong to Manager at the end of the Term; Owner shall not use or maintain copies thereof upon the end of the Term.

5.2 **Right of Use by Manager.** The Owner hereby gives Manager the right and license to use the Facility for the Term, and Manager accepts such right of use, for the purpose of performing the services herein specified, including the operation and maintenance of all physical and mechanical facilities necessary for, and related to, the operation, maintenance and management of the Facility. The Owner shall provide Manager with a sufficient amount of suitable office space in the Facility (exact office space to be mutually agreed by the parties) and with such office equipment as is reasonably necessary to enable Manager to perform its obligations under this Agreement. In addition, the Owner shall make available to Manager, at no cost, parking spaces adjacent to the Facility for all of Manager's full-time employees and for the Facility's event staff.

5.3 **Right of Use of Staff by Manager.** Manager shall have the right to utilize its employees as needed to support manager's organization as a whole, including but not limited to travel for training and temporary staffing coverage. Manager shall have the right to utilize the Facility to host events for its employees from time to time for the purpose of learning and development, at no cost to the operational budget other than that incurred by the staff who are regularly stationed at the Facility.

5.4 **Observance of Agreements.** The Owner agrees to pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any leases, bonds, debentures, loans and other financing and security agreements to which the Owner is bound in connection with its ownership of the Facility.

## **ARTICLE 6 PERSONNEL**

6.1 **Generally.** All Facility staff and other personnel shall be engaged or hired by Manager in its sole discretion, except that Owner shall preapprove the employment of the General Manager, and shall be employees, agents or independent contractors of Manager, and not of the Owner. Manager shall select employees, in its sole discretion but subject to Owner's right to approve the Operating Budget. The Operating Budget shall define the number, function, qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment (including without limitation termination thereof) relating to such employees. Manager agrees to use reasonable and prudent judgment in the selection and supervision of such personnel. Owner specifically agrees that Manager shall be entitled to pay its employees, as an Operating Expense, bonuses and benefits in accordance with Manager's then current employee manual, which may be modified by Manager from time to time in its sole discretion. A copy of Manager's current employee manual and any Facility-specific employee manual supplement shall be provided to Owner.

6.2 **General Manager.** Personnel engaged by Manager will include a full-time on-site General Manager. Hiring of the General Manager by Manager requires the prior approval of the Owner, which approval shall not be unreasonably withheld or delayed; provided, however, in the event of a vacancy in the General Manager position, Manager may, upon notice to the Owner, temporarily fill such position with an interim General Manager for up to one hundred eighty (180) days without the necessity of obtaining the Owner's approval. The General Manager will have general supervisory responsibility for Manager and will be responsible for day-to-day operations of the Facility, supervision of employees, and management and coordination of all activities associated with events taking place at the Facility.

6.3 **Work Environment.** Employees will be required to work to the standards outlined in the most current version of Manager's employee handbook. Owner shall not require employees of Manager to vary from those employment standards either directly, or indirectly through impacting decisions, including but not limited to not funding the correct staffing level, not providing safe work tools and a safe work environment, or an environment inconsistent with Manager's values.

6.4 **Post-Termination Employment.** In the event of termination, or in any case where Owner, and/or its affiliated agencies or entities, expresses an interest in hiring Manager's employee(s), Manager shall reserve the right to agree or deny such a request. In the event that Manager elects to permit Owner to hire Manager's employee(s), Owner shall provide the Manager with a one-time fee (the "Recruitment Fee") equal to six (6) months' gross salary and benefits. In any of these events described, the Manager's employee would not retain the Manager's intellectual material in any future employment.

## **ARTICLE 7 PROCEDURE FOR HANDLING INCOME**

7.1 **Operating Account.** Except as otherwise agreed to by the parties in writing all Revenue derived from operation of the Facility shall be deposited by Manager into the Operating Account as soon as practicable upon receipt (but not less often than once each business day). The specific procedures (and authorized individuals) for making deposits to and withdrawals from such account shall be set forth in the Operations Manual, but the parties specifically agree that Manager shall have authority to sign checks and make withdrawals from such account, subject to the limitation contained in this Agreement, without needing to obtain the co-signature of an Owner employee or representative. The Owner will have access and visibility to all accounts owned by the Facility and or Manager that are established for the sole purpose of operating the Facility.

## **ARTICLE 8 FUNDING**

8.1 **Source of Funding.** Manager shall pay all items of expense for the operation, maintenance, supervision and management of the Facility from the funds in the Operating Account, which Manager may access periodically for this purpose. The Operating Account shall be funded with amounts generated by operation of the Facility (as described in Article 7 above), or otherwise made available by the Owner. To ensure sufficient funds are available in the Operating Account, Owner will deposit in the Operating Account, on or before the Effective Date, the budgeted or otherwise approved expenses for the quarter (three-month period) beginning on the Effective Date. The Owner shall thereafter, on or before the first (1<sup>st</sup>) day of each succeeding quarter following the Effective Date, deposit (or allow to remain) in the Operating Account the budgeted or otherwise approved expenses for each such quarter. Manager shall have no liability to the Owner or any third party in the event Manager is unable to perform its obligations hereunder, or under any third-party contract entered into pursuant to the terms hereof, due to the fact that sufficient funds are not made available to Manager to pay such expenses in a timely manner.

8.2 **Advancement of Funds.** Under no circumstances shall Manager be required to pay for or advance any of its own funds to pay for any Operating Expenses. In the event that, notwithstanding the foregoing, Manager agrees to advance its own funds to pay Operating Expenses, Owner shall promptly reimburse Manager for the full amount of such advanced funds, plus interest at a rate to be mutually agreed upon. Owner will also fund an amount to be included in the budget, that will be accounted for as Owner's asset, to be used as operating funds and working capital. The "working capital" will be the baseline account balance for the Operating Account and Owner will contribute funds as needed to maintain that minimum of amount in the Operating Account.

**ARTICLE 9**  
**FACILITY CONTRACTS; TRANSACTIONS WITH AFFILIATES**

9.1 **Existing Contracts.** The Owner shall provide to Manager, on or before the Effective Date, full and complete copies of all Existing Contracts. Manager shall administer and use reasonable commercial efforts to assure compliance with such Existing Contracts to the extent provided to Manager.

9.2 **Execution of Contracts.** Manager shall have the right to enter into Service Contracts, Revenue Generating Contracts and other contracts related to the operation of the Facility, as agent on behalf of the Owner. Any such material agreements shall contain standard indemnification and insurance obligations on the part of each vendor, licensee or service provider, as is customary for the type of services or obligations being provided or performed by such parties.

9.3 **Transactions with Affiliates.** In connection with its obligations hereunder relating to the purchase or procurement of services for the Facility (including without limitation food and beverage services, ticketing services and Commercial Rights sales), Manager may purchase or procure such services, or otherwise transact business with, an Affiliate of Manager, provided that the prices charged and services rendered by such Affiliate are competitive with those obtainable from any unrelated parties rendering comparable services. Manager shall, if requested by Owner, provide reasonable evidence establishing the competitive nature of such prices and services, including if appropriate, competitive bids from other persons seeking to render such services at the Facility.

**ARTICLE 10**  
**AGREEMENT MONITORING AND GENERAL MANAGER**

10.1 **Contract Administrator.** Each party shall appoint a contract administrator who shall monitor such party's compliance with the terms of this Agreement. Manager's contract administrator shall be its General Manager at the Facility, unless Manager notifies Owner of a substitute contract administrator in writing. Owner shall notify Manager of the name of its contract administrator within thirty (30) days of execution hereof. Any and all references in this Agreement requiring Manager or Owner participation or approval shall mean the participation or approval of such party's contract administrator.

**ARTICLE 11**  
**INSURANCE**

11.1 **Types of Coverage; Certificates of Insurance.** Manager and Owner agree to obtain insurance coverage in the following manner and amount. Owner and Manager shall within 30 days after the Effective Date furnish to the other party certificates of all of the insurance as well as certificates of renewal no later than ten (10) days prior to the expiration of each policy. Such insurance policies (as reflected by current certificates) held by Manager shall provide that the Additional Insureds are listed as additionally named insureds on the policies. Manager will provide reasonable notice to Owner upon receipt of any intention by Insurer to cancel, not renew or make any adverse change in coverage. All certificates, cancellation, nonrenewal or adverse change notices shall be mailed to the respective addresses listed in the definition of Additional Insured, or at such other address as an Additional Insured shall give Manager written notice. New Certificates of Insurance are to be provided to the Additional Insureds at least 15 days after coverage renewals. If requested by the Owner, Manager shall furnish complete copies of insurance policies, forms and endorsements. Owner's self-insurance and/or intergovernmental risk pool coverage shall satisfy in full Owner's obligations herein.

11.2 **Owner's Policies.** Owner shall be responsible for obtaining and administering insurance in connection with the Facility as follows:

(a) **Property Insurance.** Owner shall also procure and maintain fire and extended coverage casualty insurance, and (if appropriate) flood insurance, regarding the Facility in amounts and with companies acceptable to Owner in its sole discretion.

(b) **Commercial General Liability.** Owner shall procure and maintain, at the Owner's sole expense, a Commercial General Liability policy with a combined single limit of \$1,000,000 per occurrence and a general annual aggregate limit of \$3,000,000. All such insurance shall be on an "occurrence" basis.

11.3 **Manager's Policies.** Manager shall be responsible for obtaining and administering insurance in connection with the Facility as follows:

(a) **General Liability.** Manager shall procure and maintain as a Facility Operating Expense a general liability policy (including contractual liability insurance, including an umbrella policy, and including hired, non-owned auto coverage, and abuse and molestation coverage) which insures Manager and which includes Owner as an additional named insured, with a general liability policy (including contractual liability insurance) with a combined single limit of \$1,000,000 per occurrence and a general annual aggregate limit of \$3,000,000. All such insurance shall be on an occurrence basis.

(b) **Professional Liability.** Manager shall procure and maintain, as a Facility Operating Expense, a professional liability policy,

(c) **Workers Compensation.** Manager shall procure and maintain as a Facility Operating Expense worker's compensation insurance required under applicable Texas state law.

## **ARTICLE 12 COVENANTS AND REPRESENTATIONS**

12.1 **Owner's Covenants and Representations.** Owner makes the following covenants and representations to Manager, which covenants, and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

(a) **Owner's Status.** Owner is a municipal government duly organized, validly existing, and in good standing under the laws of the state of Texas with full power and authority to enter into this Agreement and execute all documents required hereunder.

(b) **Authorization.** The making, execution, delivery, and performance of this Agreement by Owner has been duly authorized and approved by requisite action and this Agreement has been duly executed and delivered by Owner and constitutes a valid and binding obligation of Owner, enforceable in accordance with its terms and applicable laws.

(c) **Effect of Agreement.** To Owner's best knowledge, without duty of inquiry, neither the execution and delivery of this Agreement by Owner nor Owner's performance of any obligation hereunder: (i) will constitute a violation of any law, ruling, regulation, or order to which Owner is subject; or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under

any other agreement or document (A) to which Owner is a party or is otherwise bound, or (B) to which the Facility or any part thereof is subject.

(d) Ownership Rights. Owner shall obtain and retain the property interests in the Facility necessary to enable Manager to perform its duties pursuant to this Agreement peaceably and quietly. Owner represents and warrants that Manager's performance of the services required by this Agreement shall not violate the property rights or interests of any other Person.

(e) Documentation. If necessary to carry out the intent of this Agreement, Owner agrees to execute and provide to Manager, on or after the Effective Date, any and all other instruments, documents, conveyances, assignments, and agreements which Manager may reasonably request in connection with the operation of the Facility.

(f) Qualified Management Agreement. Any management agreement entered into with respect to the Facility intends to comply with the guidelines set forth in Revenue Procedure 2017-13, I.R.B. 2017-6, as modified and amplified (the "Guidelines") because (i) the compensation of the manager is reasonable without any sharing of net profits with, or shifting of net losses to, the managers, (ii) any management agreement's terms do not, nor will they, exceed the lesser of 30 years or 80% of the weighted average reasonably expected economic life of the athletic complex, (iii) the Owner retains control over, and risk of loss for, the athletic complex, (iv) any manager agrees not to take an inconsistent tax position, and (v) there are no circumstances that limit the Owner's rights with respect to the Facility.

**12.2 Manager's Covenants and Representations.** Manager makes the following covenants and representations to Owner, which covenants, and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

(a) Corporate Status. Manager is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of Florida and authorized to transact business throughout the United States with full corporate power to enter into this Agreement and execute all documents required hereunder.

(b) Authorization. The making, execution, delivery, and performance of this Agreement by Manager has been duly authorized and approved by all requisite action of the board of directors of Manager, and this Agreement has been duly executed and delivered by Manager and constitutes a valid and binding obligation of Manager, enforceable in accordance with its terms and applicable laws.

(c) Effect of Agreement. To Manager's best knowledge, without duty of inquiry, neither the execution and delivery of this Agreement by Manager nor Manager's performance of any obligation hereunder (i) will constitute a violation of any law, ruling, regulation, or order to which Manager is subject; or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document to which Manager is a party or is otherwise bound.

**12.3 Indemnification.**

(a) Indemnification by Manager. Manager agrees to defend, indemnify and hold harmless the Owner and its officials, directors, officers, employees, agents, successors and assigns against any claims, causes of action, costs, expenses (including reasonable attorneys' fees) liabilities, or damages (collectively, "Losses") suffered by those parties, arising out of or in connection with any (i) grossly negligent act or omission, or willful misconduct, on the part of Manager or any of its employees or agents in the performance of its



obligations under this Agreement; or (ii) breach by Manager of any of its representations, covenants or agreements made herein.

(b) Indemnification by Owner. To the fullest extent allowed by law, Owner agrees to indemnify and hold harmless the Manager and its managers, directors, officers, employees, agents, successors and assigns against any claims, causes of action, costs, expenses (including reasonable attorneys' fees) liabilities, or damages (collectively, "Losses") suffered by those parties, arising out of or in connection with any (i) grossly negligent act or omission, or willful misconduct, on the part of Owner or any of its employees or agents in the performance of its obligations under this Agreement; or (ii) breach by Owner of any of its representations, covenants or agreements made herein.

(c) Conditions to Indemnification. With respect to each separate matter brought by any third party against which a party hereto ("Indemnitee") is indemnified by the other party ("Indemnitor") under this Section, the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve any proceeding, claim, or cause of action underlying such matter, except that (a) the Indemnitee may, at its option, participate in such defense or resolution at its expense and through counsel of its choice; (b) the Indemnitee may, at its option, assume control of such defense or resolution if the Indemnitor does not promptly and diligently pursue such defense or resolution, provided that the Indemnitor shall continue to be obligated to indemnify the Indemnitee hereunder in connection therewith; and (c) neither Indemnitor nor Indemnitee shall agree to any settlement without the other party's prior written consent (which shall not be unreasonably withheld or delayed). In any event, Indemnitor and Indemnitee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor's sole expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, Indemnitee shall promptly (and in no event more than ten (10) days after any third-party litigation is commenced asserting such claim) give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

(d) Survival. The obligations of the parties contained in this Section shall survive the termination or expiration of this Agreement.

### **ARTICLE 13 MISCELLANEOUS**

13.1 Relationship. Manager and Owner shall **not** be construed as joint venturers or general partners of each other, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Manager understands and agrees that the relationship to Owner is that of independent contractor, and that it will not represent to anyone that its relationship to Owner is other than that of independent contractor. Nothing herein shall deprive or otherwise affect the right of either party to own, invest in, manage or operate property, or to conduct business activities, which are competitive with the business of the Facility. Manager covenants and agrees that even though it may have a management responsibility for other similar properties, which from "time to time" may be competitive with the Facility, Manager shall always represent the Facility fairly and deal with Owner on an equitable basis.

Manager has the right to display its brand and marks in the Facility and on the Facility's marketing materials in a manner that does not exceed 10% of the overall impression of the Facility's own brand. Manager has the right to use and store the database and contact information of the customers of the Facility. Manager will provide from time-to-time images and other marketing material that it owns and holds the license to for use by the Facility. Owner agrees not to use those images and that material in any manner

outside of the operation of the Facility while Manager is engaged to operate it. Manager has the right to use images and marks from the Facility for its own marketing and promotions material in perpetuity, without restriction.

13.2 **Representations.** Owner represents and warrants: (i) that Owner has full power and authority to enter this Agreement; (ii) that to the best of Owner's knowledge, the property on which the Facility is located is zoned for the intended use; (iii) that all permits for the operation of the Facility have or will be secured and are or will be current; (iv) that the Facility and its operation do not violate any applicable statutes, laws, ordinances, rules, regulations, orders, or the like (including, but not limited to, those pertaining to hazardous or toxic substances); and (v) that no unsafe condition exists.

13.3 **Assignment.** This Agreement shall not be assigned by either party without the express written consent of the non-assigning party. Any such assignment made without proper consent shall be deemed void.

13.4 **Benefits and Obligations.** The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, and assigns.

13.5 **Building Compliance.** Manager does not assume and is given no responsibility for compliance of the Facility or any equipment therein with the requirements of any building codes or with any statute, ordinance, law, or regulation of any governmental body or of any public authority or official thereof having jurisdiction, except to notify Owner promptly, or forward to Owner promptly, any complaints, warnings, notices, or summonses received by Manager relating to such matters. Owner represents that to the best of Owner's knowledge, the Facility and all such equipment contained therein comply with all such requirements, and Owner authorized Manager to disclose the ownership of the Facility to any such officials and agrees to indemnify and hold Manager, its representatives, servants, and employees, harmless of and from all loss, cost, expense, and liability whatsoever which may be imposed by reason of any present or future violation or alleged violation of such laws, ordinances, statutes, or regulations.

13.6 **Notices.** All notices provided for in this Agreement shall be in writing and served by registered or certified mail, return receipt requested, postage prepaid, at the following addresses until such time as written notice of a change of address is given to the other party:

If to Owner:

City of Abilene  
Attention: City Manager  
PO Box 60  
Abilene, TX 79604

With a copy to:  
City Attorney  
PO Box 60  
Abilene, TX 79604

If to Manager:

Sports Facilities Management, LLC  
Attention: Jason Clement, Manager  
600 Cleveland Street, Suite 910  
Clearwater, FL 33755  
Email: [jclement@sportsfacilities.com](mailto:jclement@sportsfacilities.com)

with a copy to:

Bruce Rector  
General Counsel  
Sports Facilities Management, LLC  
600 Cleveland Street, Suite 910  
Clearwater, FL 33755  
Email: brector@sportsfacilities.com

13.7 **Interest on Unpaid Sums.** Any sums due Manager under any provision of this Agreement, and not paid by Owner within forth-five (45) days after such sums have become due, shall bear interest at the maximum rate allowed by law.

13.8 **Owner Responsible for Payments.** Upon termination of or withdrawal from this Agreement, Owner shall assume the obligations of any contract or outstanding bill executed by Manager under this Agreement for and on behalf of Owner and responsibility for payment of all unpaid bills, provided that such obligation has been approved by Owner as set forth in Section 6.1.

13.9 **Headlines.** All headings and subheadings employed within this Agreement and in the accompanying schedules and exhibits are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

13.10 **Force Majeure.** Any delays in the performance of any obligation of Manager under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, governmental regulations, riots, adverse weather, and other similar causes not within the control of Manager and any time periods required for performance shall be extended accordingly.

13.11 **Entire Agreement.** This Agreement, including any specified attachments, constitutes the entire agreement between Owner and Manager with respect to the management and operation of the Facility and supersedes and replaces any and all previous management agreements entered into or/and negotiated between Owner and Manager relating to the Facility covered by this Agreement. No change to this Agreement shall be valid unless made by supplemental written agreement executed and approved by Owner and Manager. Except as otherwise provided herein, any and all amendments, additions, or deletions to this Agreement shall be null and void unless approved by Owner and Manager in writing. Each party to this Agreement hereby acknowledges and agrees that the other party has made no warranties, representations, covenants, or agreements, express or implied, to such party, other than those expressly set forth herein, and that each party, in entering into and executing this Agreement, has relied upon no warranties, representations, covenants, or agreements, express or implied, to such party, other than those expressly set forth herein.

13.12 **Rights Cumulative; No Waiver.** No right or remedy herein conferred upon or reserved to either of the parties to this Agreement is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Agreement or now or hereafter legally existing upon the occurrence of an event of default under this Agreement. The failure of either party to this Agreement to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy or be construed as a waiver or relinquishment of such right or remedy with respect to subsequent defaults. Every right and remedy

given by this Agreement to the parties may be exercised from "time to time" and as often as may be deemed expedient by those parties.

13.13 **Applicable Law.** The execution, interpretation, and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of Texas. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of Texas in Taylor County, or the United States District Court, Northern District of Texas, Abilene Division. Each party consents to the sole and proper jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court.

13.14 **Acknowledgement.** The parties hereto acknowledge that they have been provided with a copy of this Agreement for review prior to signing it, that they have been given the opportunity to review it prior to signing it, that they have been given the opportunity to have this Agreement reviewed by their attorney prior to signing it, and that they understand the purposes and effect of this Agreement.

13.15 **Severability.** If any provision or provisions of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed and enforced as if such provision or provisions had not been included.

13.16 **Intellectual Property.** Owner acknowledges that Manager has certain intellectual property, trade secrets and proprietary business techniques ("Intellectual Property ") that it will on behalf of Owner to meet its obligations under this Agreement. Owner acknowledges that it obtains no ownership rights whatsoever in the Intellectual Property and, upon termination of this Agreement, Manager shall retain all rights to the Intellectual Property and remove such Intellectual Property from the Facility and its operations. For purposes of this Agreement, the term Intellectual Property shall include, without limitation, analytical tools and documented procedures for forecasting, performance tracking, operational and marketing systems that are unique to Manager's approach, staff training programs, program curriculum and agendas, rights to certain discounts or programs that Manager has negotiated for Manager-operated facilities, and other intellectual property which Manager has previously introduced to the Facility and of which Manager is an author.

13.17 In accordance with Chapter 2271 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2271 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless Manager is not subject to Chapter 2271 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Manager verifies that Manager does not boycott Israel and will not boycott Israel during the Term of this Agreement.

13.18 In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Manager is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

13.19 Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the Manager employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the Manager represents that: (1) the Manager does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or

firearm trade association; and (2) the Manager will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association.

13.20 Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the Manager employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the Manager represents that: (1) the Manager does not boycott energy companies; and (2) the Manager will not boycott energy companies during the Term of this Agreement.

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

13.22 The Owner 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 Owner will provide an exemption certificate to the Manager. The Manager 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 Manager 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.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

Attest:

**OWNER:**  
CITY OF ABILENE  
a Texas municipality

\_\_\_\_\_  
Print Name:

BY: \_\_\_\_\_

Its \_\_\_\_\_

Attest:

*Kelly Baine*

**MANAGER:**  
SPORTS FACILITIES MANAGEMENT, LLC,  
a Florida limited liability company

*Kelly Baine*  
\_\_\_\_\_  
Print Name:

BY: *[Signature]* \_\_\_\_\_

Its Manager



## EXHIBIT A

### MANAGEMENT SERVICES

During the Term, Manager will be responsible for all aspects of oversight for the staffing, marketing, maintenance, event management, sponsorship and advertising sales, and day-to-day operations of the Owner's Facility.

1. Staffing. Manager shall provide a full-time on-site General Manager and other employees as required to meet the operational needs of the Facility, within the budgeted percentage of labor.

2. Annual Business Plan. Manager will produce an Annual Business Plan two months prior to the beginning of any Operating Year in the Term, Manager shall update the Business Plan and submit the revised Business Plan to Owner for its review and approval. Owner shall give its comments and/or approval of the updated Business Plan within sixty (60) days after receiving the Business Plan from the Manager. In the event of disapproval of the Business Plan, the Manager shall use commercially reasonable efforts to operate the facility pursuant to the general terms of this Agreement and the prior Business Plan then in effect, until such time as the revisions to the Business Plan are agreed upon. In the event of disapproval of the Budgets, the Manager shall continue operating the facility pursuant to the Budgets then in effect, subject to increases in Operating Expenses required due to (i) increases in Gross Receipts; or (ii) other matters beyond the control of the Manager, until such time as Owner and the Manager agree upon the appropriate replacement Budgets. However, in the event Owner disapproves of a Business Plan, revised Business Plan/Budget hereunder, and Manager and Owner fail to reach an agreement on a new Business Plan, revised Business Plan or Budget within ninety (90) days of such disapproval, either party may terminate this agreement by providing the other party with written notice sixty (60) days prior to the date such party intends to terminate. Owner and the Manager agree to use good faith efforts to resolve any differences in opinion regarding the Business Plan and any portion thereof so that agreement on the Business Plan can be reached as soon as possible after the date Manager first submits the revised Business Plan for such year to the Owner.

3. Employment Matters. The Manager shall present the then current staffing, the incentive bonus plan for employees, and all salaries and payments to employees through the Payroll Account in the Annual Operations Budget. It is understood by all parties that reductions and additions to various positions may be made at Manager's discretion throughout the year due to business tempo, trends, opportunities, and budget requirements. If a change is recommended that will require expense above the budgeted labor percentage, the change will be submitted for Owner's review and approval by Owner via reforecast and revised business plan or budget.

4. Independent Accounting Firm. From time to time, as Owner requests, Manager shall hire an independent certified public accounting firm to be paid for out of the Operating Budget of the Facility and to be selected by mutual agreement of Owner and Manager to audit the financial statements required under this Agreement.

5. Accounting Records and Reporting. During the Term, Manager shall maintain professional accounting records. Manager shall provide the financial statements in a format reasonably specified by Owner.

INTERNAL CONTROL. The Manager agrees to develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls governing the financial aspects of the Facility, such controls to be consistent with professionally accepted accounting practices

BANK ACCOUNTS. The Manager shall establish, in the name of its special purpose entity, ACA SFM, LLC, at a banking institution, utilizing the federal tax identification number of ACA SFM, LLC, an operating expense account (the "Operating Expense Account") and a payroll account, at a banking institution or institutions, utilizing the federal tax identification number of Manager or its affiliated entity (the "Payroll Account").

ACCOUNT FUNDING. Subject to the Manager's written notices to Owner as herein, Owner acknowledges that it is solely responsible for all Operating Expenses and capital expenditures required for or on behalf of the Facility provided that such Operating Expenses and capital improvements are made in accordance with the terms of this Agreement.

## EXHIBIT B

### MANAGER COMPENSATION

During the Term of this Agreement, Manager shall receive compensation from the Owner according to the following:

1. Base Management Fee;
2. Deferred Management Incentive Fee;
3. Sponsorship and Advertising Compensation
4. Reimbursed Expenses

1. **Base Management Fee.** During the Term, Owner shall pay to Manager a Base Management Fee. Beginning on February 1, 2023 and continuing on the first day of each month thereafter, Owner shall pay Manager monthly installments of the Base Management Fee as follows:

2023 = \$222,000 – Monthly payment = \$18,500  
2024 = \$233,100 – Monthly payment = \$19,425  
2025 = \$244,755 – Monthly payment = \$20,396.25  
2026 = \$256,993 – Monthly payment = \$21,416.06  
2027 = \$269,842 – Monthly Payment = \$22,486.86

If the Facility's gross operating income ("GOI") underperforms the budgeted GOI for 2023 of a negative Three Hundred Sixty-Seven Thousand Dollars (-\$367,000) (such variance, the "Projection Gap"), Manager agrees that its Base Management Fees for 2023 by the same percentage as the Gap and credit Owner said reduction in its Base Management Fees with the exception that in no case shall the Base Management Fee for 2023 be reduced more than Forty-Four Thousand Four Hundred Dollars (\$44,400). This agreement to reduce Manager's base management fees is made with the understanding that: (i) Owner intends to increase facility user fees; (ii) that there will be no unanticipated interruptions in operations due to significant mechanical, systems and structural failures, pandemics, damages to the Facility as a result of Acts of God, etc. and; (iii) that Owner will not add a sixth (6<sup>th</sup>) splash pad without adjusted the budgeted GOI to accommodate that additional expense. GOI is calculated as revenue minus cost of goods sold, minus operating expenses.

2. **Deferred Management Incentive Fees.** To encourage Manager to grow revenues, Owner agrees to pay to Manager a Deferred Management Incentive Fee in addition to the Base Monthly Fee identified above:

1% of Gross Revenue above \$100,000 per year.

Any such Deferred Management Incentive Fee calculations shall be made by Manager within sixty (60) days of the ending of any Operating Year and paid to Manager within fifteen (15) days of delivery of same to Owner.

3. **Sponsorship and Advertising Compensation.** Due to the role that Manager will play in organizing the programs, negotiating agreements and pricing, and providing confidence to sponsors and advertisers, Manager will receive twenty percent (20%) of the gross revenue for sponsorship and advertising.

Payments will be made to Manager for Sponsorship and Advertising Compensation within thirty (30) days of the time when a sponsor/advertiser makes payment.

4. **Reimbursed Expenses.** Manager shall be reimbursed with prior written approval with prior written approval by the Owner, if not previously approved by Owner in the Operating Budget, for travel and other expenses directly related to the Management Services. All travel reimbursement will be based on receipts to be furnished by Manager to the Owner. Travel expenses may include but are not limited to airfare, rental cars, parking fees, lodging and meals. All fees and reimbursements shall be paid to Manager within thirty (30) calendar days of invoicing. Manager will make a good-faith effort to keep these travel expenses to a minimum.

# Management of Aquatics Facilities

January 26, 2023



# City of Abilene, TX

## *SFC's Aquatics Plan and Budget*





# AGENDA

About SFC

Introduction to SFC's Plan

Adventure Cove

- Revenue
- Expenses
- Net Operating Income
- Cost Recovery

All Aquatics: Adventure Cove + Splash Pads

- Net Operating Income
- Cost Recovery

Key Benefits of SFC's Plan



FOUNDED IN 2003

# **THE SPORTS FACILITIES COMPANIES**

## OUR VISION

TO DEVELOP AND MANAGE THE  
HIGHEST PERFORMING YOUTH &  
AMATEUR SPORT, RECREATION,  
WELLNESS AND  
ENTERTAINMENT FACILITIES.

**2,000+** COMMUNITIES  
SERVED

**60+ OPENED**

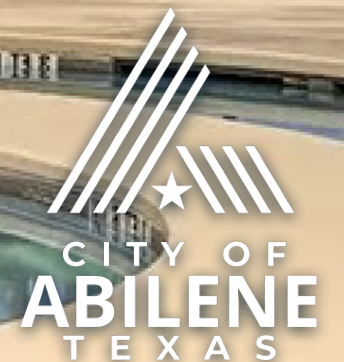
**35+ MANAGED**

BEST EVENTS  
ATTRACT THE BEST TALENT  
BEST VENDOR & PRICING  
ACCESS TO THE MOST EVENTS

## **SFNETWORK**

The Single Largest & Fastest Growing Sports Tourism Network

[WWW.THESFNETWORK.COM](http://WWW.THESFNETWORK.COM)







# INTRODUCTION TO SFC'S PLAN



# Introduction to SFC's Plan

## I. Enhance Financial Performance: NOI (Bottom Line) and Cost Recovery

- **Goal: Increase Revenue Generation**
  - **Expand Marketing Efforts and Implement “Guest 1<sup>st</sup>” Policies** to Increase Number of Guests
  - **Adjust Admissions Fees to Achieve Fair Market Value Pricing**
    - Benchmark: \$8-10 Per Cap; Currently: \$6; Target: \$8
  - **Continue to Monitor/Adjust Concessions Fees** to Ensure Gross Profit Targets (Menu Costing, Continue Quality Offerings and Responsive Packages)
  - **Increase Revenue Generation from Additional Services** (Lessons, Programs, Pavilion, and Rentals)
- **Goal: Control Expenses**
  - Adjust Schedule and Operating Procedures to Ensure **Efficiency While Guaranteeing Safety and Experience Standards** (Lifeguard and Other Support Staff)
  - Collaborate to Ensure Operating **Expenses are Efficient**



## II. Maintain and Enhance Service to and Use by Residents

- **Goal: Increase Number of Visitors to Adventure Cove**
- **Goal: Expand Programs to Serve More Residents**

## III. Lead Community Messaging

- **Goal: Ensure Alignment and Demonstrate City's Commitment to Serving Residents**
  - Aquatics is a Core Element of the City's Service to Residents
  - Adventure Cove is the Premier Community Water Park in the Region
- **Goal: Communicate, Educate, and Set Expectations for Residents/Guests**

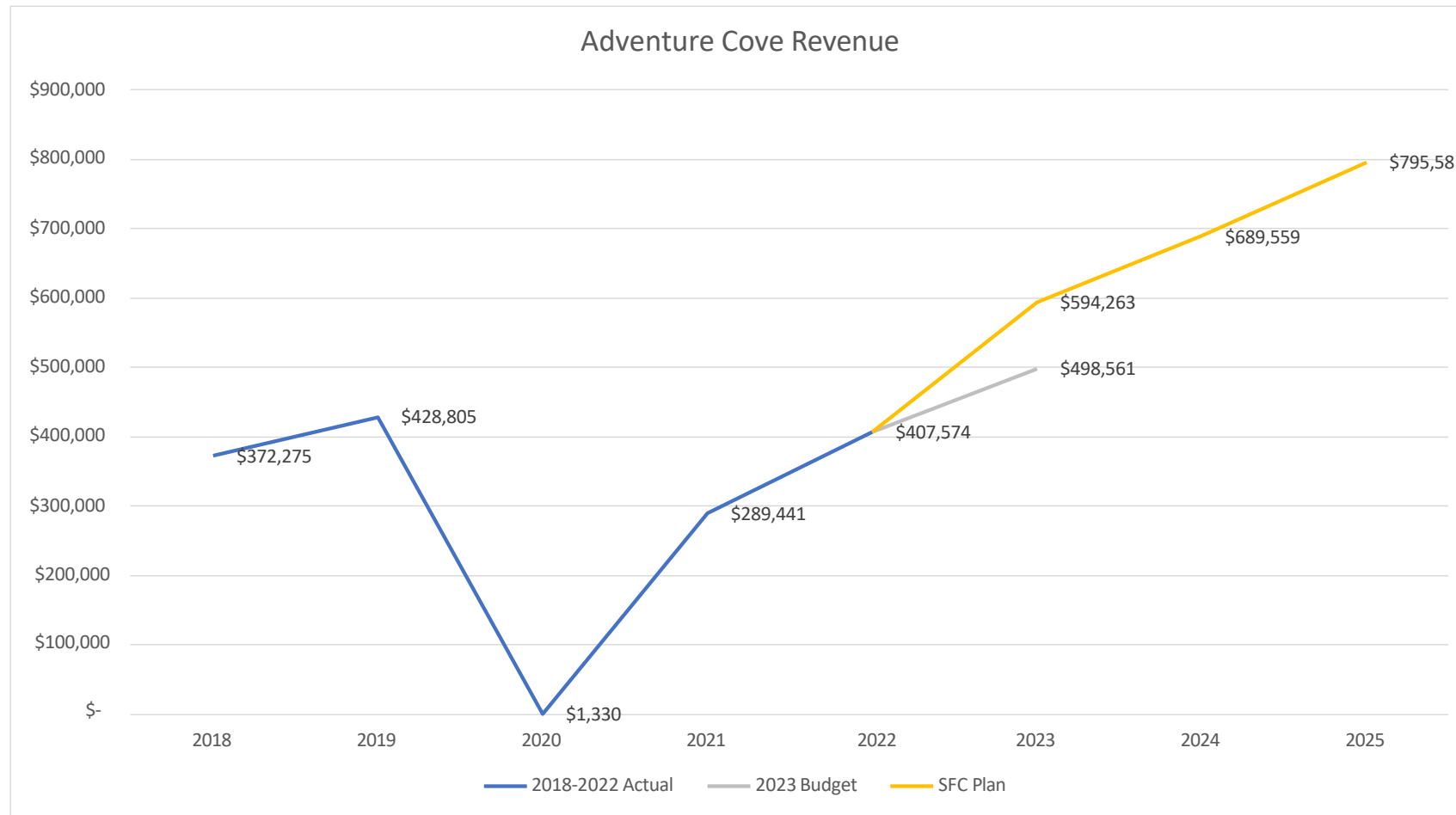


# ADVENTURE COVE



# Adventure Cove

## Revenue



SFC's plan **increases revenue generation at Adventure Cove** through increased visits:

- Price adjustments to scale into fair market value over time
  - Entry fees
  - Concessions
- Expanded fee programming



# Key Assumptions in SFC's Plan

## Revenue

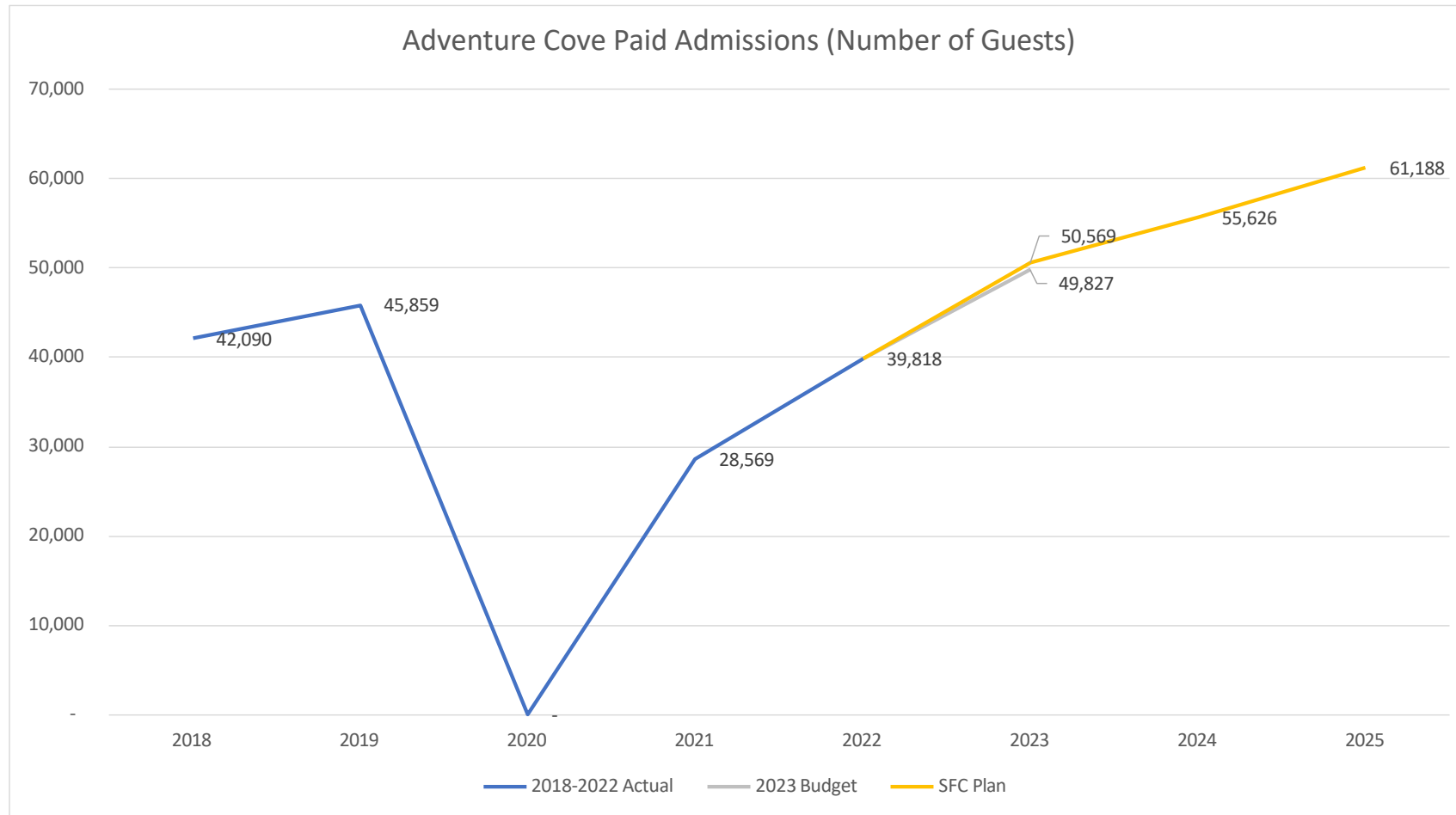
| Revenue Improvement Drivers   |        |     |         |             |             |             |
|-------------------------------|--------|-----|---------|-------------|-------------|-------------|
|                               | 2019   | ... | 2022    | 2023        | 2024        | 2025        |
| <b>Annual Paid Attendance</b> |        |     |         |             |             |             |
| City-Operated (Actual)        | 45,859 |     | 39,818  |             |             |             |
| City-Operated (Budget)        |        |     |         | 49,827      |             |             |
| SFC Plan                      |        |     |         | 50,569      | 55,626      | 61,188      |
| <b>Admissions Per Cap</b>     |        |     |         |             |             |             |
| City-Operated (Actual)        | \$6.06 |     | \$5.95  |             |             |             |
| City-Operated (Budget)        |        |     |         | \$5.95      |             |             |
| SFC Plan                      |        |     |         | PY + \$1.00 | PY + \$0.50 | PY + \$0.50 |
| <b>F&amp;B Per Cap</b>        |        |     |         |             |             |             |
| City-Operated (Actual)        | \$2.41 |     | \$2.99  |             |             |             |
| City-Operated (Budget)        |        |     |         | \$2.98      |             |             |
| SFC Plan                      |        |     |         | PY + 10%    | PY + 5%     | PY + 5%     |
| <b>Lessons and Programs</b>   |        |     |         |             |             |             |
| City-Operated (Actual)        | \$0    |     | \$6,410 |             |             |             |
| City-Operated (Budget)        |        |     |         | \$8,825     |             |             |
| SFC Plan                      |        |     |         | PY x 3      | PY + 25%    | PY + 10%    |

SFC's plan increases revenue generation at Adventure Cove through a combination of:

- **Increased visits**
- **Price adjustments to scale into fair market value over time**
  - Entry fees
  - Concessions pricing
- **Expanded programming**

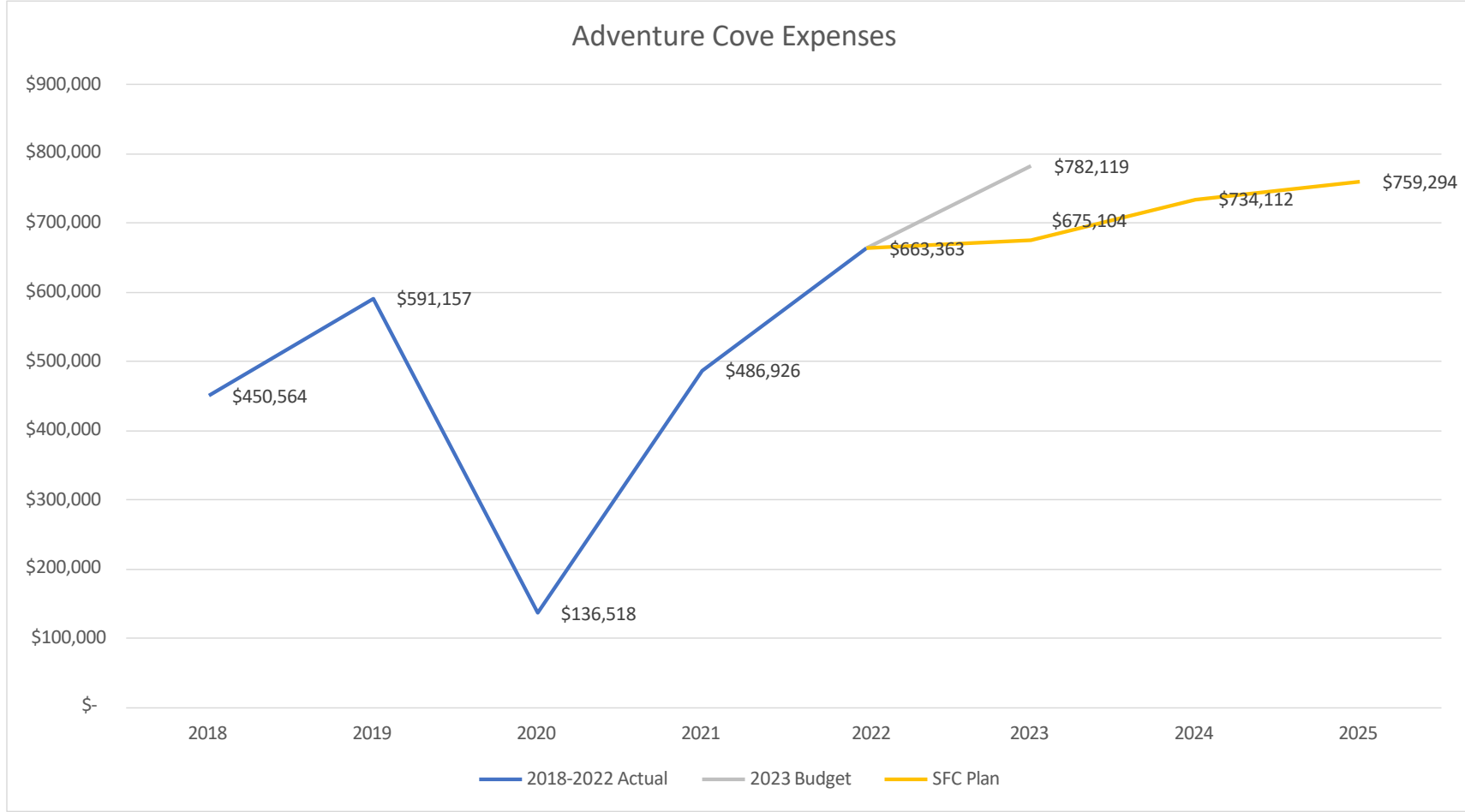
# Adventure Cove

## Number of Guests



With a high-impact marketing campaign and a continued focus on the guest experience, SFC's plan will allow Adventure Cove to **hit the 2023 budget visitation projection and continue to increase through 2025.**

# Adventure Cove Expenses



With a focus on efficient operating and staff schedules, SFC’s plan will allow Adventure Cove to **serve more guests in 2023 with a minimal increase in expenses from 2022.**

# Key Assumptions in SFC's Plan

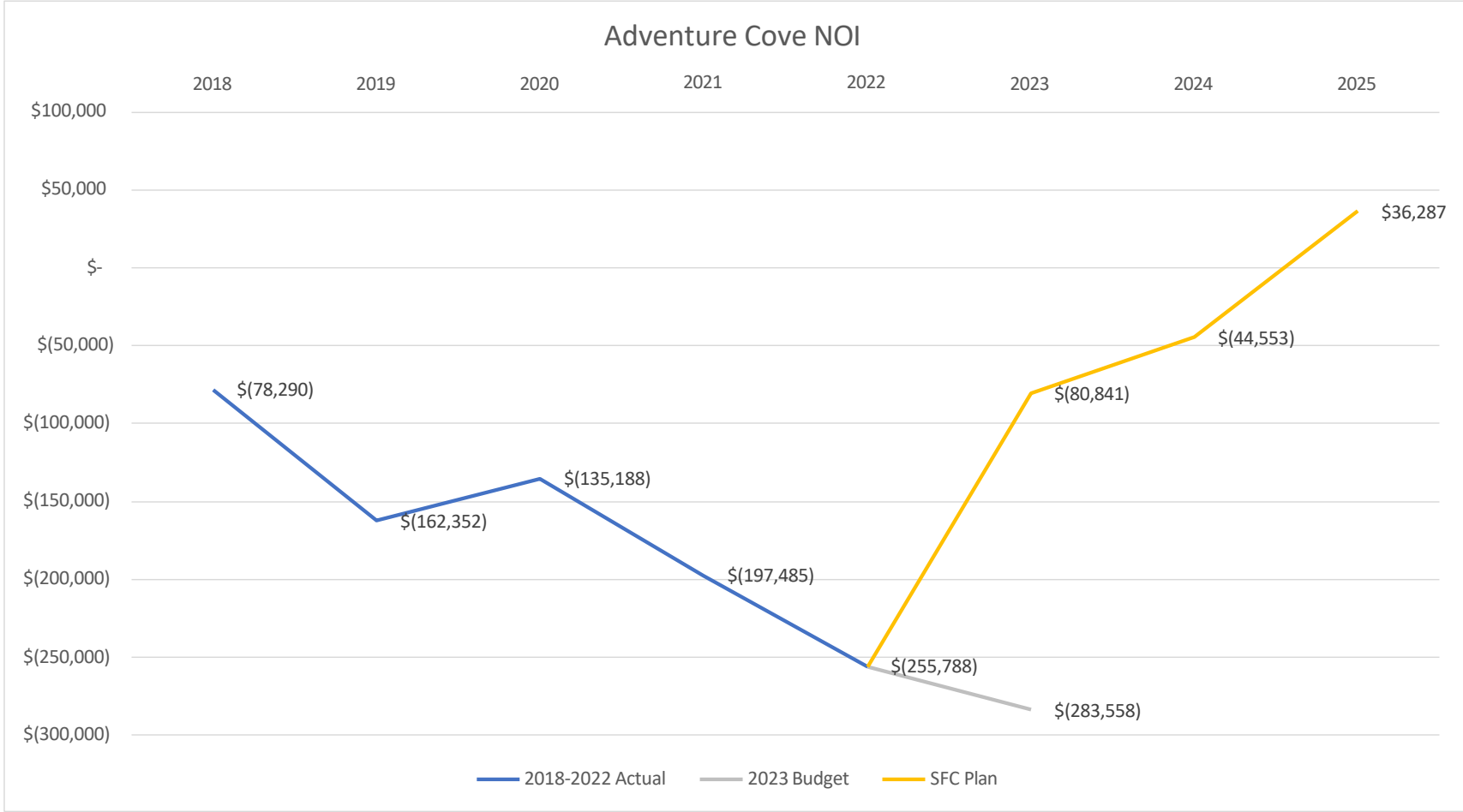
## Staffing

With a focus on efficient operating and staff schedules, SFC's plan will allow Adventure Cove to **serve more guests in 2023 with a minimal increase in expenses from 2022.**

| Staff Budget                                 |              |             |           |           |           |
|----------------------------------------------|--------------|-------------|-----------|-----------|-----------|
|                                              |              | 2022 Actual | 2023      | 2024      | 2025      |
| <b>FT Aqua. Manager</b>                      |              |             |           |           |           |
| City-Operated (Actual)                       | Partial Year |             |           |           |           |
| City-Operated (Budget)                       |              |             | Full Year |           |           |
| SFC Plan                                     |              |             | 6 Months  | Full Year | Full Year |
| <b>FT Aqua. Tech.</b>                        |              |             |           |           |           |
| City-Operated (Actual)                       | Partial Year |             |           |           |           |
| City-Operated (Budget)                       |              |             | Full Year |           |           |
| SFC Plan                                     |              |             | Full Year | Full Year | Full Year |
| <b>PT Staff (Guards, Conc., Cash., Etc.)</b> |              |             |           |           |           |
| City-Operated (Actual)                       | \$295,318    |             |           |           |           |
| City-Operated (Budget)                       |              |             | \$363,062 |           |           |
| SFC Plan                                     |              |             | PY + 5%   | PY + 3%   | PY + 3%   |

# Adventure Cove

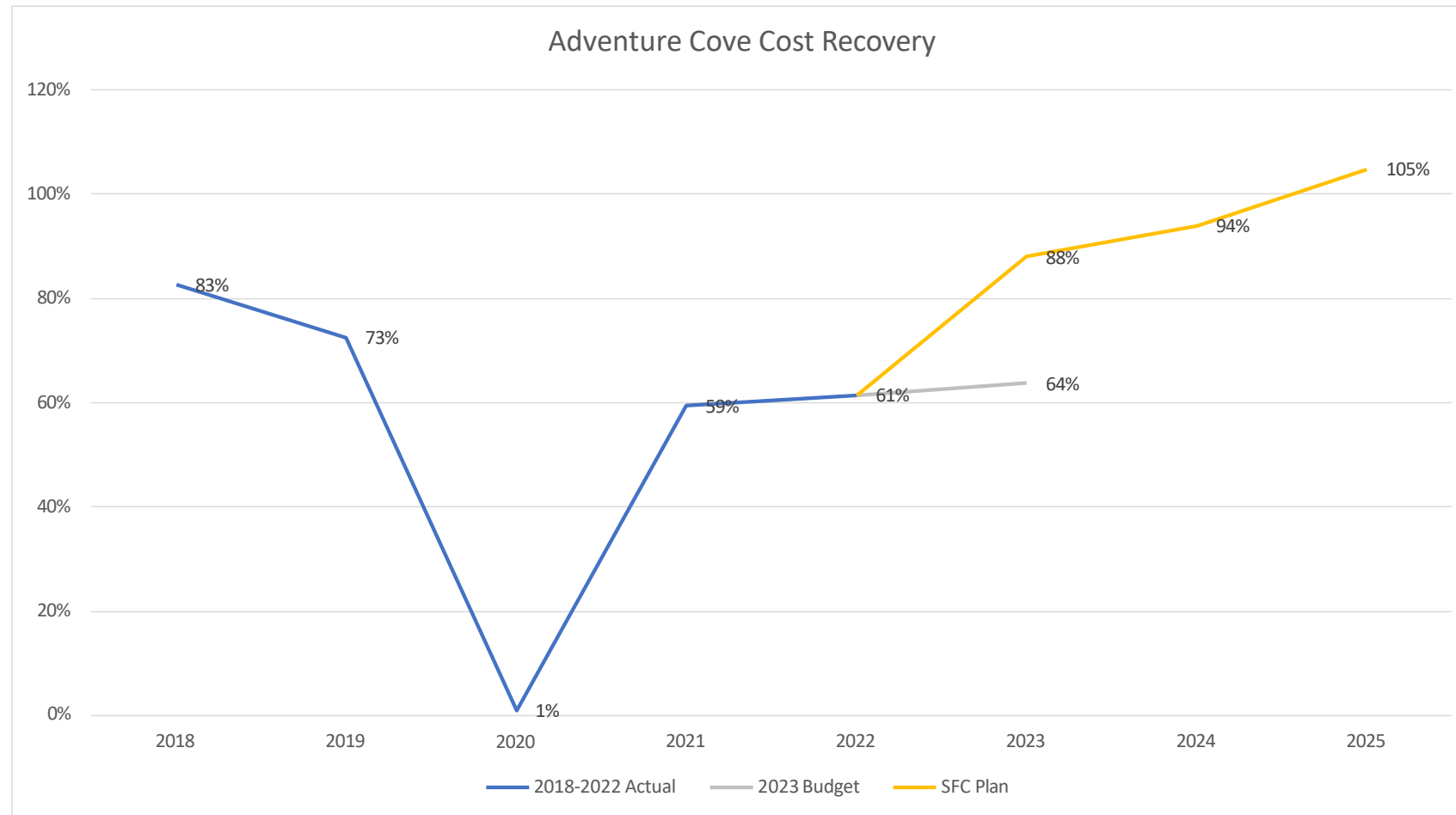
## Net Operating Income



By executing SFC’s plan to improve revenue generation and control expenses, **Adventure Cove will achieve a marked improvement in Net Operating Income** and reach operational self- sustainability by 2025.

# Adventure Cove

## Cost Recovery



By executing SFC's plan to improve revenue generation and control expenses, **Adventure Cove will** achieve a marked improvement in Net Operating Income and **reach operational self-sustainability by 2025.**



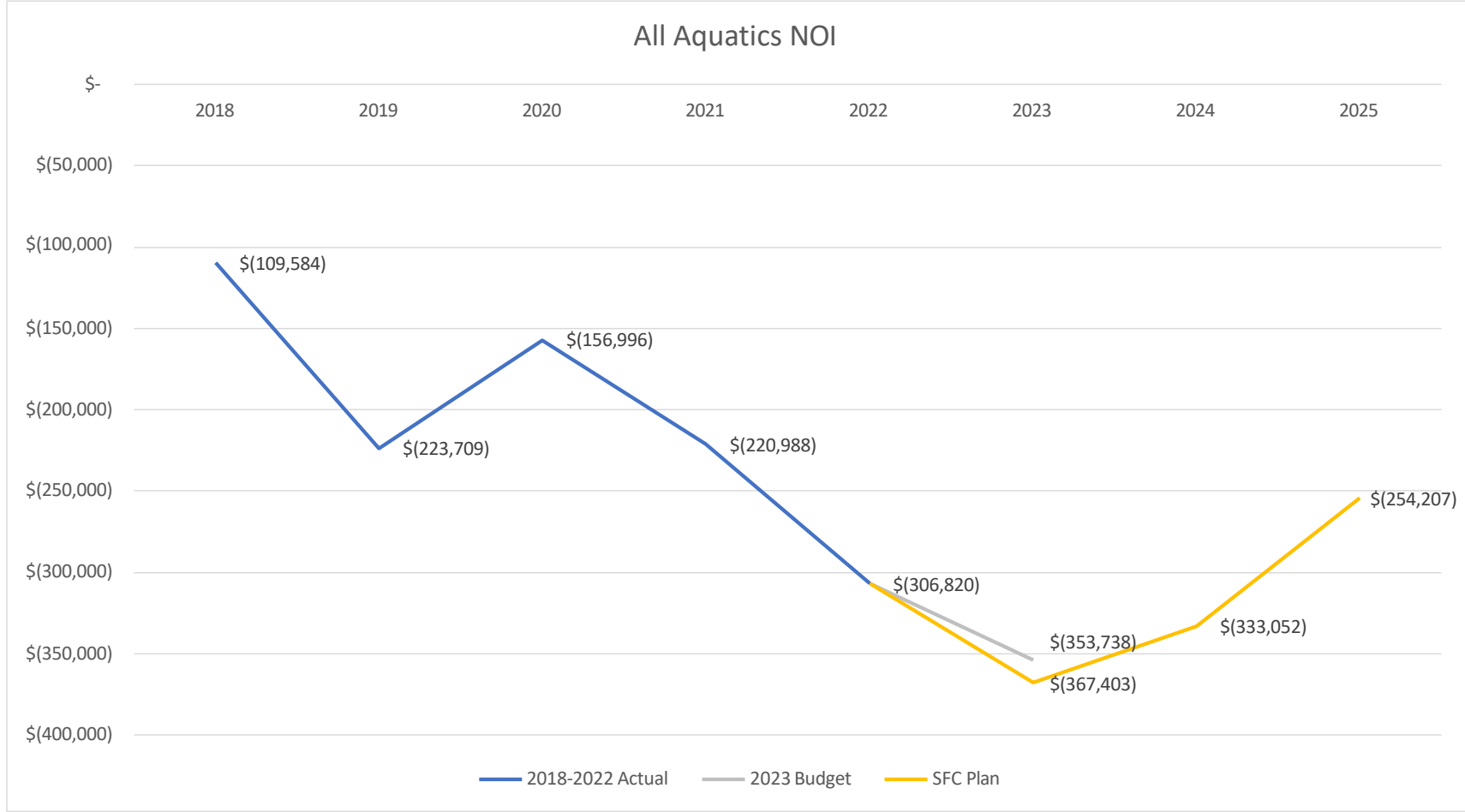


# ALL AQUATICS: ADVENTURE COVE + SPLASH PADS



# All Aquatics: Adventure Cove + Splash

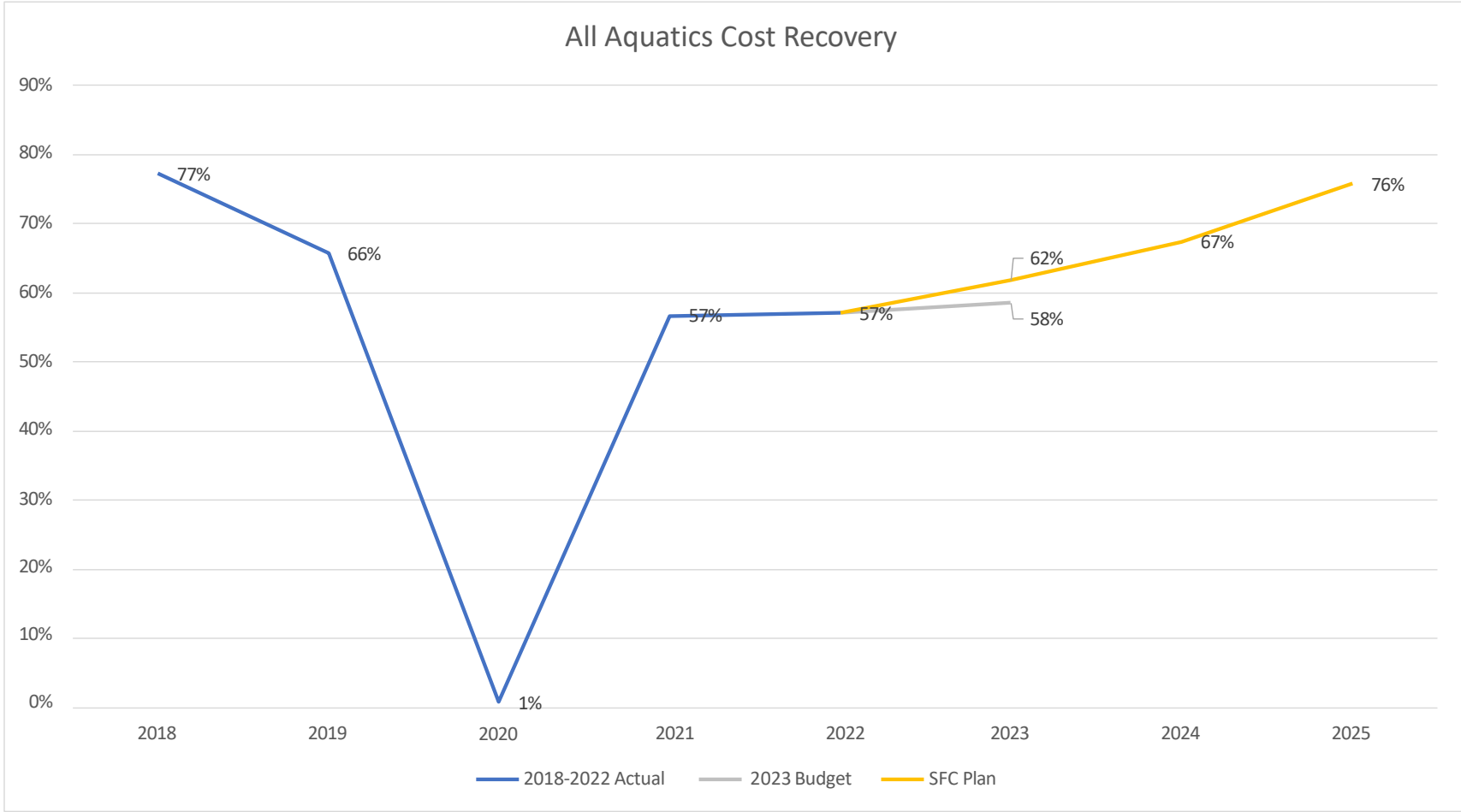
Net Operating Income, Inclusive of SFC's



By executing SFC's plan to improve revenue generation and control expenses, the City of Abilene's **aquatics assets will achieve a marked improvement in Net Operating Income** and reach 76% cost recovery by 2025.

# All Aquatics: Adventure Cove + Splash Pads

## Cost Recovery



By executing SFC’s plan to improve revenue generation and control expenses, the City of Abilene’s **aquatics assets** will achieve a marked improvement in Net Operating Income and **reach 76% cost recovery by 2025.**



A large outdoor swimming pool with a green water slide and many people swimming. The pool is surrounded by a concrete deck and has several depth markers. In the background, there are tall light poles and a clear blue sky. The water slide is a large green tube that curves over the pool. Many people are in the pool, some are swimming and others are standing near the edge. The overall scene is bright and sunny.

# KEY BENEFITS OF SFC'S PLAN



# Key Benefits of SFC's P

## I. Enhanced Financial Performance (NOI and Cost Recovery)

- Projected **NOI is in Line with the Approved Budget for 2023**
- Projected **Cost Recovery Improves from 2022 and Continues Improving Every Year**
- Financial Performance **Will Improve to Otherwise Unattainable NOI and Cost Recovery** in 2024 and Beyond
- **Adventure Cove will Become Operationally Self-Sustaining by 2025**

## II. Enhanced Service to and Use by Residents

- SFC will **Increase Guest Visits to Adventure Cove**
- SFC will **Expand Programs to Serve More Residents**
  - Swim Lessons
  - Other Group Programming

# Key Benefits of SFC's P

## III. Operator-Led Community Messaging

- Marketing Budget Allows for **Improved Business Development**
  - Aquatics is a Core Element of the City's Service to Residents
  - Adventure Cove is the Premier Community Water Park in the Market
- Marketing Budget **Allows for Key Messaging Related to Fees**
  - Cost of Operations Has Increased Steadily with Rising Staff Costs, Utilities, Pool Chemicals, Etc.
    - Entry Fee Increases Allow SFC to Maintain High Standards and Offer Best-In-Class Experiences for Residents

## IV. SFC's Commitment to Financial Performance

- As a Demonstration of Our Commitment, **SFC Will Credit Up to 20% of Its 2023 Management Fee to the City if 2023 NOI**

**Falls Below 2023 Budget** (Not Including

Unplanned Operating Interruptions or Expenses)



# Q&

## City of Abilene, TX *SFC's Aquatics Plan and Budget*





**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2023**

**TO:** Robert Hanna, City Manager

**FROM:** Lesli Andrews, Director

**SUBJECT:** **14. Ordinance (First Reading):** Receive a Report, Hold a Discussion and Take Action on Amending the Fees and Charges Ordinance changing the Adventure Cove Fees *(Lesli Andrews)*

---

**GENERAL INFORMATION**

Adventure Cove opened in 2017. There has not been an admissions increase since the opening except for a \$.50 increase to one level in 2018. The City of Abilene wants to enter into a contract with Sports Facilities Companies (SFC) for the management of Adventure Cove. The recommendation from SFC is to increase the admissions by \$1 for the 2023 season. This would make adults \$8, children 48 inches and over \$7, children under 48 inches \$5, and children 2 and under remain free. This recommendation is below the national average of \$8-\$10.

The Fiscal Year 2023 Fee Schedule was adopted on August 11, 2022. Request to increase the Adventure Cove fees in the Fiscal Year 2023 Fee Schedule. The effective date for the new fees will be March 1, 2023. The request is a \$1 increase to each admissions category for the 2023 season.

**SPECIAL CONSIDERATIONS**

**FUNDING/FISCAL IMPACT**

Possible revenue to offset expenses.

**STAFF RECOMMENDATION**

Staff recommends approval of the \$1 fee increase for admission to Adventure Cove.

## **BOARD OR COMMISSION RECOMMENDATION**

### **ATTACHMENTS:**

1. 1\_26\_2023 Ordinance-Fee
2. Attachment A - Adventure Cove Admission Fee Schedule
3. Presentation Adventure Cove Admission Fee Schedule Addition

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

AN ORDINANCE AMENDING ORDINANCE 41-2022 AND ADOPTING FEES AND CHARGES FOR ADMISSION INTO ADVENTURE COVE AQUATIC FACILITY, FOR THE CITY OF ABILENE; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES, RESOLUTIONS AND PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; CALLING A PUBLIC HEARING.

WHEREAS, the City Council adopted Ordinance 41-2022 ("Fee Ordinance") on August 11, 2022 setting fees and charges commencing on October 1, 2022; and,

WHEREAS, it was contemplated that this Fee Ordinance would require amendment from time to time to modify and update fees and charges; and,

WHEREAS, the City of Abilene desires to increase the admission fees by \$1.00 for adults, child 48 inches tall or taller and child less than 48 inches tall; now, therefore,

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

PART 1: That the Schedule of Fees and Charges for the City of Abilene, Texas is amended as set out in Exhibit "A", attached and made a part of this ordinance for all purposes.

PART 2: That all ordinance and parts of ordinance, resolutions, and parts of resolutions in conflict herewith are repealed.

PART 3: That this Schedule of Fees and Charges for the City of Abilene, Texas shall be kept on file in the City Secretary's office.

PART 4: That the effective date of this section shall be the 1st day of March, A.D., 2023.

PASSED ON FIRST READING on the 26<sup>th</sup> day of January, A.D. 2023.

After passage on first reading, a notice of the time and place 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. The same being more than twenty-four (24) hours prior to the time designated for said hearing. After such an opportunity for the public to be heard, said ordinance was passed on its second and final reading.

PASSED ON SECOND AND FINAL READING AT A PUBLIC HEARING on the 9<sup>th</sup>  
day of February, A.D. 2023.

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

\_\_\_\_\_  
MAYOR

APPROVED:

\_\_\_\_\_  
CITY ATTORNEY

|                 |                           | Current Fee | Proposed Fee |
|-----------------|---------------------------|-------------|--------------|
| Adventure Cove: | Child less than 48" tall  | \$4.00      | \$5.00       |
|                 | Child/adolescent 48" tall | \$6.00      | \$7.00       |
|                 | Adult                     | \$7.00      | \$8.00       |



# Adventure Cove Fee Schedule Addition

January 26, 2023





# General Information:

- City of Abilene is contracting management services for aquatics.
- Request to increase admission fee to Adventure Cove to Fiscal Year 2023 Fee Schedule.
- The new fees include an increase in adult, child 48" and taller, and child less than 48" tall by \$1.
- The effective date for the new fees will be February 1, 2023





# Adventure Cove Proposed Admission Fees

- Adventure Cove Admission Fee:
  - Child less than 48": \$5
  - Child/adolescent 48" tall and taller: \$7
  - Adult: \$8





**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2023**

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

**FROM:** Stanley Smith, City Attorney

**SUBJECT:** **15. Ordinance (First Reading): Receive a Report, Hold a Discussion and Take Action on** Amending Chapter 9, "Courts," Article I, "General," Section 9-7, "Rules of Practice and Procedure," of the Abilene Code of Ordinances (Stanley Smith)

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**GENERAL INFORMATION**

Section 9-7, Abilene Code of Ordinances, currently provides that the Abilene Municipal Court shall follow the state laws pertaining to Justice of the Peace courts. This is an outdated ordinance, and needs to be updated to reflect that the Abilene Municipal Court shall follow the state laws pertaining to municipal courts.

This requested amendment comes from the City Attorney's Office and the Judge of the Municipal Court.

**SPECIAL CONSIDERATIONS**

This amendment will not alter the procedure currently followed by the Abilene Municipal Court, as the Court currently follows state laws for municipal courts, and not justice of the peace courts. This amendment will correct the error in the City's code.

**FUNDING/FISCAL IMPACT**

None.

**STAFF RECOMMENDATION**

Staff recommends that the City Council approve the amendment to the Ordinance regarding the rules of practice and procedure of the municipal court.

## **BOARD OR COMMISSION RECOMMENDATION**

Not applicable.

## **ATTACHMENTS:**

1. 2023 Ordinance Municipal Court rules of procedure
2. Amend Section 9-7 Code Court Rules of Procedure

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

**AN ORDINANCE AMENDING CHAPTER 9, "COURTS," ARTICLE I, "GENERAL," SECTION 9-7, "RULES OF PRACTICE AND PROCEDURE," OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW**

**WHEREAS**, Section 9-7 requires the Abilene Municipal Court to follow the rules of practice and procedure that govern state justice of the peace courts; and

**WHEREAS**, this requirement is in conflict with state law, as state law provides specific rules of procedure for municipal courts; and

**WHEREAS**, there is a need to amend the City Code of Ordinances to reference state municipal courts rather than state justice of the peace courts.

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

**PART 1:** That Chapter 9, Article I, Section 9-7 of the Abilene Municipal Code be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

**PART 2:** That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force or effect.

**PASSED ON FIRST READING this 26<sup>th</sup> 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 5<sup>th</sup> day of February, 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 9<sup>th</sup> day of February, 2023, to permit the public to be heard.

**PASSED ON SECOND AND FINAL READING this 9<sup>th</sup> day of February, 2023.**

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

\_\_\_\_\_  
MAYOR

APPROVED:

\_\_\_\_\_  
CITY ATTORNEY



## Exhibit A

### Sec. 9-7. - Rules of practice and procedure.

The rules of practice and procedure as prescribed by state law governing trials in the state ~~municipal justice of the peace~~ courts shall govern the procedure and practice of the municipal court; and the City Council may prescribe such additional rules of practice and procedure as may not be inconsistent with state law.

# Amend Section 9-7, Code of Ordinances, “Rules of Practice and Procedure”





**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2023**

**TO:** Robert Hanna, City Manager

**FROM:** Tim Littlejohn, Director of Planning & Development Services

**SUBJECT:** **16. Ordinance (Final Reading): Receive a Report, Hold a Discussion and Public Hearing, 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)**

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**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 (1)
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 12<sup>th</sup> 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 26<sup>th</sup> 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 26<sup>th</sup> 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 five (5) 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 12<sup>th</sup> 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 26<sup>th</sup> 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 26<sup>th</sup> day of January, 2023.**

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

\_\_\_\_\_  
MAYOR

APPROVED:

\_\_\_\_\_  
CITY ATTORNEY

## EXHIBIT A

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#### Sec. 8-362. - Composition.

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(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.

**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 ~~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 ~~fivesix~~ (56) 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

01/26/2023





# 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: 1/26/2023**

**TO:** Robert Hanna, City Manager

**FROM:** Tim Littlejohn, Director of Planning & Development Services

**SUBJECT:** **17. Ordinance (Final Reading) Z-2023-01: Receive a Report, Hold a Discussion and Public Hearing, 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)**

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**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. 301 S. Pioneer Drive
8. zoning - Z-2023-01 - not\_001
9. 4258 Don Juan
10. 4410 Don Juan
11. 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 12<sup>th</sup> 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 18<sup>th</sup> 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 12<sup>th</sup> 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 26<sup>th</sup> 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:

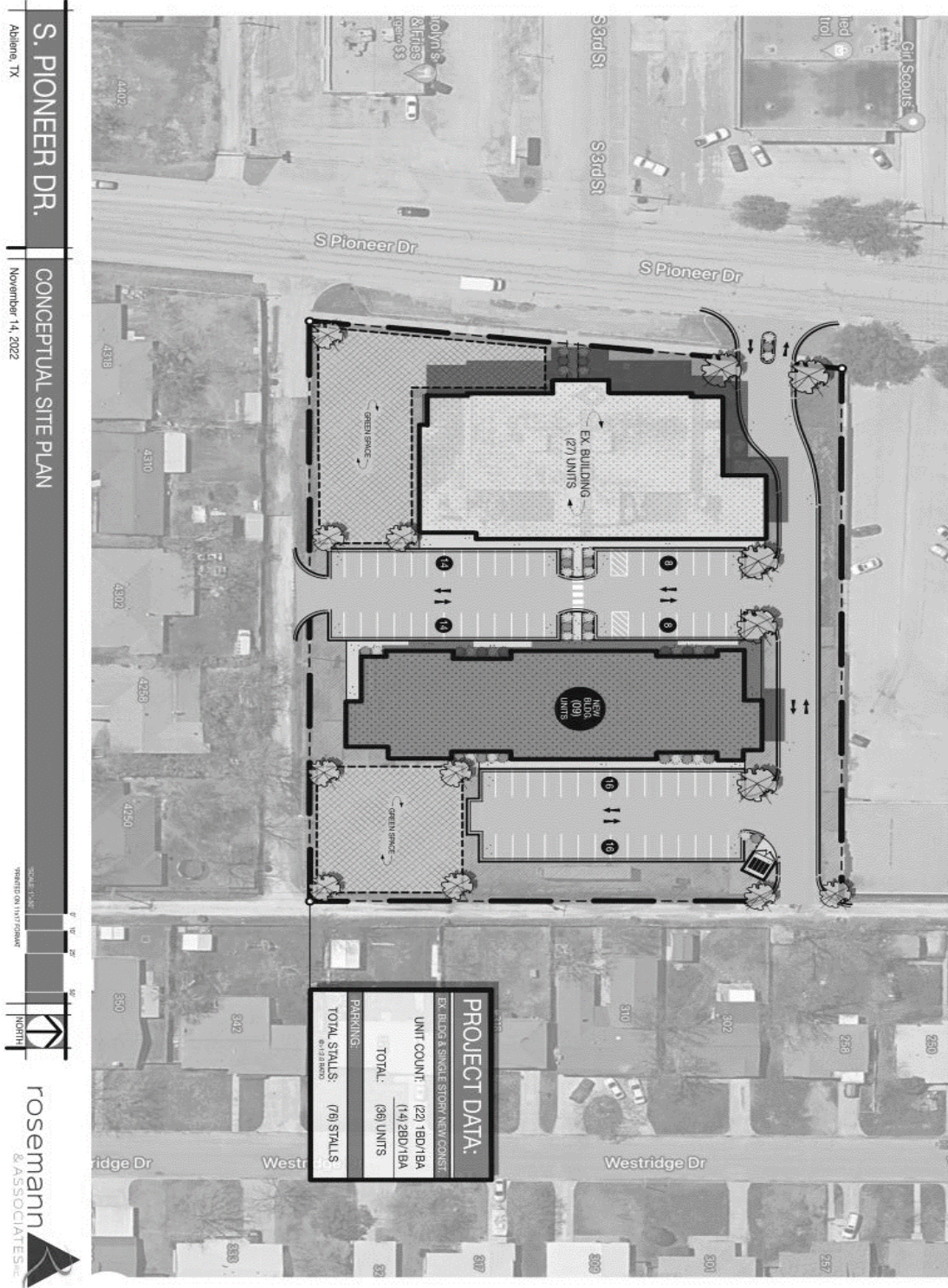
1. The minimum parking ratio for multi-family dwellings shall be 5 spaces for every 4 dwelling units.
2. For all other uses, the standard parking requirements of the LDC shall be applicable.

**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

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### Scheduled Hearings

Planning & Zoning Commission: January 3, 2023

City Council 1<sup>st</sup> Reading: January 12, 2023

City Council 2<sup>nd</sup> 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 23<sup>rd</sup>, 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<br>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<br>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 |          |

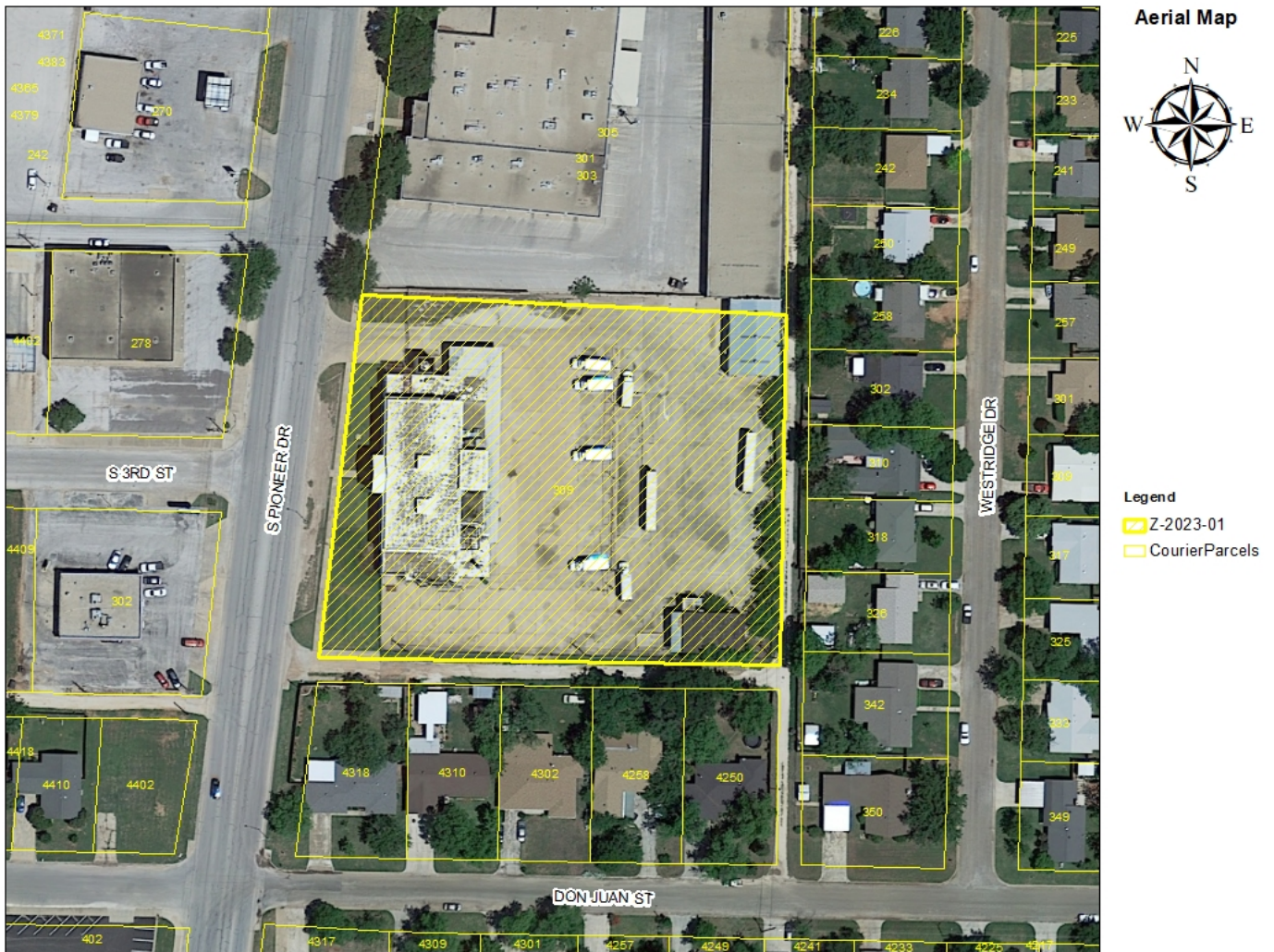


|                           |         |                  |  |
|---------------------------|---------|------------------|--|
| T & T OKLAHOMA LLC        | 1006027 | 301 S PIONEER DR |  |
| T & T OKLAHOMA LLC        | 1006027 | 305 S PIONEER DR |  |
| T & T OKLAHOMA LLC        | 1006027 | 303 S PIONEER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

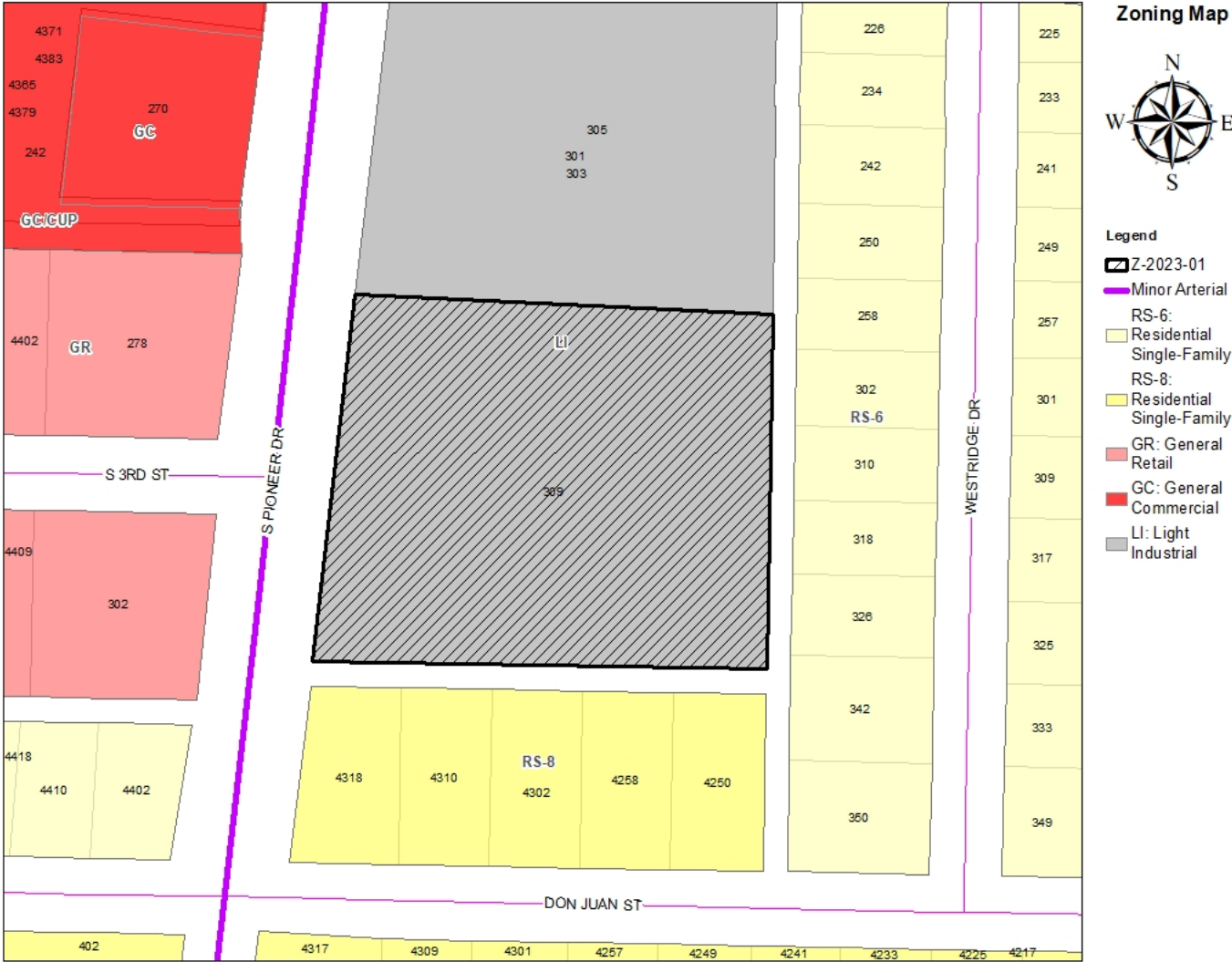
**Property ID**

| Owner                             | Property ID | Situs            | Response |
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| FOCO CAPITAL LLC                  | 11444       | 301 WESTRIDGE DR |          |
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| MARTINEZ SYLVIA                   | 40576       | 4318 DON JUAN ST |          |
| MARTINEZ SYLVIA &                 | 40701       | 4310 DON JUAN ST |          |
| FRY REAL PROPERTY                 | 40827       | 4302 DON JUAN ST |          |
| MILLER LAUREL ANN                 | 40949       | 4258 DON JUAN ST | O        |
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| HERBERT KEVIN                     | 55511       | 4410 DON JUAN ST | O        |
| WESTGATE CHURCH OF CHRIST         | 55632       | 4402 DON JUAN ST |          |
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| JOHNSON PAUL                      | 98661       | 4379 S 1ST ST    | O        |
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| T & T OKLAHOMA LLC                | 1006027     | 303 S PIONEER DR |          |

# LOCATION MAP



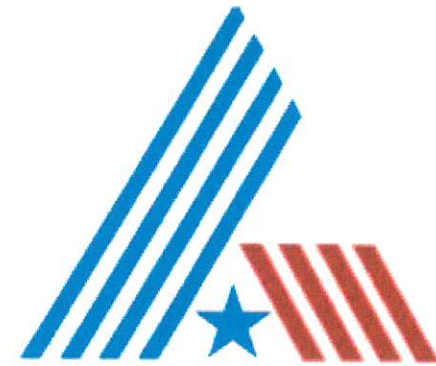
ZONING MAP







# 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](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](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](mailto: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](mailto: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

- |                                                                    |                                             |                                                         |                                           |
|--------------------------------------------------------------------|---------------------------------------------|---------------------------------------------------------|-------------------------------------------|
| <input type="checkbox"/> Conditional Use                           | <input type="checkbox"/> Special Exceptions | <input type="checkbox"/> Rezoning                       | <input type="checkbox"/> Variance         |
| <input checked="" type="checkbox"/> PDD Amendment                  | <input type="checkbox"/> Street Name Change | <input type="checkbox"/> Thoroughfare Abandonment       | <input type="checkbox"/> Easement Release |
| <input type="checkbox"/> Historic Certification of Appropriateness |                                             | <input type="checkbox"/> Historic Project Tax Reduction |                                           |

### Relief Procedures

- |                                              |                                                 |                                                 |                                 |
|----------------------------------------------|-------------------------------------------------|-------------------------------------------------|---------------------------------|
| <input type="checkbox"/> Petition for Relief | <input type="checkbox"/> Proportionality Appeal | <input type="checkbox"/> Vested Rights Petition | <input type="checkbox"/> 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

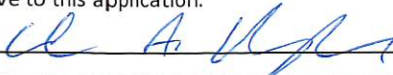
Agent Name: JES Dev Co, Inc. and its employees

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

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

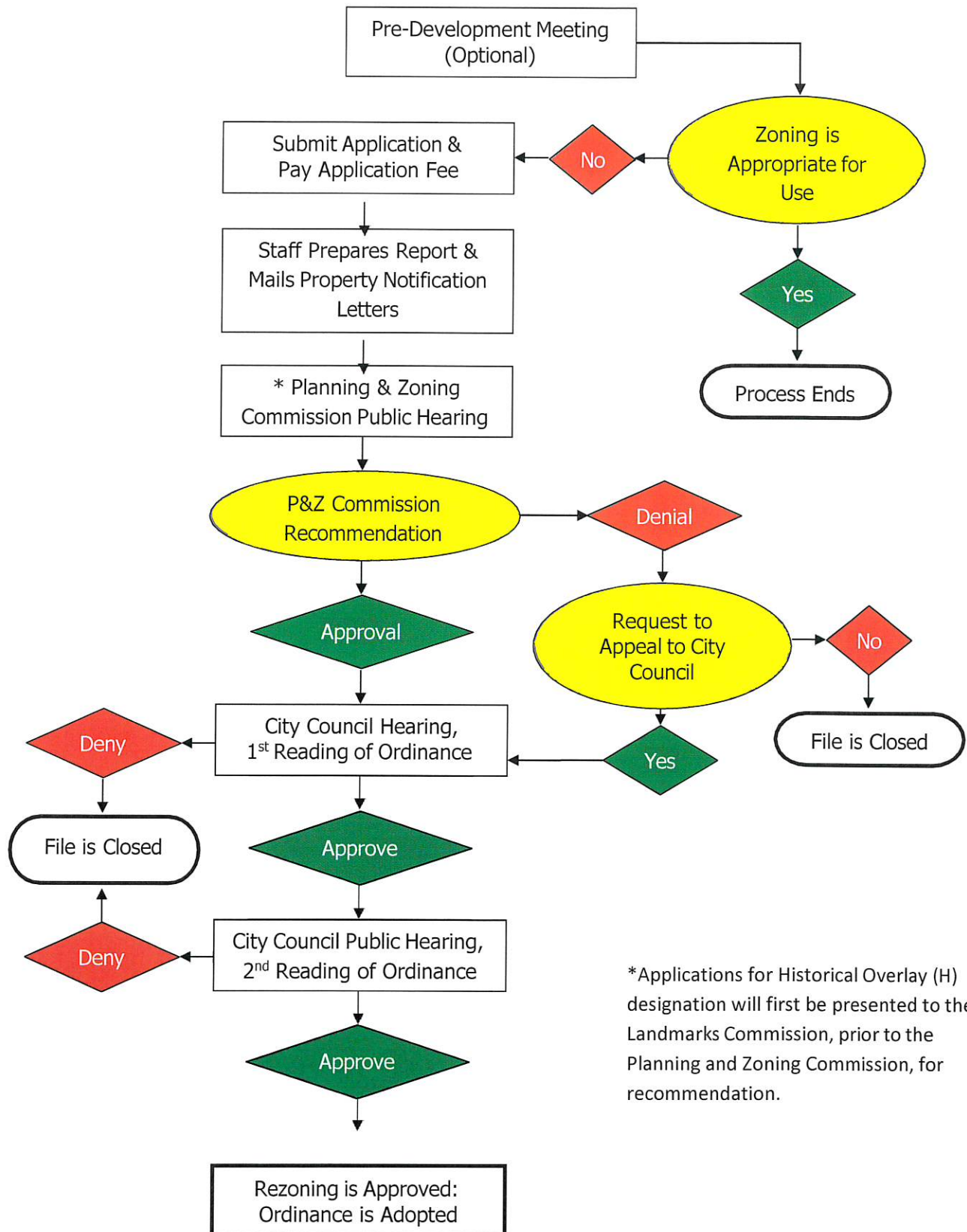
4. Are there other factors which will substantially affect the public health, safety, morals, or general welfare? Yes, this development will add to Abilene's housing stock, preserve a historic building, and convert an underutilized industrial building into a new useful multifamily community.

### 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

- |                                                                  |                                                      |
|------------------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> Preliminary Plat/Replat                 | <input type="checkbox"/> Civil Plans                 |
| <input type="checkbox"/> Final Plat/Replat                       | <input type="checkbox"/> Site Plan/Revised Site Plan |
| <input type="checkbox"/> Combination Preliminary and Final Plat* | <input type="checkbox"/> Landscape Plan              |
| <input type="checkbox"/> Amended Plat                            | <input type="checkbox"/> Tree Preservation           |
| <input type="checkbox"/> Minor Plat/Replat                       | <input type="checkbox"/> Lighting Plan               |
| <input type="checkbox"/> Development Plat                        | <input type="checkbox"/> 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, 20 22

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.

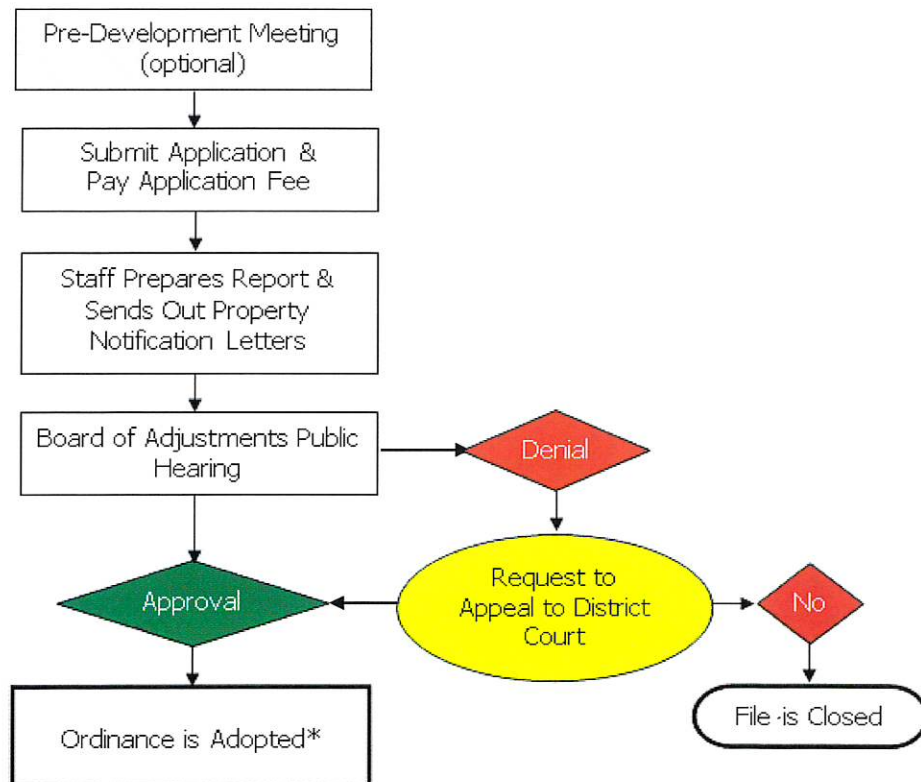
The Board of Adjustment shall finally decide appeals on the following matters of an appeal of any official's interpretation of the requirements of Chapters 2 or 4 of this LDC in which the requirement applies to development within the City limits of Abilene, unless a separate appeals process is otherwise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

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## 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.

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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?

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# 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

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## 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

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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

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Abilene, TX



JES HOLDINGS, LLC

# COMPANY OVERVIEW

## JES HOLDINGS, LLC

DEVELOP

BUILD

MANAGE

INVEST



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

# DEVELOPER

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- 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

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**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

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- 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

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**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

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# HIDDEN GLEN

SALADO, TX

---



# BLUFF VIEW SENIOR VILLAGE

CRANDALL, TX





# DA HOLMES SENIOR HOUSING

KANSAS CITY, MO

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# LOFTS AT LANDMARK

ST JOSEPH, MO



# MARY LEILA LOFTS

GREENSBORO, GA

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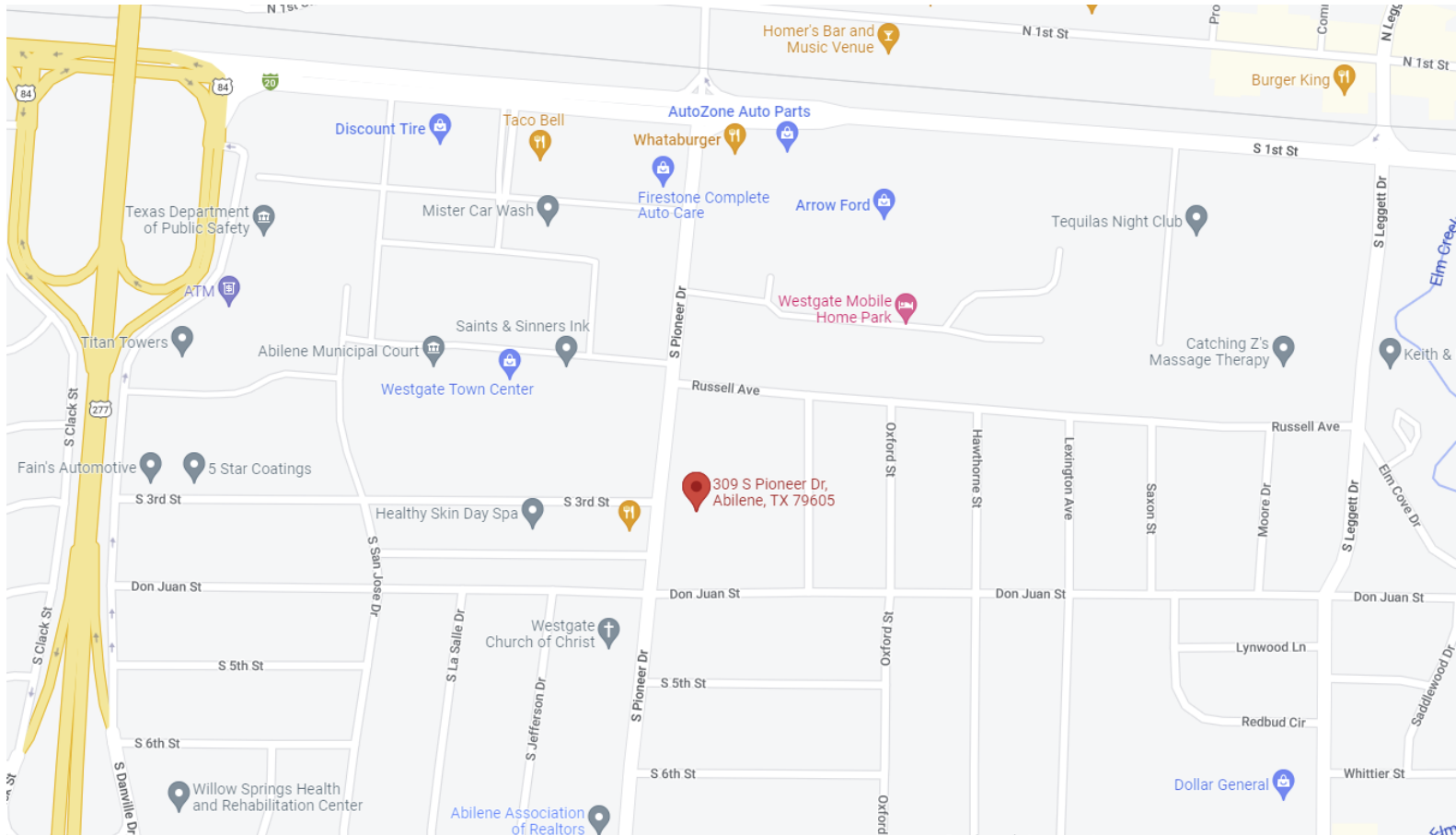




# SITE INFORMATION

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# SITE LOCATION



# SITE AERIAL





# SITE LAYOUT

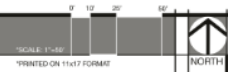


S. PIONEER DR.

Abilene, TX

CONCEPTUAL SITE PLAN

November 14, 2022



rosemann  
& ASSOCIATES

# COMMUNITY FEATURES

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# COMMUNITY FEATURES

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





# UNIT FEATURES & RESIDENT PROFILE

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# RESIDENTIAL UNIT FEATURES

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## 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

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## 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

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# PROPOSED RESIDENT SERVICES

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- 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

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Michael Ash, Development Manager

- 737-228-4962
- [mash@aepartners.com](mailto:mash@aepartners.com)

Ryan Garcia, Development Manager

- 573-397-2105
- [rgarcia@jesholdings.com](mailto:rgarcia@jesholdings.com)





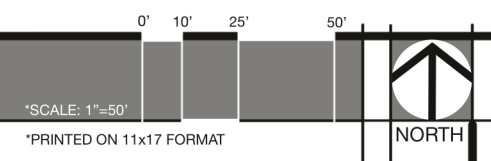
| PROJECT DATA:                      |                              |
|------------------------------------|------------------------------|
| EX. BLDG & SINGLE STORY NEW CONST. |                              |
| UNIT COUNT:                        | (22) 1BD/1BA<br>(14) 2BD/1BA |
| TOTAL:            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

S. PIONEER DR.

CONCEPTUAL SITE PLAN

Abilene, TX

November 14, 2022





For the PLANNING & ZONING COMMISSION

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

**CASE #: Z-2023-01**

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

Name: T & T OKLAHOMA LLC

Parcel I.D.: 1006027

Address: 301 S PIONEER DR

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

Email: [planning@abilenetx.gov](mailto:planning@abilenetx.gov)

I am in favor ☐

I am opposed ☒

Additional Comments:

Signature: \_\_\_\_\_

  
DON M. TOINDEXTER

JAN 6 AM 8:59



JOHNSON PAUL  
4633 S 14TH ST  
ABILENE, TX 79605-4734

### NOTICE OF PUBLIC HEARING

**RE: Zoning Application Number Z-2023-01**

**12/19/2022**

The Planning and Zoning Commission will hold a public hearing on **January 3, 2023 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 New Dairy Texas, LLC, represented by Borden Bluff, to change the zoning of approximately 2.4 acres 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. Legal description being Lot 2, Elmwood West, Section N, City of Abilene, Taylor County, Texas.

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If you have any questions, please contact Adam Holland at telephone 325-676-6230 or by email address [planning@abilenetx.gov](mailto:planning@abilenetx.gov)

---

For the PLANNING & ZONING COMMISSION  
Please call (325) 676-6237 if you have any questions about this notice.

**CASE #: Z-2023-01**

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

Name: JOHNSON PAUL

Parcel I.D.: 98661

Address: 4365 S 1ST ST

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

Email: [planning@abilenetx.gov](mailto:planning@abilenetx.gov)

I am in favor ☐

I am opposed ☒

Additional Comments:

Signature: \_\_\_\_\_

*Paul Johnson*

*Not in favor of "MF" zoning*



JOHNSON PAUL  
4633 S 14TH ST  
ABILENE, TX 79605-4734

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Name: JOHNSON PAUL  
Parcel I.D.: 98661  
Address: 4371 S 1ST ST

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

Email: [planning@abilenetx.gov](mailto:planning@abilenetx.gov)

I am in favor ☐

I am opposed ☒

Additional Comments:

Signature: \_\_\_\_\_

*Not in favor of "MF" zoning*



JOHNSON PAUL  
4633 S 14TH ST  
ABILENE, TX 79605-4734

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Name: JOHNSON PAUL  
Parcel I.D.: 98661  
Address: 4379 S 1ST ST

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

Email: [planning@abilenetx.gov](mailto:planning@abilenetx.gov)

I am in favor ☐

I am opposed ☒

Additional Comments:

Signature: \_\_\_\_\_

A handwritten signature in blue ink that reads "Paul Johnson".

*Not in favor of "MF" zoning*



JOHNSON PAUL  
4633 S 14TH ST  
ABILENE, TX 79605-4734

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Name: JOHNSON PAUL  
Parcel I.D.: 98661  
Address: 4383 S 1ST ST

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

Email: [planning@abilenetx.gov](mailto:planning@abilenetx.gov)

I am in favor ☐

I am opposed ☒

Additional Comments:

Signature: Paul Johnson

*Not in favor of "MF" zoning*





JOHNSON PAUL  
4633 S 14TH ST  
ABILENE, TX 79605-4734

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

I am in favor ☐

I am opposed ☒

Additional Comments:

*Not in favor of "MF" zoning*

Name: JOHNSON PAUL  
Parcel I.D.: 98661  
Address: 242 S PIONEER DR

Email: [planning@abilenetx.gov](mailto:planning@abilenetx.gov)

Signature: \_\_\_\_\_

*Paul Johnson*

For the PLANNING & ZONING COMMISSION  
Please call (325) 676-6237 if you have any questions about this notice.

**CASE #: Z-2023-01**

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

Name: MILLER LAUREL ANN  
Parcel I.D.: 40949  
Address: 4258 DON JUAN ST

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

Email: [planning@abilenetx.gov](mailto:planning@abilenetx.gov)

I am in favor ☐

I am opposed ☒

Additional Comments:

Signature:

*Laurel Ann Miller*

*I am opposed to the multi-family residential development portion of the zoning request.*

DEC 30 AM 11:01

For the PLANNING & ZONING COMMISSION

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

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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: HERBERT KEVIN

Parcel I.D.: 55511

Address: 4410 DON JUAN ST

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

Email: [planning@abilenetx.gov](mailto:planning@abilenetx.gov)

I am in favor ☐

I am opposed ☒

Additional Comments:

Signature: \_\_\_\_\_



DEC 28 AM 10:45



# 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





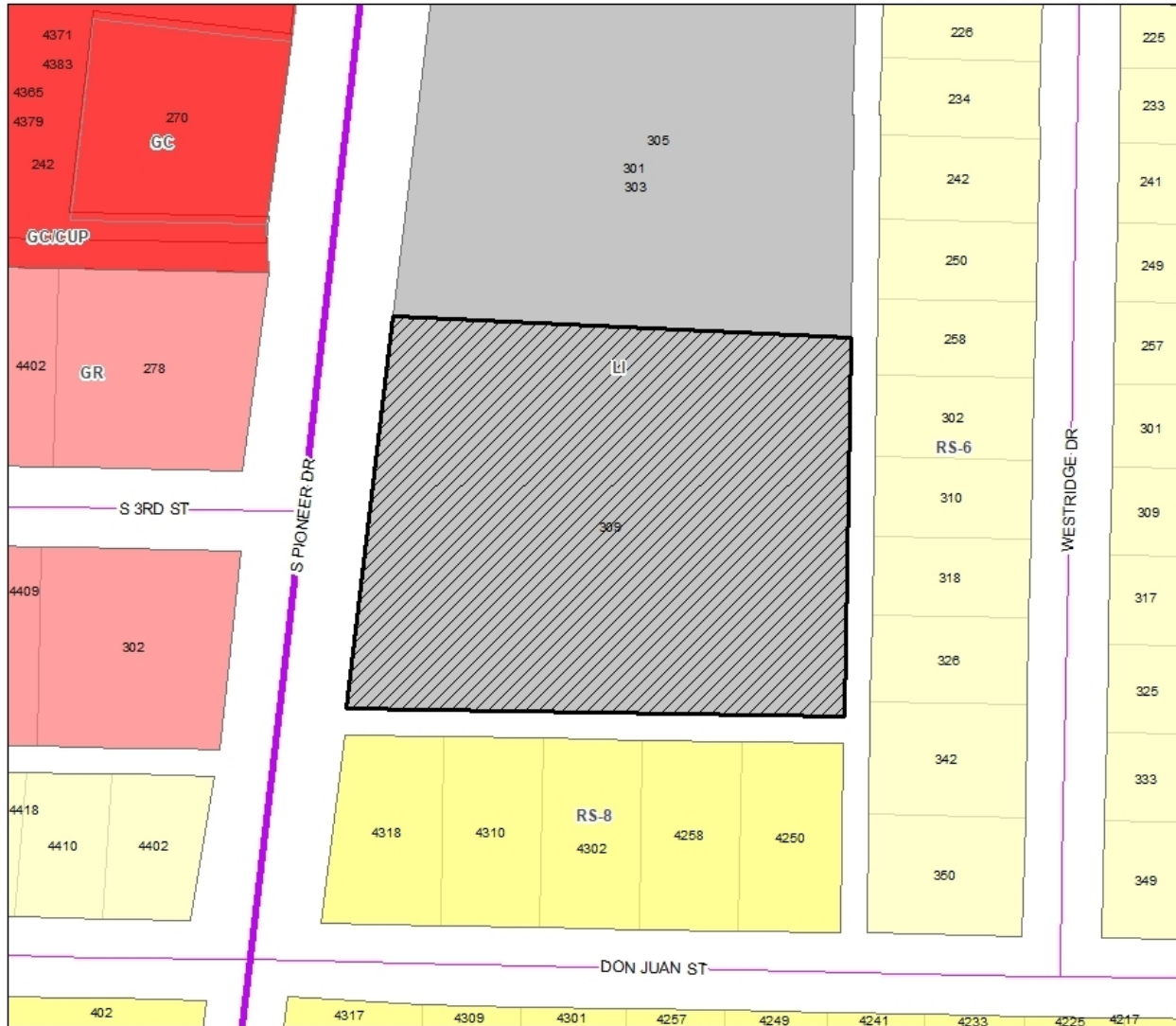
# Z-2023-01 LOCATION MAP







# 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



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**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



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 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
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# Z-2023-01 VIEWS OF SUBJECT & NEIGHBORING PROPERTIES



**West Neighboring Property**  
**Southwest Neighboring Property**



**Subject Property**



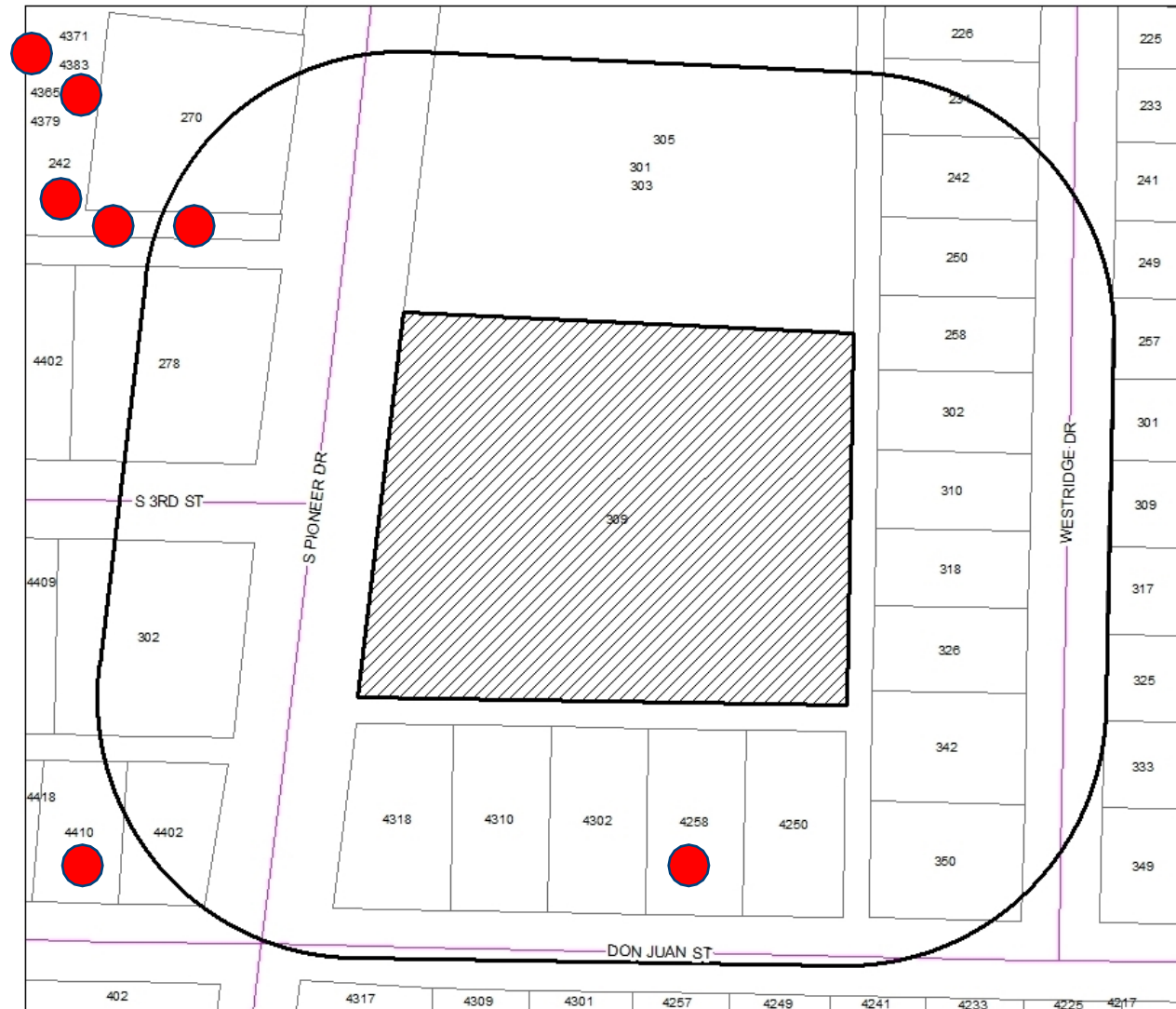
**North Neighboring Property**







# 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

November 14, 2022

Abilene, TX

SCALE: 1"=40'

PRINTED ON 11x17 FORM



rosemann  
& ASSOCIATES



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: 1/26/2023**

**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