



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 May 11, 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 Kyle McAlister

PLEDGE TO THE UNITED STATES FLAG AND THE TEXAS FLAG

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS AND ANNOUNCEMENTS

2. **Presentations & Proclamations:**

- National Travel & Tourism Week
- Be Kind to Animals Week
- Bicycle Awareness Month & Ride of Silence

CONSENT AGENDA AND PUBLIC COMMENTS

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

After the Council Members have requested any item on the consent Agenda be considered separately, the public comment period will be held. The public comment section of the consent agenda allows members of the public to present any ideas or information to the City Council and staff, and also allows for public

comment on the consent agenda items not otherwise pulled for separate consideration. Neither the City Council nor staff will engage in discussion with the public during the public comments unless the item is listed on the Council agenda.

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

3. **Minutes:** Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on April 27, 2023 (**Shawna Atkinson**)
4. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Appointing Members to Various Boards and Commissions per the City Charter (**Shawna Atkinson**)
 - Abilene Housing Authority
 - Abilene-Taylor County Public Health District
 - Keep Abilene Beautiful
 - Senior Citizens Advisory Board
 - Visual Arts Jury
5. **Resolution:** Receive a Report, Hold a Discussion and Take Action to Award a Contract for Capital Projects Implementation Service Consultant (CB-2342). (**Don Green**)
6. **Resolution:** Receive a Report, Hold a Discussion and Take Action to Approve the implementation of Passenger Facility Charge Application #4 at Abilene Regional Airport (**Don Green**)
7. **Resolution:** Receive a Report, Hold a Discussion and Take Action to approve an Operating Agreement with Turo, Inc. to enable a Peer to Peer Vehicle Sharing Service at Abilene Regional Airport (**Don Green**)
8. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Executing a Professional Services Contracts with West Texas Occupational Corporate Health Solutions (WTX-OCBS) and Screening For Life to Conduct Annual Medical Physicals for Employees of the Abilene Fire Department (**Cande Flores**)
9. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Finding that AEP Texas Inc.'s Application to Amend it's Distribution Cost Recovery Factors to Increase Distribution Rates Within the City Should be Denied; Authorizing Participation with the Cities Served by AEP Texas; Authorizing Hiring of Legal Counsel; Finding that the City's Reasonable Rate Case Expenses Shall Be Reimbursed by the Company; Finding that the Meeting at Which This Resolution is Passed is Open to the Public as Required by Law; Requiring Notice of this Resolution to the Company and Legal Counsel (**Mike Rains**)
10. **Resolution:** Receive a Report, Hold a Discussion, and Take Action authorizing an application for the State of Texas Department of Transportation 2023 Alternative (TA) Program call for projects for the Old Anson Road Walkability Project (West Stamford Street to Ambler Avenue) (**Max Johnson**)
11. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Authorizing the City Manager to Enter Into a Contract with Jacob and Martin, LLC for the Design of

REGULAR AGENDA - ORDINANCES AND PUBLIC HEARINGS - RESOLUTIONS

12. **Ordinance (Final Reading) Z-2023-09:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Rolling Plains EV Stations LLC to change zoning of approximately 783 acres of land located at 5502 Spinks Road from Agricultural Open to Planned Development (PD-181) (*Tim Littlejohn*)
13. **Ordinance (Final Reading) Z-2023-10:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Bridgestone Bandag, LLC to change zoning from Agricultural Open (AO) to Heavy Industrial (HI), located at 4678 FM 18 (*Tim Littlejohn*)
14. **Ordinance (Final Reading) Z-2023-12:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from KPLB LLC to amend the terms of PDD-155. More specifically, this request is to change the base zoning of the north three hundred feet of this PD from Neighborhood Office (NO) to Neighborhood Retail (NR), located on the 4600 Block of Antilley Road (*Tim Littlejohn*)

EXECUTIVE SESSION

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

A. 551.071 (Consultation with Attorney)

1. Robert Steven Reitz v. City of Abilene, Texas, et al., Case No. 1:16-cv-00181-BL; In the U.S. District Court, Northern District of Texas, Abilene Division, filed October 10, 2016
2. 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. 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
4. Sharra Sampson v. City of Abilene; Cause No. 8144-B, In the 104th Judicial District Court, Taylor County, Texas; filed September 14, 2020
5. 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
6. 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
7. 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
8. 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
9. Richard Scheriger, et al. v. City of Abilene; Cause No. CV33253, In the 90th Judicial District Court, Stephens County, Texas, filed April 21, 2023

B. 551.072 (Deliberations about Real Property)

C. 551.073 (Deliberations about Gifts and Donations)

D. 551.074 (Personnel Matters)

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

E. 551.076 (Deliberations about Security Devices)

F. 551.087 (Business Prospect/Economic Development)

RECONVENE

REGULAR AGENDA

ADJOURNMENT

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

CERTIFICATION

I hereby certify the above meeting notice was posted on the bulletin board at the City Hall of the City of Abilene, Texas, on the 5th day of May, 2023, at 2:35 p.m.

Shawna Atkinson, TRMC, CMC
City Secretary



**City Council
Agenda Memo**

City Council Meeting Date: 5/11/2023

TO: Honorable Mayor & Members of City Council

FROM: Shawna Atkinson, City Secretary

SUBJECT: **3. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on April 27, 2023 (Shawna Atkinson)**

GENERAL INFORMATION

Approval of the Minutes from the Regular meeting held on April 27, 2023

SPECIAL CONSIDERATIONS

None.

FUNDING/FISCAL IMPACT

None

STAFF RECOMMENDATION

Approval of the Minutes

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 04-27-2023 Minutes - Regular - Morning

CITY COUNCIL MEETING
April 27, 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 April 13, 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 Deputy City Secretary Kaitlin Richardson.

Councilmember Travis Craver delivered the invocation.

Royal Downing and Braedyn Cummings, both 5th graders from Purcell Elementary, led the Pledge of Allegiance to the Flag of the United States of America and State of Texas Flag.

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS, ANNOUNCEMENTS

- Presentations & Proclamations:
 - Mental Health Awareness Month – accepted by William Boyd and NAMI staff members.
 - Human Trafficking and National Crime Victims’ Rights Week – accepted by Stephanie Rocha and Beyond Trafficking
 - Presentation of the 2023 Odis Dolton Good Neighbor Award to Stephanie Rocha

PRESENTATION OF CONSENT AGENDA

The Consent Agenda consisted of items 3-11. No items were pulled for individual consideration.

PUBLIC COMMENTS

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

- Samuel Garcia – spoke about excessive charges from the DCOA, including salaries and bonuses paid to staff.

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

CONSENT AGENDA

Mayor Pro-tem Hurt moved to approve the consent agenda consisting of items 3-11. 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

3. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on April 13, 2023
4. Resolution: Receive a Report, Hold a Discussion, and Take Action to Approve an Agreement with CBIZ to provide Property Appraisal Services
[ASSIGNED RESOLUTION NO. 77-2023]

5. Resolution: Receive a Report, Hold a Discussion and Take Action on Authorizing the City Manager to Enter Into a Contract with Extreme Exteriors, LLC for the Installation of a Splash Pad at Valentine Park
[ASSIGNED RESOLUTION NO. 78-2023]
6. Resolution: Receive a Report, Hold a Discussion and Take Action on Authorizing the City Manger to enter into a contract with Kreative Core Tech for project management, functional configuration assistance and technical support services to support the City's Tyler Munis Enterprise Resource Planning (ERP) implementation
[ASSIGNED RESOLUTION NO. 79-2023]
7. Resolution: Receive a Report, Hold a Discussion and Take Action on Authorizing the City Manager to enter into an Agreement with Strategic Government Resources (SGR) to provide the services of an Interim Director of Public Safety, perform an organizational department review and recommendation, and assist with the search and recruitment of the new Police Chief
[ASSIGNED RESOLUTION NO. 80-2023]
8. Resolution: Receive a Report, Hold a Discussion and Take Action on Approval of Single-Family Rehabilitation/Reconstruction Program Budget with HOME Program Funds for 5314 Durango Drive
[ASSIGNED RESOLUTION NO. 81-2023]
9. Ordinance (First Reading) Z-2023-09: Receive a Report, Hold a Discussion and Take Action on a request from Rolling Plains EV Stations LLC to change zoning of approximately 826 acres of land located at 5502 Spinks Road from Agricultural Open to Planned Development (PD-181)
10. Ordinance (First Reading) Z-2023-10: Receive a Report, Hold a Discussion and Take Action on a request from Bridgestone Bandag, LLC to change zoning from Agricultural Open (AO) to Heavy Industrial (HI), located at 4678 FM 18
11. Ordinance (First Reading) Z-2023-12: Receive a Report, Hold a Discussion and Take Action on a request from KPLB LLC to amend the terms of PDD-155. More specifically, this request is to change the base zoning of the north three hundred feet of this PD from Neighborhood Office (NO) to Neighborhood Retail (NR), located on the 4600 Block of Antilley Road

REGULAR AGENDA

12. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Approval of a Single-Family Reconstruction Program contract with HOME Program Funds for 1317 Mesquite
[ASSIGNED RESOLUTION NO. 82-2023]

Tim Littlejohn, Director of Planning and Development Services, presented the item. Adoption of the item would approve a rehabilitation project at 1317 Mesquite Street.

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

Because the two bidders on this project were for the exact same dollar amount, according to State law, Council must draw a name from a lot to award the bid. Deputy City Secretary Kaitlin Richardson brought two cards forward to Mayor Williams, one with each of the contractor's names on the back. Mayor Williams chose the card for Rick's Construction.

Mayor Pro-tem Hurt moved to approve award the bid to Rick's Construction. 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

13. Ordinance (Final Reading): Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Authorizing the Issuance of City of Abilene, Texas Combination Tax and Limited Surplus Revenue Certificates of Obligation, Series 2023 for Street Projects
[ASSIGNED ORDINANCE NO. 23-2023]

Mike Rains, Finance Director, presented the item. Adoption of the item would approve the Certificates of Obligations for the Cypress Street Streetscape Project. George Williford, with Hilltop Securities, brought Council a book with pricing information, and reviewed that in detail. Mr. Hanna also discussed how these bonds will be paid back, using TIRZ revenue.

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

- Ryan Goodwin – requested the information that Council is voting on be made available to the public in advance of the meeting. Mr. Goodwin likes the TIRZ funding.
 - Mayor Williams explained the forecasting process. Mr. Hanna added that the information in the binder is simply the debt information and numbers, and spoke about how this process works.

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

Councilmember Beard moved for approval of the ordinance authorizing the issuance of City of Abilene, Texas, combination tax and limited surplus revenue certificates of obligation, series 2023 for street projects. 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. Ordinance (Final Reading): Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Authorizing the Issuance and Sale of City of Abilene, Texas General Obligation Bonds, Series 2023 for Fire Department Projects
[ASSIGNED ORDINANCE NO. 24-2023]

Mike Rains, Finance Director, presented the item. Adoption of the item would approve the General Obligation bonds for the construction of Fire Station Number 9, approved by voters in November 2022.

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

Councilmember Price moved for approval of the of the ordinance authorizing the issuance and sale of City of Abilene, Texas General Obligation Bonds, series 2023 for Fire Department Projects. 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

EXECUTIVE SESSION

Mayor Williams recessed into Executive Session at 9:12 a.m., pursuant to the following of the Open Meetings Act, with the following issues discussed during this session, as listed on the agenda and authorized by the noted Texas Government Code Section:

- 15. B. 551.072 (Deliberations about Real Property)
 - 1. Solar Project at Hamby WRF
- 15. D. 551.076 (Personnel Matters)
 - 1. City Manager

The Executive Session ended at 9:25 a.m. and reconvened to Open Session. Mayor Williams reported no votes or action were taken in Executive Session.

Mayor Williams recognized City Secretary Shawna Atkinson for Administrative Professionals Day.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:26 a.m.

Shawna Atkinson
City Secretary

Anthony Williams
Mayor

Minutes approved on: _____



**City Council
Agenda Memo**

City Council Meeting Date: 5/11/2023

TO: Honorable Mayor & Members of City Council

FROM: Shawna Atkinson, City Secretary

SUBJECT: 4.

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

- Abilene Housing Authority
- Abilene-Taylor County Public Health District
- Keep Abilene Beautiful
- Senior Citizens Advisory Board
- Visual Arts Jury

GENERAL INFORMATION

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

SPECIAL CONSIDERATIONS

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

FUNDING/FISCAL IMPACT

No cost consideration to the city.

STAFF RECOMMENDATION

(Re)Appointment

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. B&C Resolution
2. Exhibit A (12)
3. B&C Presentation Slide

RESOLUTION NO. _____

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

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

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

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

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

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

PASSED this 11th day of May, 2023.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

RESOLUTION NO. _____
EXHIBIT "A"

Board	Term End Date
<i>Abilene Housing Authority</i>	
Celestine Daugherty [New]	November 2024
<i>Abilene -Taylor County Public Health District Board</i>	
Tim Farrar [New]	November 2023 [unexpired term]
Garrett Turner [New]	November 2023 [unexpired term]
<i>Keep Abilene Beautiful</i>	
Steve Stovall [New]	September 2025 [unexpired term]
<i>Senior Citizens Advisory Board</i>	
Deborah Williams [Reappointment]	May 2025
Joe Lopez [Reappointment]	May 2025
Sydnye Moore [Reappointment]	May 2025
<i>Visual Arts</i>	
Mike Warren [Reappointment]	May 2026
Pam Tippen [Reappointment]	May 2026



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

- Abilene Housing Authority
- Abilene-Taylor County Public Health District
- Keep Abilene Beautiful
- Senior Citizens Advisory Board
- Visual Arts Jury





**City Council
Agenda Memo**

City Council Meeting Date: 5/11/2023

TO: Robert Hanna, City Manager

FROM: Don Green, Director

SUBJECT: 5. Resolution: Receive a Report, Hold a Discussion and Take Action to Award a Contract for Capital Projects Implementation Service Consultant (CB-2342). (Don Green)

GENERAL INFORMATION

Abilene Regional Airport has multiple capital projects in various stages of development. These projects will require time and attention to details that Airport Staff will need assistance with as well as meeting Federal Aviation Administration (FAA) requirements for those projects that will be funded by FAA grants. The City conducted a Request for Qualifications (CB-2342) from consultants that have experience in project development and management and in assisting airports with securing funding sources.

One submittal was received from Kutchins & Groh and is a qualified firm to conduct the scope of work detailed in the contract. This contract will be at a not-to-exceed cost of \$90,000.00 based on actual work performed as directed.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

This contract is eligible for 90% funding under the FAA's Airport Improvement Program Grant and Airport Infrastructure Grant. The City is responsible for the 10% Match of up to \$9,000.00.

STAFF RECOMMENDATION

Staff recommends this contract as the best way to implement the upcoming projects and

maximize staff effectiveness.

BOARD OR COMMISSION RECOMMENDATION

The Airport Development Board will consider this contract for its recommendation at its May 10, 2023 meeting. If the Airport Development Board is unable to make a recommendation, this item will be pulled prior to the City Council meeting.

ATTACHMENTS:

1. Airport Capital Implementation Services Contract Resolution (5-11-23) (1)
2. Capital Implementation Services Consulting Contract Presentation (5-11-23)

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
APPROVING AN AIRPORT CAPITAL PROJECTS IMPLEMENTATION
CONSULTING CONTRACT WITH KUTCHINS & GROH**

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

WHEREAS, Abilene Regional Airport continually seeks improvement occasionally with assistance from consulting firms with top-of-industry experience and results; and

WHEREAS, the City conducted a Request for Qualifications (CB-2342) for Airport Capital Projects Implementation Consulting Services; and

WHEREAS, Kutchins & Groh submitted its Statement of Qualifications and has performed previous tasks for Abilene Regional Airport that exceeded Staff's expectations; and

WHEREAS, Abilene Regional Airport Staff anticipates the need for near-future consulting assistance assigned by task orders under this contract; and

WHEREAS, such task orders will be brought for separate City Council approval, when needed.

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

- I. That City Council accepts and approves this Contract with Kutchins & Groh.
- II. That this contract will not exceed \$90,000.00 based on actual work performed.
- III. That this action is effective immediately upon Council approval.

ADOPTED this 11th day of May 2023.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

City Council Meeting

May 11, 2023





Airport Capital Projects Implementation Consulting Services – Kutchins & Groh

- The City conducted a Request for Qualifications (CB-2342) to provide consulting services for various issues related to implementing Abilene Regional Airport's capital projects.
- Kutchins & Groh is a firm that specializes in capital projects consulting for smaller airports and has performed previous work for ABI.
- Their expertise will be used for funding planning, design and cost review, FAA compliance, Independent Fee Estimates for professional design services.



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 5/11/2023

TO: Robert Hanna, City Manager

FROM: Don Green, Director

SUBJECT: 6. Resolution: Receive a Report, Hold a Discussion and Take Action to Approve the implementation of Passenger Facility Charge Application #4 at Abilene Regional Airport (*Don Green*)

GENERAL INFORMATION

A Passenger Facility Charge (PFC) is authorized by Federal Law and this user fee is imposed only on eligible enplaned passengers utilizing commercial service airports. The City of Abilene has authorized the imposition and use of PFC charges since their inception in 1997 and this is the airport's fourth PFC application. The continuation of a PFC charge in the amount of \$4.50, the maximum charge allowed by law, is necessary to accomplish capital projects designed to enhance the capacity, safety, and development of the Abilene Regional Airport. The projects detailed in the attached listing are those expected to be approved by the Federal Aviation Administration for this application.

A consultation meeting was held April 27th to give airlines the opportunity to comment on the proposed PFC. No comments were received.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval of PFC #4, which will contribute to the funding of eligible capital improvement projects and development at Abilene Regional Airport.

BOARD OR COMMISSION RECOMMENDATION

The Airport Development Board will consider this contract for its recommendation at its May 10, 2023 meeting. If the Airport Development Board is unable to make a recommendation, this item will be pulled prior to the City Council meeting.

ATTACHMENTS:

1. PFC 4 Resolution (5-11-23)
2. ABI PFC #4 Consultation Letter
3. PFC 4 Authorization Presentation (5-11-23)

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
AUTHORIZING A \$4.50 PASSENGER FACILITY CHARGE AT ABILENE REGIONAL
AIRPORT THROUGH APPLICATION NUMBER FOUR.**

WHEREAS, a Passenger Facility Charge (PFC) is authorized by Federal Law and this user fee is imposed only on eligible enplaned passengers utilizing Airports, and;

WHEREAS, the City of Abilene has authorized the use of PFC charges since 1997 to fund eligible capital projects at Abilene Regional Airport to enhance capacity, safety, and development of the Airport, and;

WHEREAS, the authorization to impose and use PFC #4 and charge the amount of \$4.50 per qualified enplaned passenger at Abilene Regional Airport is necessary to accomplish eligible capital projects.

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

PART 1. That the City Manager is authorized to file Application #4 and amend and close, as necessary, any open applications with the Federal Aviation Administration (FAA), authorizing through Application Number Four to impose and use a \$4.50 per passenger charge at Abilene Regional Airport for eligible projects, and the assurances and understandings contained in the application.

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

ADOPTED this 11th day of May 2023.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney



March 27, 2023

Air Carriers, Foreign Air Carriers and Others Operating at Abilene Regional Airport

Re: Notice by Public Agency of Intent to Apply for Authority to Impose a Passenger Facility Charge for New Projects at the Abilene Regional Airport (ABI)

Dear Operator:

The City of Abilene (the City) intends to submit an application to the Federal Aviation Administration (FAA) to gain authority to initiate a new impose and use application for projects at the Abilene Regional Airport.

As required by Section 158.23 of the Federal Aviation Regulations (FAR) Part 158, Passenger Facility Charges, the City of Abilene is hereby providing written notice to all air carriers and foreign air carriers operating at the Airport. This letter serves to inform air carriers of the City's intent to initiate a new PFC application and notify air carriers of a PFC Consultation Meeting.

The City seeks to initiate a new impose and use application to add projects for:

1. Terminal Modernization Project Improvements (Preliminary Planning & Design)
2. ARFF Truck Replacement
3. Terminal Modernization Project Construction Phase I
4. ARFF Building Construction
5. Jet Bridge Replacements
6. Terminal Modernization Phase II Design
7. PFC Professional Services (App 4)
8. PFC Professional Services (SOAR Admin, Close-out, and Audit Costs)

In accordance with §158.23(e)(1), the City of Abilene requests that air carriers confirm receipt of this letter and additionally state their intended presence at an in-person and virtual meeting scheduled for April 27, 2023, at 10:30 am CDT.

The in-person meeting location is:

Airport Terminal Lower Level, 2933 Airport Blvd, Abilene, TX, Lawrence E. Gill Conference Room

Abilene Regional Airport
2933 Airport Boulevard, Suite 200
Abilene, Texas 79602
325.676.6367
IFLYABI.COM



If you wish to participate virtually, please email Lisa Lawson at lisa@kutchins-groh.com with your contact information in order to receive information regarding the virtual Consultation Meeting login credentials.

If an air carrier determines that the consultation meeting is not necessary, the City requests that the air carrier's certification of agreement or disagreement be forwarded with its written acknowledgment of receiving this notice of intent.

Also, in accordance with §158.23, the City requests that air carriers confirm receipt of this letter and additionally state their intended presence at a consultation meeting scheduled for April 27, 2023, at 10:30 am CDT.

Section 158.23 (a) (1) Description of Projects

1. Terminal Modernization Project Improvements (Preliminary Planning & Design): This project involves architectural and engineering design services for interior terminal improvements, including renovation and modernization of restrooms, and public use areas. This project includes the schematic design phase through issuance of construction documents, bidding services, and construction administration. This project is to reimburse the Airport for Local funds required for the design and project oversight costs.
2. ARFF Truck Replacement: This project is for the replacement of the Airport's ARFF Truck. The current vehicle is 21 years old and has reached the end of its useful life. This project is for the match money required for the planned 2024 AIP Entitlement Grant.
3. Terminal Modernization Project Construction Phase I: This project is the enabling mechanism for the Airport's Modernization program. It includes interior renovations and improvements and sets the stage for the full improvement program that includes a new security checkpoint, expansion and renovation of the boarding lounges, improvements to the ticket lobby, and expansion of the terminal lobby pre-security. This project is funded by AIP Grant 55 and AIG Grant 56.
4. ARFF Building Construction: This project is to cover eligible costs associated with the new ARFF Station constructed in 2022. The project was funded with an AIP grant; however, there were not enough funds available to cover the entire cost. The Airport paid for the grant match and additional funding out of its Airport funds and now seeks reimbursement of those costs.
5. Jet Bridge Replacements: This project is for the removal and replacement of the outdated jet bridges. The project was funded by an AIP grant and this PFC project is for the local funding portion.
6. Terminal Modernization Phase II Design: This project involves architectural and engineering design services for interior terminal improvements, including renovation and modernization of restrooms and public use areas. This project includes the schematic design phase through issuance of construction documents, bidding services, and construction administration.
7. PFC Professional Services (App 4): This project involves the recapture of the professional service fees associated with the preparation of the PFC application. The objective of this project is to successfully navigate the Passenger Facility Charge application process in a manner acceptable to the FAA that will

result in the Airport's ability to impose and use the PFC as set out by FAR Part 158. Successful completion of the application will afford the Airport the opportunity to continue the collection of PFC revenue for its Capital Development Program. This project is a 100% PFC-funded project.

8. PFC Professional Services (SOAR Admin, Close-out, and Audit Costs): This project involves the professional services associated with the required annual audits of the program as well as the monthly administration, review, and update of all SOAR transactions for the life of the application. This project is a 100% PFC-funded project.

Section 158.23 (a)(3) Request that a Class of Air Carriers Not Be Required to Collect the PFC

Under Section 158.11 of FAR Part 158, the City may request in its application to the FAA to impose a PFC that any class of air carrier not be required to collect the PFC if the number of passengers enplaned by the carriers in the class constitutes no more than one percent (1%) of the total number of passengers enplaned annually at the Airport. The number of passengers enplaned annually by the requested class of ATCO-Non-Scheduled/On-Demand Air Carriers filing FAA Form 1800-31 represents approximately 0.0% of total passengers enplaned at the Airport in 2021. The 2021 ACAIS Report included no carriers filing under FAA Form 1800-31.

The City believes that the PFC revenue to be collected from the requested class of carriers does not justify the administrative burden that would be imposed on the carriers and the City in collecting and accounting for the revenues.

The City further believes that the requested class of on-demand air taxi operators is logically distinguishable from the air carriers providing regularly scheduled air service at the main Airport passenger terminal building and that the exclusion of such on-demand operators will not have a discriminatory effect.

Section 158.23 (a)(2) PFC Level, Effective Date, Expiration Date, and Total Revenue

PFC Level:	\$4.50
Charge Effective Date:	July 1, 2023
Estimated Charge Expiration Date:	July 1, 2032
Total PFC Revenue:	\$2,754,595

Section 158.23 (a) (4) Meeting Notice

The City will hold an airline consultation meeting on **April 27, 2023, at 10:30 am CDT** to discuss the proposed application and answer any questions. The in-person meeting location is:

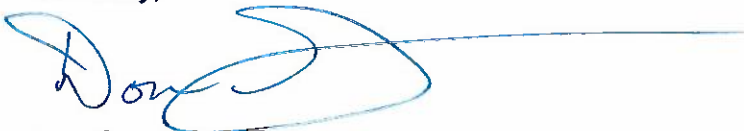
Airport Terminal Lower Level, 2933 Airport Blvd, Abilene, TX, Lawrence E. Gill Conference Room

Please contact Lisa Lawson with Kutchins & Groh, LLC, at lisa@kutchins-groh.com for information regarding attendance via virtual means.

It is requested that you provide the City your written responses and Certifications of Agreement/Disagreement to the proposed action within 30 days of the consultation meeting or receipt of this letter if no meeting is desired.

Should you have any questions, please contact us. We look forward to meeting with you to discuss this program with you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Don Green", with a long horizontal line extending to the right.

Don Green, A.A.E.
Director of Transportation Services

City Council Meeting

May 11, 2023





Airport Passenger Facility Charge Application #4

- The Passenger Facility Charge (PFC) is authorized by Federal Law and this user fee is imposed only on eligible enplaned passengers utilizing Airports, and;
- The maximum charge is \$4.50 per passenger and is used only to help fund capital improvement projects at the airport.
- Abilene Regional Airport has reached its authorized collection amount for PFC #3 and is going through the Federal Aviation Administration's formal process to get PFC #4 authorized.
- PFC #4 is proposed to fund the following projects where the City has or will use its funds for grant matches or other eligible costs:



CITY OF
ABILENE
T E X A S

- The City seeks to initiate a new impose and use application to add projects for:
 - Terminal Modernization Project Improvements (Preliminary Planning & Design)
 - ARFF Truck Replacement (Reimburse City)
 - Terminal Modernization Project Construction Phase I (Reimburse City)
 - ARFF Building Construction (Reimburse City)
 - Jet Bridge Replacements (Reimburse City)
 - Terminal Modernization Phase II Design (Reimburse City)
 - PFC Professional Services (App 4) (Reimburse City)
 - PFC Professional Services (SOAR Admin, Close-out, and Audit Costs)



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 5/11/2023

TO: Robert Hanna, City Manager

FROM: Don Green, Director

SUBJECT: 7. Resolution: Receive a Report, Hold a Discussion and Take Action to approve an Operating Agreement with Turo, Inc. to enable a Peer to Peer Vehicle Sharing Service at Abilene Regional Airport (Don Green)

GENERAL INFORMATION

Turo, Inc is an app-based company enabling vehicle owners (Hosts) to rent their vehicles to customers. This is a similar concept to Airbnb and VRBO for homes.

This Agreement will allow Turo "Hosts" to use Abilene Regional Airport as a selected pickup and dropoff point for its customers. These exchanges may occur in the Airport Terminal Parking Lot, whereby a customer is directed by the app to the vehicle and given access to it; the customer pays the standard parking rate when exiting. An in-person exchange will be allowed to occur at a designated location on the Airport Terminal Curbside. The Turo Host stays with the vehicle and makes an in-person exchange when the customer arrives at the vehicle. Returns are handled in a similar way.

Turo is a growing company, and currently has agreements with approximately 70 airports.

This agreement specifies that the Airport will receive a 10% commission on gross revenue collected from rentals originating at the airport.

A Shared Vehicle with a license plate that exempts it from Airport Parking Lot fees (Purple Heart, Disabled Veteran, Medal of Honor, and Prisoner of War) not driven by the qualifying Vehicle Owner will not be eligible for the fee exemption.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

This agreement will increase Airport revenues by an unknown amount.

STAFF RECOMMENDATION

Staff recommends approval of this agreement.

BOARD OR COMMISSION RECOMMENDATION

The Airport Development Board approved its recommendation at its March 8, 2023 meeting.

ATTACHMENTS:

1. Resolution - Turo Operating Agreement (5-11-23)
2. Turo Agreement (Final)
3. Turo Agreement Presentation (5-11-23)

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
AUTHORIZING AN AGREEMENT WITH TURO, INCORPORATED TO OPERATE AT
ABILENE REGIONAL AIRPORT**

WHEREAS, Turo, Inc is an app-based company enabling vehicle owners (Hosts) to rent their vehicles to customers; and

WHEREAS, this Agreement will allow Turo Hosts to use Abilene Regional Airport as a selected pickup and drop-off point for its customers; and

WHEREAS, this agreement specifies that the Airport will receive a 10% commission of gross revenue collected from rentals originating at the airport; and

WHEREAS, a Shared Vehicle with a license plate that exempts it from Parking Lot fees (Purple Heart, Disabled Veteran, Medal of Honor, and Prisoner of War) not driven by the qualifying Vehicle Owner will not be eligible for the fee exemption.

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

PART 1. That City Council authorizes the City Manager to approve this Agreement with Turo, Inc.

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

ADOPTED this 11th day of May 2023.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

TURO INC. PEER TO PEER CAR SHARING AGREEMENT

THIS Peer to Peer Car Sharing Agreement is entered into on this **11th day of May 2023** (Effective Date"), by and between the CITY OF ABILENE, TEXAS, a municipal corporation existing under the laws of the State of Texas ("City"), and TURO INC., a Delaware corporation ("Turo"). City and Turo may sometimes be referred to herein as "party" or collectively as "parties".

WHEREAS, City owns and operates the Abilene Regional Airport ("Airport"), located in Taylor County, Texas; and

WHEREAS, Turo desires to enable its Peer-to-Peer Vehicle Sharing Service (as defined herein) at the Airport; and

WHEREAS, City has agreed to allow Turo to offer a Peer-to-Peer Vehicle Sharing Service at the Airport subject to the terms, covenants, and conditions of this Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and other good and valuable- consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms, covenants, and conditions:

ARTICLE 1 **DEFINITIONS**

- A. "Peer-to-Peer Vehicle Sharing Service" shall mean the authorized use of a vehicle by an individual other than the vehicle's Owner through an internet-booking platform that connects motor vehicle Owners with drivers to enable the sharing of motor vehicles for financial consideration.
- B. "Agreement" shall mean the City Council authorizing the authority to grant this Agreement to Turo to offer Peer-to-Peer Vehicle Sharing Service.
- C. "Shared Vehicle Driver, or Drivers" shall mean an individual who has been authorized to drive a Shared Vehicle by a Shared Vehicle Owner under a Vehicle sharing agreement.
- D. "Shared Vehicle Owner, or Owners" shall mean the registered Owner(s), or a person designated by a registered Owner, of a vehicle made available-to Shared Vehicle Drivers through a Peer-to-Peer Vehicle Sharing Service program.
- E. "Shared Vehicle, or Vehicles" shall mean a motor vehicle that is available for sharing through a Peer-to-Peer Vehicle Sharing Service.

ARTICLE 2 **NON-EXCLUSIVE AGREEMENT**

- A. Subject to the terms of this Agreement, City hereby grants a revocable, non-exclusive privilege to Turo to enable its Peer-to-Peer Vehicle Sharing Service for Owners to deliver vehicles at the Airport.
- B. Turo, Shared Vehicle Owners and Shared Vehicle Drivers shall use the Airport Terminal Parking Lot

in the same manner as any other Airport customer, in which they will drop off and pick up the Shared Vehicle in the Airport Terminal Parking Lot (**Exhibit 1**) and be responsible for any applicable parking fees. Turo, Shared Vehicle Owners, and Shared Vehicle Drivers may also conduct Owner and Driver attended drop-offs and pick-ups of Shared Vehicles ("Attended Vehicle Exchanges") at a Designated Location (**Exhibit 2**) at the Airport, which location shall be determined from time-to-time solely by the City provided, however that (i) such Attended Vehicle Exchanges shall not exceed five (5) minutes, and (ii) Turo, Shared Vehicle Owners and Shared Vehicle Drivers entire Attended Vehicle Exchange takes place within the Designated Location depicted on **Exhibit 2**. Vehicles left unattended in the Attended Vehicle Exchange Designated Area or any other unauthorized area may be ticketed and/or towed by the City at any time. Any vehicle towed or impounded shall be recovered by the Shared Vehicle Owner at their sole cost.

- C. The City reserves the right at its sole discretion to reassign the Designated Location for Attended Vehicle Exchanges at the Airport, or to terminate all Designated locations for Attended Vehicle Exchanges at the Airport at any time following thirty (30) days written notice to the Turo, or immediately if the City is compelled to for good reason due to security, repairs, construction, or other good cause. The City will make reasonable efforts to accommodate a Designated Location in another area, if possible. If City terminates all Designated Location for Attended Vehicle Exchanges at the Airport, Turo, Shared Vehicle Owners, and Shared Vehicle Drivers shall continue to have the right to use the Airport Parking Lot in the same manner as any other Airport customer, in which they will drop off and pick up the Shared Vehicle in the Airport Parking Lot and be responsible for any applicable parking fees.
- D. For purposes of vehicle identification, Turo shall cause all Shared Vehicle Owners that are engaging in drop-offs or pick-ups at the Designated Location for Attended Vehicle Exchanges to equip each vehicle of such Shared Vehicle Owner entering on Airport property with vehicle trade dress, consisting of recognizable emblems acceptable to the City, which will allow City to always identify vehicles at up to fifty (50) feet when such vehicles are on Airport. Such trade dress shall be a visual indicator and control device approved by City designating that the vehicle is authorized to operate at the Designated Location.
- E. Failure by Turo to ensure Shared Vehicle Owners display the City's approved vehicle trade dress shall subject Turo to revocation of the Designated Location. Failure to accurately, and on a timely basis report vehicle activity at the Airport, shall subject Turo to revocation of this Agreement as set forth herein.
- F. A Shared Vehicle with a license plate that exempts it from Parking Lot fees (Disabled Veteran, Purple Heart, Medal of Honor, and Prisoner of War) will not be eligible for the fee exemption when not driven by that Shared Vehicle's registered owner.
- G. Turo, Shared Vehicle Owners, and Shared Vehicle Drivers shall always comply with orders and directives from the City's police, security, traffic/parking officers, and airport officials.
- H. If any Shared Vehicle Owner, Shared Vehicle Driver, or any Turo agent or employee violates this Agreement, City shall take the following actions:
 - i. First Offense - City shall give a verbal warning to such Shared Vehicle Owner, Shared Vehicle Driver, or Turo agent or employee.
 - ii. Second Offense – City shall give a written warning and/or ten (10) day suspension of operation at the Airport to such Shared Vehicle Owner, Shared Vehicle Driver, or Turo agent or employee, and City shall provide a copy of such written warning to Turo.

- iii. Third Offense - Such Shared Vehicle Owner, Shared Vehicle Driver, or Turo agent or employee shall no longer have a right of access to Airport property through the end of the current Term.
- iv. If an offense is so serious in the opinion of the City, the City has the right to immediately suspend or permanently revoke the right of Airport access that Shared Vehicle Owner, Shared Vehicle Driver, or Turo agent or employee is granted under this Agreement.

ARTICLE 3
TERM OF AGREEMENT

- A. Initial Term. The term of this Agreement and all rights herein granted to Turo shall begin within thirty (30) days following the execution of this Agreement by both parties ("the Effective Date") and shall terminate one (1) year thereafter, unless earlier terminated as provided herein.
- B. Renewal Terms. Subject to full compliance to all terms, covenants, and conditions by Turo during the initial Term of this Agreement, as may be amended, the parties may elect in sequence to extend the term of this Agreement for two (2) additional one (1) year renewal terms ("Renewal Terms"), which Renewal Terms shall be subject to the same terms, covenants, and conditions of this Agreement, and evidenced by a written agreement executed by both parties.
- C. Right to Terminate. Either party may terminate this Agreement upon giving thirty (30) days' prior written notice to the other party. City may also terminate, revoke or suspend this Agreement, at City's option, without forfeiture, waiver or release of City's rights to any sum due or to become due under the provisions of this Agreement upon default by Turo in the payment of the fees required hereunder or any other material violation by Turo of any of the other provisions of this Agreement and the failure of Turo to remedy such default or violation within ten (10) days after notice from City to Turo of such default or violation, provided, however, that no such ten (10) day notice shall be required in those instances in which a provision of this Agreement grants to City the right to terminate this Agreement immediately upon Turo's violation of or failure to comply with the terms hereof. City may suspend the right of access to Airport property by any Shared Vehicle Owner, Shared Vehicle Driver, or any Turo agent or employee if, in City's sole discretion, such Shared Vehicle Owner, Shared Vehicle Driver, or Turo agent or employee violates any Applicable Laws.

ARTICLE 4
USE FEES

- A. Use Fee. For the commercial use of the Airport, on the twentieth (20) day of each month, Turo shall make a payment to City equal to ten percent (10%) of the gross revenue relating to any transaction in which a Shared Vehicle Driver selects the Airport for delivery of a Shared Vehicle ("Use Fee"), which Use Fee shall contribute in part to the operating cost of the Airport. At any time, City and its agents may further audit Turo's business accounts at any reasonable time, and if any such audit demonstrates that Turo has underpaid under any amount hereunder, Turo shall pay the cost of such audit if the discrepancy exceeds five percent (5%) of the amount paid by Turo that is audited.
- B. Activity Report. On the twentieth (20) day of each month, Turo shall furnish a true and correct report signed by an authorized representative of Turo to City detailing the following for the previous month:
- I. The number of drop-offs and pick-ups of Shared Vehicles at the Airport per day that are arranged or booked through Turo's platform.
 - II. The number of Shared Vehicles at the Airport per day arranged or booked through Turo's platform.
 - III. The number of transactions at the Airport per day arranged or booked through Turo's platform.
 - IV. The gross revenue per each such transaction.
 - V. The total gross revenue (as defined below) for the month; and
 - VI. The number of Shared Vehicle Owners that, to the knowledge of Turo, operated at the Airport in the

previous month.

C. Gross Revenue. For purposes of this Agreement, the term "gross revenue" shall include:

- I. Any income Turo and Shared Vehicle Owner receives under a Shared Vehicle agreement.
- II. All time and mileage charges for Shared Vehicles in the Shared Vehicle agreement.
- III. Any charges for insurance offered incidental to a Shared Vehicle agreement including but not limited to accident and personal effects insurance.
- IV. The amount charged to Airport patrons in the Shared Vehicle agreement for the cost of furnishing and/or replacing fuel provided by a Shared Vehicle Owner or Turo; and
- V. All additional charges not expressly excluded under this provision, such as add-ons for GPS, child carriers, ski or bicycle roof-top carriers, travel accessories or conveniences, and services charges.

D. Deductions from Gross Revenue. The following shall be excluded from "gross revenue":

- I. The amount of any federal, state, local sales, or tourism tax separately stated on the Vehicle Sharing agreement and collected from the Shared Vehicle Driver and remitted to the taxing authority.
- II. The amount of *any* sum received as insurance proceeds or a judicial judgment or settlement to restore damage to automobiles or other property of Turo or Owners, or to restore a tangible loss, theft, or conversion.
- III. Amounts received as payment for and administration on behalf of Shared Vehicle Drivers and/or Shared Vehicle Owners of red-light tickets, parking tickets, tolls, tows, and impound fees, or any other fees which are separate from the Shared Vehicle Agreement.
- IV. Any amounts received for *any* cancellation fees
- V. Any amounts received by Turo from Shared Vehicle Drivers which are fully passed through to Shared Vehicle Owners such as post-trip reimbursements, smoking fees, etc. or any other amounts received in which Turo does not retain any portion thereof.

ARTICLE 5 LATE FEES

Any amount due and payable hereunder that is not paid on the date it is due shall bear interest until paid at the lesser of 1.5% per month or the maximum allowable interest ("MAI") permitted to be charged under Applicable Laws. Notwithstanding any provision of this Agreement to the contrary, it is the intent of City and Turo that City shall not be entitled to receive, collect, reserve, or apply, as interest, any amount more than the MAI. In the event this Agreement requires a payment of interest that exceeds the MAI, such interest shall not be received, collected, charged, or reserved until such time as that interest, together with all other interest then payable, falls within the MAI. In the event City receives any such interest more than the MAI, the amount that would be excessive interest shall be deemed a partial prepayment hereunder and treated as such, or, if

this Agreement has been terminated, any remaining excess funds shall immediately be paid to Turo.

ARTICLE 6

SURETY

As security for Turo's full, faithful and prompt performance of and compliance with all covenants, terms and conditions of this Agreement, Turo shall provide an irrevocable letter of credit or corporate surety bond in favor of the City and in a form acceptable to City in an amount equivalent to three (3) months' projected fees (as projected by City) payable under this Agreement, or Five Thousand Dollars (\$5,000.00), whichever is greater, assuring the faithful performance of all obligations under this Agreement (the "Surety"). In addition to any and all other remedies available to it under this Agreement or otherwise, City shall have the right, at its option at any time and from time to time, to use the Surety or any part thereof in whole or partial satisfaction of any of its claims or demands against Turo and for the payment or attorneys' fees for the enforcement of any or its claims or demands against Turo, if City is the prevailing party. City shall have no obligation to exercise such right, and neither the existence of such right nor the holding of the Surety itself shall cure any default or breach on the part of Turo. Within thirty (30) days after the expiration or earlier termination of this Agreement and upon written request therefor by Turo, City will return.

ARTICLE 7

OBLIGATIONS OF TURO

A. Turo shall comply in all material aspects with all Applicable Laws (as defined herein). For purposes of this Agreement, the term "Applicable Laws" shall mean all present and future laws, ordinances, orders, directives, rules, codes, regulations and decrees of federal, state and municipal authorities and agencies and their respective agencies, departments, authorities and commissions (individually, "Governmental Authority" and collectively, "Governmental Authorities") and all present and future grant assurances provided by City to any Governmental Authority in connection with City's Ownership or operation of the Airport and all other rules, regulations, policies and procedures of City, as the same may be amended, modified or updated from time to time. For purposes of this Agreement, "Governmental Authorities" shall specifically include, without limitation, City, the State of Texas, the United States Department of Transportation ("DOT"), the Federal Aviation Administration ("FAA") and/or the Transportation Security Administration ("TSA"). Turo shall comply and shall cause Shared Vehicle Owners to comply with such additional requirements as may be imposed from time to time by the City or by any government or agency having jurisdiction over the Airport. Turo agrees to cause all Shared Vehicle Owners that operate on Airport property to maintain their vehicles in a safe operating condition, properly muffled and producing no visible emissions. Turo shall not Agreement any Shared Vehicle Owner that operates as a Commercial Host (as defined by Turo's website) or as a Rental Vehicle Company (as defined by State of Texas Statutes), as may be amended from time to time) to operate at the Airport. Turo and Shared Vehicle Owner shall comply with the civil rights provisions set forth in Attachment A.

ARTICLE 8

ASSIGNMENT AND SUB-AGREEMENT

Turo shall not assign or sub-Agreement or otherwise purport to authorize or allow any other person or entity to exercise, this Agreement or its rights granted in this Agreement without the prior written consent of City, which City may grant or withhold in its sole discretion. Notwithstanding the foregoing, Turo may assign this Agreement to an affiliate of Turo upon written consent of City, which consent shall not be

unreasonably withheld. If Turo assigns this Agreement to an affiliate, Turo shall remain liable for the performance and obligations of this Agreement, including, but not limited to, all fees and charges, deposit, insurance, indemnification, and compliance with all laws, regulations, and policies.

ARTICLE 9 ENVIRONMENTAL REGULATIONS

Turo agrees to comply and/or cause its Shared Vehicle Owners to comply with all Applicable Laws relating to the protection of the environment and the handling and release of any and all substances, chemicals, wastes, sewage or other materials which are now or hereafter regulated, controlled or prohibited by any Applicable Laws requiring removal, warning or restriction on the use, generation, disposal or transportation thereof, including, without limitation, any substance defined as a "hazardous substance", "hazardous material", "hazardous waste", "toxic substance" or "air pollutant," (collectively, "Hazardous Material") Turo shall indemnify City, defend it with counsel reasonable and acceptable to City, and hold it free and harmless from any and all liabilities, damages, claims, penalties, fines, settlements, causes of action, costs or expense, including reasonable attorneys' fees, environmental consultant and laboratory fees and the costs and expense of investigation and defending any claims or proceedings, resulting from or attributable to (i) the presence, disposal, release or threatened release of any Hazardous Material that is on, from or affecting the Airport premises which Turo uses, including the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise located on, under, or near such premises; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or relating to the Hazardous Material; (iii) any lawsuits or administrative order relating to the Hazardous Material; or (iv) any violation of any laws applicable to the Hazardous Material. The terms of this paragraph shall apply only to Hazardous Material for which Turo, or a Shared Vehicle Owner is responsible.

ARTICLE 10 INSURANCE REQUIREMENTS

- A. General. Turo shall obtain and maintain (i) commercial general liability insurance and (ii) automobile liability insurance, each in an amount not less than One Million Dollars (\$1,000,000). The automobile liability insurance shall cover any instance a Shared Vehicle is operating on Airport property, whether such operation is by Turo, Shared Vehicle Owner, or Shared Vehicle Driver.
- B. Rating. All policies required herein shall be issued by an insurance company(s) Agreement or eligible, including surplus lines, to issue insurance policies in the State of Texas, and with insurers with a current A.M. Best's rating of not less than "A-" (Financial size: VII), unless otherwise approved by City.
- C. Deductibles and Self-Insurance. The self-insured retention or deductible amount on the policy shall not reduce the amount of collectible limits of liability. Any policy of insurance that either specifies self-insurance or self-insurance retention or that is maintained by Turo pursuant to excess liability shall contain a provision to the effect that the insolvency or bankruptcy of the insured shall not relieve the insurance company of any obligation under the policy.
- D. Additional Insured. The City of Abilene, Texas and its, officers, directors, employees and agents in the course and scope of employment, shall be included as an additional insured and loss payee on Turo's certificates of insurance with respect to coverage under Turo's commercial general liability insurance with respect to claims or liabilities arising from, or connected with Turo's work or operations at the Airport and its automobile liability policies with respect to claims or liabilities arising from, or connected with Shared Vehicle Owner's Ownership, maintenance or use

Commented [ED1]: Don - Awaiting confirmation on Turo compliance to insurance requirements. Looks good at first glance

(including any Shared Vehicle Driver's use) of an automobile at the Airport.

- E. Primary Coverage. Turo's required insurance coverage, including umbrella or excess liability, shall be primary insurance and non-contributory to any insurance or self-insurance maintained by City.
- F. Severability of Interest. Except with respect to the limits of insurance, Turo's required insurance shall apply separately to each insured or additional insured.
- G. Waiver of Subrogation. To the fullest extent allowed by law, Turo agrees to waive all rights of subrogation against City, including City's officers, directors, employees and agents, including City's officers, directors, employees and agents for all costs or expenses, losses, damages, claims, suits or demands, howsoever caused (i) to real or personal property, including but not limited to vehicles, equipment, and tools, owned, leased or used by Turo or Turo's Shared Vehicle Owners, Shared Vehicle Drivers, employees, agents or subcontractors; and (ii) to the extent such loss, damage, claims, suits or demands are covered, or should be covered, by the required or any other insurance maintained by Turo. This waiver shall apply to all deductibles, retentions, or self-insured layers applicable to the required or any other insurance maintained by Turo. Turo agrees to endorse the required insurance policies to Agreement waivers of subrogation in favor of City as required hereunder. Turo further agrees to hold harmless and indemnify City for any loss or expense incurred because of Turo's failure to obtain such waivers of subrogation from Turo's insurers.
- H. Notice of cancellation. Should Turo cancel or fail to renew any insurance policy required herein, and/or receive advanced written notice from the insurer prior to the cancellation, termination, and revocation or any insurance coverage required hereunder. Turo or its agent shall provide 30 days written notice to City of such material change. If any of the insurance is cancelled, Turo shall cease operation until such insurance can be provided and shall cause Turo's Shared Vehicle Owners to also cease operations at the Airport.
- I. Verification of Coverage. Turo shall furnish City with a certificate of insurance evidencing the required coverage prior to the commencement of work or operations. The certificates are to be signed by a person authorized by the insurer(s) to bind coverage on their behalf. Copies of endorsements providing coverage for additional insured's and permitting waiver of subrogation shall be attached to the certificate of insurance. Turo shall submit an insurance certificate(s) and required endorsement such that City has a certificate and endorsement always evidencing current required coverage. Renewal certificates are to be provided to City or City's agent prior to the expiration of the required insurance policies. If requested by City, Turo agrees to provide true and certified copies of the required insurance policies within fifteen (15) days of written request from City, any premium information to be redacted. In the event renewal policies have not been issued by insurer(s), Turo agrees to provide complete copies of insurance binders issued to evidence coverage required by these specifications until such time as the actual policies are received from insurer(s). Failure of City to request such certificates or other evidence of Turo's compliance with insurance requirements, or failure of Turo to identify deficiencies from evidence that is provided, shall in no way limit or relieve Turo of its obligations to maintain such insurance.
- J. No Representation. In specifying Turo's minimum insurance requirements, City does not represent that such insurance is adequate to protect Turo for loss, damage or liability arising from its work. Turo agrees that it is Turo's responsibility to identify its own risks and protect itself accordingly and understands that City accepts no liability for any such uninsured risks howsoever arising. The insurance requirements set forth herein shall not be construed to relieve Turo for liability more than such coverage, nor shall it preclude City from taking such other actions as is available to it under any other provision of this Agreement. Any acceptance of certificates of insurance by City shall in no way limit or relieve Turo of its duties and responsibilities under this Agreement, including the duty to indemnify and hold harmless City under Sections 9 and 12(i) of this Agreement.

ARTICLE 11
INDEMNIFICATION

Turo shall protect, defend, indemnify and hold harmless City and its Officers, Directors and employees from and against any and all liabilities, losses, suits, claims, judgments, fines or other civil or criminal penalties resulting from any civil, criminal or administrative proceeding or order, or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Agreement and the use of the Airport premises, or out of the acts or omissions of Turo or its agents, employees, contractors, subcontractors, or invitees, regardless of where the injury, death or damage may occur, unless such injury, death or damage is adjudicated by a final judgment to have been caused solely by the negligence of the agents or employees of City. City shall give to Turo prompt and timely notice of any such claims or actions. City shall be entitled to choose counsel, with Turo's concurrence in the choice (which concurrence shall not be unreasonably withheld), to represent it, at Turo's expense, in connection with matters covered by the provisions of this section and said provisions shall survive the expiration or early termination of this Agreement.

ARTICLE 12
LOBBYING ACTIVITIES

Turo certifies to the best of its knowledge and belief that: (i) no federally or state-appropriated funds have been paid or will be paid by or on behalf of Turo to any person for influencing or attempting to influence an officer or employee of any agency of the United States government or a member, officer or employee of the United States Congress, or an employee of a member of the United States Congress, in connection with the awarding of any federal contract, the making of any federal grant or loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement; and (ii) if Turo has compensated or does compensate any person for influencing or attempting to influence an officer or employee of any agency of the United States government, a member, officer or employee of the United States Congress, or any employee of a member of the United States Congress, in connection with any contract, grant, loan or cooperative agreement, then Turo shall complete and submit to City, in accordance with its instructions, Standard Form LLL, "Disclosure of Lobbying Activities"; and (iii) Turo shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and make disclosures in accordance with this Section 13(a).

ARTICLE 13
NON-EXCLUSIVITY

Nothing herein contained shall be deemed to grant Turo any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act of 1958, as amended (the "Federal Aviation Act"), for the conduct of any activity at the Airport, except that, subject to the terms and provisions hereof, Turo shall have the right to operate at the Airport under the provisions of this Agreement.

ARTICLE 14
SUBORDINATION

This Agreement is further subject and subordinate to the provisions of any agreement heretofore or hereafter made between City and the United States government relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to

City for Airport purposes, or the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with provisions of the Federal Aviation Act. The parties incorporate herein by reference all provisions lawfully required to be contained herein by any Governmental Authority.

In the event that a Governmental Authority requires modifications or changes to this Agreement as a condition precedent to the granting of funds for the Improvement of the Airport, or otherwise, Turo shall make or agree to such amendments, modifications, revisions, supplements or deletions of any of the terms, condition or requirements of this Agreement as may be reasonably required and any expenses resulting from such amendments, modifications, revisions, supplements or deletions shall be paid by City.

ARTICLE 15
NO WAIVER

No waiver of default by either party of any of the terms, covenants, or conditions herein to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

ARTICLE 15A
COSTS OF ENFORCEMENT

If legal action is necessary to enforce the terms of this Agreement, Turo shall pay all of City's costs incurred in taking such action, including, without limitation, attorneys' fees, solely if City is the prevailing party in such legal action.

ARTICLE 16
NOTICES

All notices, approvals, consents, demands and other communications required by this Agreement must be in writing to be effective and be delivered or sent by certified United States Mail, postage prepaid, by a recognized overnight delivery service that provides registered and verifiable shipment or air bill tracking and delivery record, with costs prepaid, by hand-delivery, to the addresses set forth below:

To City:

CITY OF ABILENE – ABILENE REGIONAL AIRPORT
Director of Transportation Services
2933 Airport Blvd, Ste. 200
Abilene, TX 79602

To Turo:

TURO INC.
Legal - Airports
111 Sutter Street, 12th Floor San Francisco

The person and place to which notices are to be sent may be changed by a party hereto upon written notice to the other. A notice required or permitted hereunder shall be deemed received on the date that is three (3) calendar days after the date on which the notice is deposited in the United States Mail if sent by certified mail, or, if personally delivered, on the date such personal delivery is made. If notice is given by a recognized delivery service, then the notice shall be deemed received by the addressee on the date on which the signature receipt is recorded by such recognized delivery service.

ARTICLE 17
HEADINGS

The headings of the several sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

ARTICLE 18
SEVERABILITY

If one or more clauses, sections or provisions of this Agreement shall be held to be unlawful, invalid, or unenforceable, the parties hereto agree that the material rights of either party hereto shall not be affected thereby except to the extent of such holding, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted here from.

ARTICLE 19
RIGHTS RESERVED

The parties hereto further covenant and agree that City reserves the right to further develop or improve the Airport as it may see fit, regardless of the desires or views of Turo and without interference or hindrance by Turo.

ARTICLE 20
SUSSESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties.

ARTICLE 21
INTERPRETATION

Words of any gender used in this Agreement shall be held and construed to include any other gender, words in the singular number shall be held to include the plural, and words in the plural number shall be held to include the singular, unless the context otherwise requires.

ARTICLE 22
REPRESENTATION

Everyone executing this Agreement on behalf of Turo warrants that he or she has full authority to execute this

Agreement on behalf of Turo. The parties hereby agree that this Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

ARTICLE 23

VENUE

This Agreement has been executed by, delivered to, and accepted by City, and the provisions hereof shall be governed by the laws of Texas; and any disputes arising out of or related to this Agreement shall be resolved in accordance with said laws. The parties agree that any action or legal proceeding arising out of or related to this Agreement shall be brought in the state courts of Taylor County, Texas, or in the federal court in closest proximity to the City; and the parties hereby consent to and waive any objection to jurisdiction or venue in said courts.

ARTICLE 24
ENTIRETY OF AGREEMENT

The parties hereto understand and agree that this instrument contains the entire agreement between the parties hereto with respect to the subject matter hereof. Each party hereto further understands and agrees that the other party and its agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement except as expressly set forth herein. Each party hereto acknowledges that it has thoroughly read this Agreement, including any exhibits or attachments hereto, and has sought and received such competent advice and counsel as was necessary for it to form a full and complete understanding of all rights and obligations herein.

No Director, officer, agent, or employee of City shall be charged personally or be held liable by or to Turo under any term or provision of this Agreement, or any amendment thereto, or because of any breach hereof, or because of its execution.

IN WITNESS WHEREOF, the parties have executed this Agreement, or caused it to be executed by their respective duly authorized officers, as of the day and year first above written.

CITY:

LESSEE:

CITY OF ABILENE

TURO INC

Robert Hanna, City Manager

Alex Benn, President

Date: _____

Date: _____

ATTEST:

ATTEST:

Shawna Atkinson, City Secretary

APPROVED AS TO FORM:

Title

Stanley Smith, City Attorney

ATTACHMENT A

Civil Rights Provisions

Turo and Shared Vehicle Owner shall agree to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Turo and Shared Vehicle Owner, for themselves, their permitted assignees, and successors in interest agree to comply with the following Nondiscrimination Acts and Authorities, as they may be amended from time to time and to the extent to they apply to the services to be provided by Turo and/or Shared Vehicle Owner to the Airport:

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. (prohibiting discrimination on the basis of race, color, national origin);
- 49 CFR part 21, Non-discrimination in Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964;
- the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 (prohibiting unfair treatment of persons displaced or whose property has been acquired because of Federal and Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination on the basis of disability), and 49 CFR part 27;
- the Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq. (prohibiting discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, 49 USC § 47123, (prohibiting discrimination based on race, creed, color, national origin, or sex);
- the Civil Rights Restoration Act of 1987, Pub. 100-209, (broadening 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 programs or activities of the Federal-aid recipients, subrecipients, and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131- 12189, as implemented by 49 CFR parts 37 and 38 (prohibiting 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).;
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination 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;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 70 Fed. Reg. at 74087 - 74100 (defining national origin discrimination to include discrimination because of limited English proficiency); and
- Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (prohibiting discrimination because of sex in education programs or activities).

EXHIBIT 1

Airport Terminal Parking Lot (park within orange border only)

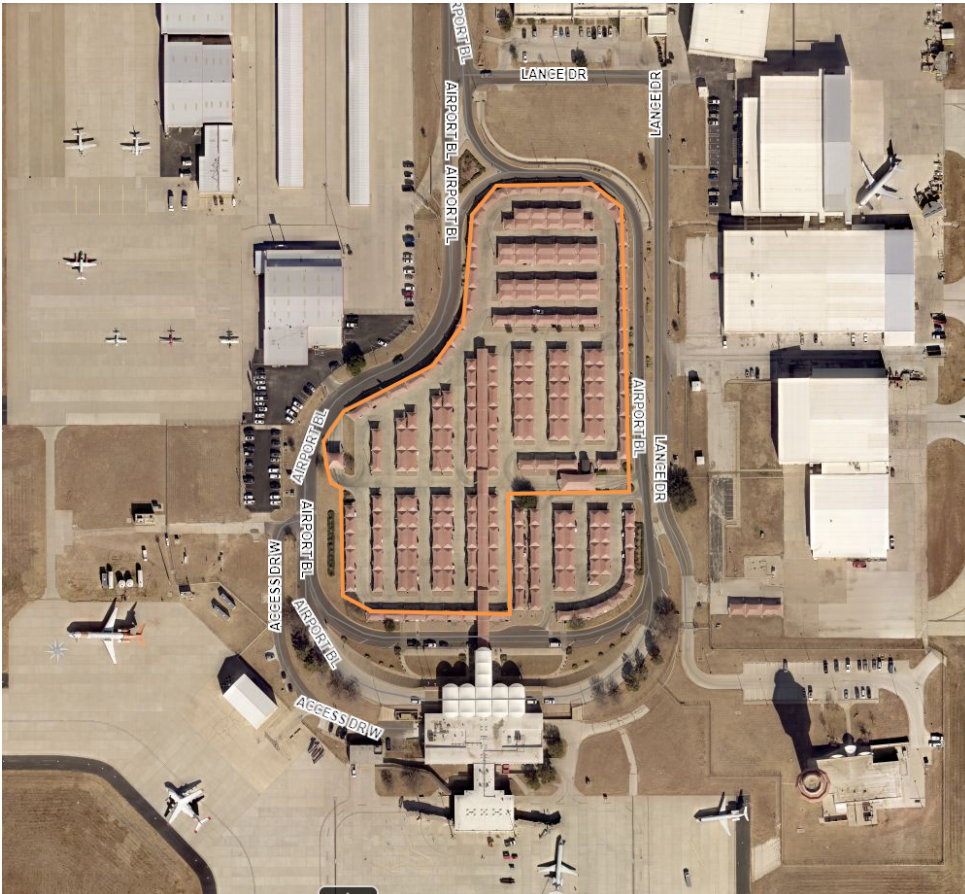
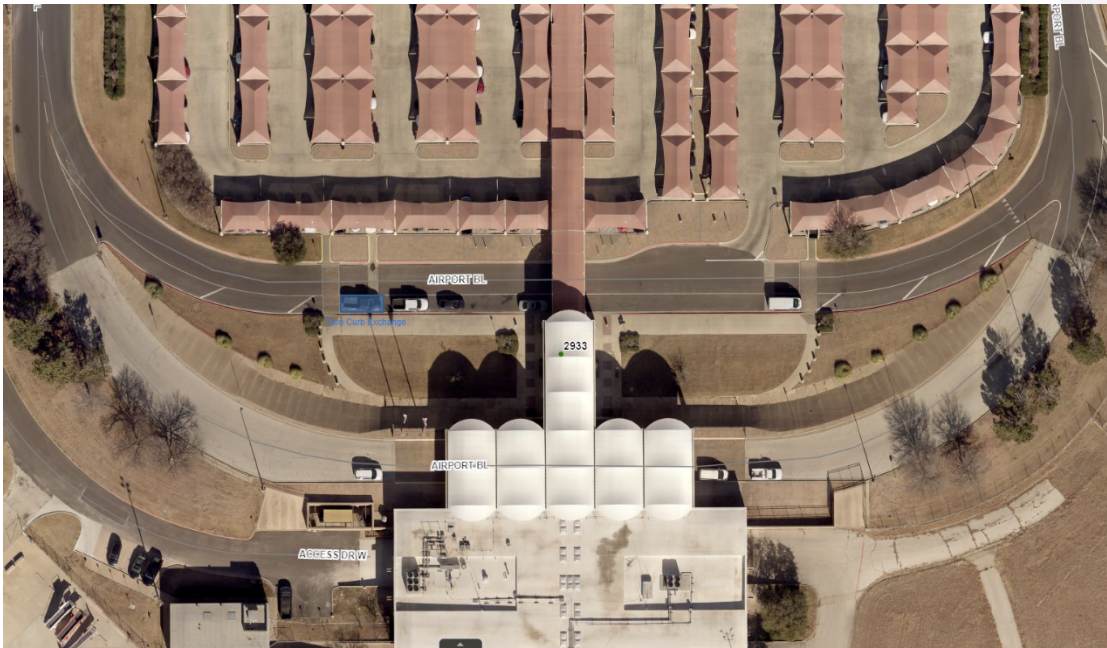


EXHIBIT 2
Designated Location for Attended Vehicle Exchanges



City Council Meeting

May 11, 2023





Airport Operating Agreement with Turo

- Turo, Inc is an app-based company enabling vehicle owners (Hosts) to rent their vehicles to customers. This is a similar concept to Airbnb and VRBO for homes.
- This Agreement will allow Turo "Hosts" to use Abilene Regional Airport as a selected pickup and drop-off point for its customers. These exchanges shall occur in the Airport Terminal Parking Lot only, whereby a customer is directed by the app to the vehicle and given access to it; the customer pays the standard parking rate when exiting.



- An in-person exchange will be allowed to occur at a designated location on the Airport Terminal Curbside. The Turo Host stays with the vehicle and makes an in-person exchange when the customer arrives at the vehicle. Returns are handled in a similar way.
- This agreement specifies that the Airport will receive a 10% commission of gross revenue collected from rentals originating at the airport.
- A Shared Vehicle with a license plate that exempts it from Parking Lot Fees (Purple Heart, Disabled Veteran, Medal of Honor) not driven by Vehicle Owner will not be eligible for the Parking Lot Fee exemption.



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 5/11/2023

TO: Robert Hanna, City Manager

FROM: Cande Flores, Fire Chief

SUBJECT: 8. Resolution: Receive a Report, Hold a Discussion and Take Action on Executing a Professional Services Contracts with West Texas Occupational Corporate Health Solutions (WTX-OCHS) and Screening For Life to Conduct Annual Medical Physicals for Employees of the Abilene Fire Department (Cande Flores)

GENERAL INFORMATION

General Information:

National Fire Protection Agency (NFPA) 1582 outlines procedures for annual firefighter medical testing and physicals. NFPA 1582 is a national standard followed by the majority of Texas fire departments, including the Abilene Fire Department.

Annual medical physicals are imperative to maintaining a healthy workforce and for identifying job-related medical issues before they can negatively affect firefighters.

SPECIAL CONSIDERATIONS

Special Considerations:

The WTX-OCHS Director, Stacy Garley, has been providing annual medical physicals for the AFD since 2007 and is well acquainted with NFPA 1582 and the physical requirements of AFD personnel. WTX-OCHS previously operated in Abilene under the name of Abilene Diagnostic Clinic.

WTX-OCHS will offer the standard annual physical evaluation that is required each year for AFD employees. Screening For Life will conduct advanced physical screenings specific towards fire service related tumors and cancers.

FUNDING/FISCAL IMPACT

Funding/Fiscal Impact:

The total cost of these professional services contracts are quoted at \$62,915.00 for WTX-OCHS, and \$11,375.00 for Screening For Life for a total cost of \$74,290.00. Total funding will come from the AFD FY23 Budget.

Competitive bidding is not required for specialized medical services. The requirements lie with the qualifications of the personnel performing the services.

STAFF RECOMMENDATION

Staff Recommendation:

Staff recommends approval of the Resolution to authorize the execution of the professional services contracts with West Texas Occupational Corporate Health Solutions and Screening For Life to conduct annual medical physicals for all AFD employees.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution - 2023 Annual Physicals
2. Screening For Life Quote
3. WTX-OCHS Quote
4. Screening4Life Agreement
5. 2023 WTX-OCHS Contract for Services
6. 2023 Annual Physicals Presentation

RESOLUTION _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS AUTHORIZING THE CITY MANAGER TO EXECUTE PROFESSIONAL SERVICES CONTRACTS WITH WEST TEXAS OCCUPATIONAL CORPORATE HEALTH SERVICES (WTX-OCHS) AND SCREENING FOR LIFE FOR ANNUAL MEDICAL PHYSICALS FOR EMPLOYEES OF THE ABILENE FIRE DEPARTMENT.

WHEREAS, the Abilene Fire Department (AFD) is guided by the National Fire Protection Agency (NFPA) 1582 to provide annual medical physicals to all fire department employees.

WHEREAS, WTX-OCHS is an approved vendor for the City of Abilene and possesses all the necessary resources to conduct the annual physical process for the AFD since 2007.

WHEREAS, the AFD is required to provide an annual physical evaluation for each firefighter in accordance with the current Meet and Confer Agreement between the City of Abilene and the Abilene Professional Fire Fighters Association, IAFF Local 1044.

WHEREAS, this service contract will provide a medical physical, consistent with NFPA 1582 guidelines, for all AFD personnel.

WHEREAS, \$74,290.00 will be funded through the AFD Fiscal Year 2023 Budget.

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

Part 1: The City Manager is hereby authorized to execute Professional Services Contracts with WTX-OCHS and Screening For Life for the purpose of providing annual medical physicals to all AFD employees.

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

ADOPTED and approved by the City Council on the 11th of May, 2023.

ATTEST:

Shawna Atkinson
City Secretary

Mayor

APPROVED:

Stanley Smith
City Attorney



PROJECT PROPOSAL

COMPANY: Abilene Fire Department

Description of Services: 2023 Annual Physical Screenings

Date: 01/18/2023

TOTAL PROJECT COST: \$11,375.00

SELECT 65:

- Screening Echocardiogram Ultrasound
- Screening Carotid Ultrasound
- Screening Thyroid Ultrasound
- Screening Abdomen Ultrasound
- Screening Pelvis Ultrasound
- Screening Testicular/Scrotum Ultrasound

Rate: \$175.00 per AFD Member

Estimated: \$11,375.00 for 65 AFD Members

CARDIOVASCULAR SCREENING PRICES

- Echocardiogram (heart) Screening
- 12 Lead EKG
- Carotid Artery Screening
- Intima-Media Thickness Measurement (IMT)
- Aortic Aneurysm Screening (AAA)

Rate: \$175.00 per AFD Family Member

CONTACT:

Michele Lee | President
Screening for Life, LLC
6410 Buffalo Gap Road, Suite C, Abilene, Texas 79606
Email: mlee@screening4life.us
PH: (325) 692-4410 CELL: (325) 864-9786



WEST TEXAS OCCUPATIONAL CORPORATE HEALTH SOLUTIONS

Company: Abilene Fire Department

DESCRIPTION OF SERVICES: 2023 Annual Physicals

DATE: 5/1/2023

(133) Annual Exams @ \$264.00 per AFD Member

Total: \$35,112.00

INCLUDED: History and Physical Examination with Vision Screening (Near, Far, Color, Horizontal), Vitals, Medical Director Examination and Component & Lab Review with Status. Corporate Labs: CBC w/Diff, Comprehensive Metabolic Panel, Lipid Panel w/ Cholesterol/HDL Ration, UA, and PSA – Prostate Specific-Ag Serum (>40 or older and/or w/history), A1C Hemoglobin. Audio Screening and Baseline Comparison, Pulmonary Function Test w/Respiratory Clearance, Resting EKG.

(2) Partial Annual Exams @ \$ 89.00 (Phase I) per AFD member

Total: \$ 178.00

INCLUDED: Audio Screening and Baseline Comparison, Pulmonary Function Test w/Respiratory Clearance, Resting EKG

(65) "SELECT" Annual Exams @ \$ 425.00 per AFD member

Total: \$ 27,625.00

INCLUDED: **SPECIAL Screening – includes additional cancer screening labs and review plus History and Physical Examination with Vision Screening (Near, Far, Color, Horizontal), Vitals, Medical Director Examination and Component & Lab Review with Status. Corporate Labs: CBC w/Diff, Comprehensive Metabolic Panel, Lipid Panel w/ Cholesterol/HDL Ration, UA, and PSA – Prostate Specific-Ag Serum ($\geq$ 40 or older and/or w/history), A1C Hemoglobin. Audio Screening and Baseline Comparison, Pulmonary Function Test w/Respiratory Clearance, Resting EKG

Project Total Billed: \$62,915.00

CONTACT:

Stacy L. Garley, BS, TRS , COHC | Director

WTX-OCHS West Texas Occupational Corporate Health Solutions

1665 Antilley Road, Suite 100, Abilene, Texas 79606

E-Mail: sgarley@abilenedc.com or team@wtx-ochs.com

PH: (325) 437-8618 EXT. 5720 Cell: (325) 260-5606 FAX: (325) 794-5352

SCREENING SERVICE AGREEMENT

This Contract for Services is made effective as of _____, 2023, by and between City of Abilene Fire Department of Abilene, Texas, Taylor County (the "Recipient"), and Screening For Life, LLC of 6410 Buffalo Gap Road STE. C, Abilene, Texas 79606 (the "Provider").

1. DESCRIPTION OF SERVICES. Screening For Life, LLC will provide to Abilene Fire Department the following services (collectively, the "Services"):

S4L will provide ultrasound screening services at a location provided by the Recipient on sixty-five (65) AFD members. These screenings will include, Thyroid, Carotid, Echocardiogram, Abdomen, Pelvic and Testicular. The screenings will be performed by Technologists that are credentialed in every area being scanned. A Cardiologist and Radiologist will establish scanning protocols and review each screening. After review, there will be a recommendation if needed, to follow up with further testing.

2. PAYMENT. Payment shall be made to Provider in the total amount of \$11,375.00 upon completion of Services.

In addition to any other right or remedy provided by law, if Abilene Fire Department fails to pay for the Services when due, Screening for Life, LLC has the option to treat such failure to pay as a material breach of this Contract, and may cancel this Contract and/or seek legal remedies.

3. TERM. This Contract will terminate automatically upon completion by Provider of the Services required by this Contract.

4. WORK PRODUCT OWNERSHIP. Any copyrightable works, ideas, discoveries, inventions, patents, products, or other information (collectively the "Work Product") developed in whole or in part by Provider in connection with the Services will be the exclusive property of Recipient. Upon request, Provider will execute, within a reasonable period of time, all documents necessary to confirm or perfect the exclusive ownership of Recipient to the Work Product.

5. CONFIDENTIALITY. Provider, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of Provider, or divulge, disclose, or communicate in any manner, any information that is proprietary to Recipient. Provider and its employees, agents, and representatives will protect such information and treat it as strictly confidential. This provision will continue to be effective after the termination of this Contract. Any oral or written waiver by Recipient of these confidentiality obligations which allows Provider to disclose Recipient's confidential information to a third party will be limited to a single occurrence tied to the specific information disclosed to the specific third party, and the confidentiality clause will continue to be in effect for all other occurrences.

6. DEFAULT. The occurrence of any of the following shall constitute a material default under this Contract:

- a. The failure to make a required payment when due.
- b. The insolvency or bankruptcy of either party.
- c. The subjection of any of either party's property to any levy, seizure, general assignment for the benefit of creditors, application or sale for or by any creditor or government agency.
- d. The failure to make available or deliver the Services in the time and manner provided for in this Contract.

7. ATTORNEYS' FEES AND COLLECTION COSTS. If there is dispute relating to any provisions in this Contract, the prevailing party is entitled to, and the non-prevailing party shall pay, the costs and expenses incurred by the prevailing party in the dispute, including but not limited to all out-of-pocket costs of collection, court costs, and reasonable attorney fees and expenses.

8. REMEDIES. In addition to any and all other rights a party may have available according to law, if a party defaults by failing to substantially perform any provision, term or condition of this Contract (including without limitation the failure to make a monetary payment when due), the other party may terminate the Contract by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have 30 days from the effective date of such notice to cure the default(s). Unless waived in writing by a party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Contract.

9. FORCE MAJEURE. If performance of this Contract or any obligation under this Contract is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages or other labor disputes, or supplier failures. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

10. DISPUTE RESOLUTION. The parties will attempt to resolve any dispute arising out of or relating to this Agreement through friendly negotiations amongst the parties. If the matter is not resolved by negotiation within 30 days, the parties will resolve the dispute using the below Alternative Dispute Resolution (ADR) procedure.

Any controversies or disputes arising out of or relating to this Agreement will be resolved by binding arbitration under the rules of the American Arbitration Association. The arbitrator's award will be final, and judgment may be entered upon it by any court having proper jurisdiction.

11. ENTIRE AGREEMENT. This Contract contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Contract. This Contract supersedes any prior written or oral agreements between the parties.

12. SEVERABILITY. If any provision of this Contract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

13. AMENDMENT. This Contract may be modified or amended in writing by mutual agreement between the parties, if the writing is signed by the party obligated under the amendment.

14. GOVERNING LAW. This Contract shall be construed in accordance with the laws of the State of Texas.

15. NOTICE. Any notice or communication required or permitted under this Contract shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

16. WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.

17. ATTORNEY'S FEES TO PREVAILING PARTY. In any action arising hereunder or any separate action pertaining to the validity of this Agreement, the prevailing party shall be awarded reasonable attorney's fees and costs, both in the trial court and on appeal.

18. CONSTRUCTION AND INTERPRETATION. The rule requiring construction or interpretation against the drafter is waived. The document shall be deemed as if it were drafted by both parties in a mutual effort.

19. ASSIGNMENT. Neither party may assign or transfer this Contract without the prior written consent of the non-assigning party, which approval shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

Service Recipient:
City of Abilene Fire Department

By: _____ Date: _____
Robert Hanna, Abilene City Manager

Service Provider:
Screening For Life, LLC

By: _____ Date: _____
S4L

EXHIBIT A: DESCRIPTION OF SERVICES

- 1. Screening Echocardiogram Ultrasound**
- 2. Screening Carotid Ultrasound**
- 3. Screening Thyroid Ultrasound**
- 4. Screening Abdomen Ultrasound**
- 5. Screening Pelvis Ultrasound**
- 6. Screening Testicular/Scrotum Ultrasound**

This \$175.00 pricing will be extended to all other Firefighters that wish to pay out of their own pocket. Additional Firefighter screenings will not be billed to the Abilene Fire Department. Only the named Firefighters will be billed to the Abilene Fire Department.



PRIVIA MEDICAL GROUP OF WEST TEXAS PLLC | WEST TEXAS HEALTH
WEST TEXAS OCCUPATIONAL CORPORATE HEALTH SOLUTIONS

CONTRACT FOR SERVICES

Company: Abilene Fire Department

DESCRIPTION OF SERVICES: 2023 Annual Physicals

DATE: 5/3/2023

(133) Annual Exams @ \$264.00 per AFD Member

Total: \$35,112.00

INCLUDED: History and Physical Exam with Vision Screening (Near, Far, Color, Horizontal), Vitals; PHQ-9 Review and Education; Basic Annual Labs; Audio Screening and Baseline Comparison, Pulmonary Function and Respiratory Clearance; Resting EKG; Medical Director Exam includes Component & Lab Review with Clearance Status.

(2) Partial Annual Exams @ \$ 89.00 (Phase I) per AFD member

Total: \$ 178.00

INCLUDED: Audio Screening and Baseline Comparison, Pulmonary Function Test w/Respiratory Clearance, Resting EKG

(65) "SELECT" Annual Exams @ \$ 425.00 per AFD member

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Project Total Billed: \$62,915.00

Stacy L. Garley
Director

Robert Hanna
City Manager

CONTACT:

Stacy L. Garley, BS, TRS, COHC | Director
WTX-OCHS West Texas Occupational Corporate Health Solutions
1665 Antilley Road, Suite 100, Abilene, Texas 79606
E-Mail: sgarley@abilenedc.com or team@wtx-ochs.com
PH: (325) 437-8618 EXT. 5720 Cell: (325) 260-5606 FAX: (325) 794-5352

Annual Medical Physicals

ABILENE FIRE DEPARTMENT

May, 2023



ANNUAL PHYSICALS

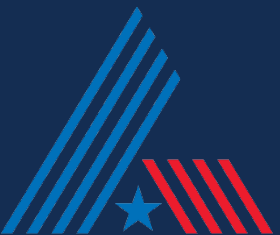
AFD Conducts Annual Medical Physicals For All Employees

- Requirements based on NFPA 1582: Standard on Comprehensive Occupational Medical Program for Fire Departments
- Meet & Confer Contract: Article 11
 - “an annual physical examination will be conducted for each firefighter at no cost to the firefighter”*
- Allows for medical history to be monitored throughout a career
- Identifies abnormalities before they become major issues
- Supports maintaining a healthy workforce
- Assists in reducing risks and improving safety



NFPA 1582

- Promotes Annual:
 - Physical Examination
 - Chest X-rays
 - Cancer Screening
- Focus is on early detection of hidden health issues
- Required Medical Testing:
 - Blood Analysis
 - Urinalysis
 - Pulmonary Function Test
 - Chest X-ray (Every 5 years)
 - EKG
 - Infectious Disease Screening
 - Audiometric Exam
 - Vision Testing
- Advanced Screenings
 - One-Quarter of AFD personnel will received advanced screening each year
 - Minimum of one-quarter of full-time AFD personnel each year
 - Advanced screenings include ultrasound of major organs and additional blood work to screen for cancer markers



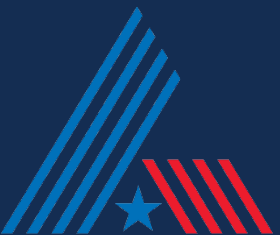
WTX-OCHS

- West Texas Occupational Corporate Health Solutions
 - Formerly Abilene Diagnostic Clinic
 - 1665 Antilley Road, Suite 100
 - Parent Company is Privia Medical Group West Texas
- Specializes in Occupational Medicine
- Current City of Abilene Vendor
- Director, Stacy Garley, has overseen AFD physicals since 2007
- Familiar with the physical demands of firefighting
- Qualified physicians involved with the process



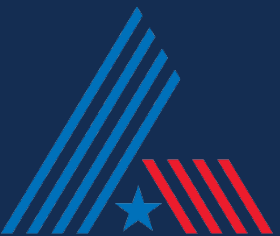
WTX-OCHS PRICING

- Base pricing is set at \$264 per employee
- Advanced Screening is \$425 per employee
 - Select “65”
 - Covers advanced lab screenings for cancer markers and thyroid issues
 - One-fourth of AFD personnel (rotating basis)
 - Additional personnel may be screened if funding allows
- Total quote of \$62,915.00
 - Additional testing may increase the overall price



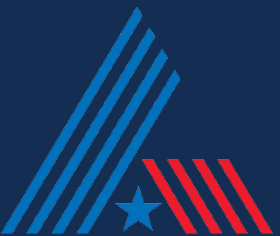
SCREENING FOR LIFE PRICING

- Additional rate for advanced screenings
- Select “65”
- Advanced Screenings
 - Ultrasound of all major organs
 - 12-lead EKG
 - Echocardiogram Screening
 - Carotid Artery Screening
 - Intima-Media Thickness Measurement (IMT)
 - Aortic Aneurysm Screening (AAA)
- Total Quote of \$11,375.00

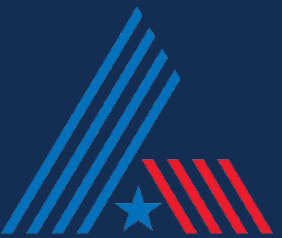


FUNDING

- Total Costs - \$74,290.00
 - Follow-up testing may increase overall costs by a small amount
- Specialized medical services do not require competitive bidding
- Funding will come from the Abilene Fire Department FY23 Budget



QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 5/11/2023

TO: Robert Hanna, City Manager

FROM: Mike Rains, Finance Director

SUBJECT: 9. Resolution: Receive a Report, Hold a Discussion and Take Action on Finding that AEP Texas Inc.'s Application to Amend it's Distribution Cost Recovery Factors to Increase Distribution Rates Within the City Should be Denied; Authorizing Participation with the Cities Served by AEP Texas; Authorizing Hiring of Legal Counsel; Finding that the City's Reasonable Rate Case Expenses Shall Be Reimbursed by the Company; Finding that the Meeting at Which This Resolution is Passed is Open to the Public as Required by Law; Requiring Notice of this Resolution to the Company and Legal Counsel *(Mike Rains)*

GENERAL INFORMATION

On April 5, 2023, AEP Texas Inc. ("AEP") filed an Application to Amend its Distribution Cost Recovery Factor. In the filing, the Company is seeking an increase in distribution revenues of approximately \$39.7 million. This equals an approximately \$1.63 increase to the average residential customer's bill from the rates approved in the Company's most recent DCRF case.

Moreover, in this filing, the Company is seeking to impose Rider Mobile TEEE Facilities ("Rider") to recover revenue related to mobile generation unit leasing and operation. The Rider would recover approximately \$30.67 million (an approximately \$1.30 increase to the average customer's bill).

The City of Abilene is a member of "Cities Served by AEP Texas, Inc, (Cities)", a membership of similarly situated cities served by AEP that have joined together to efficiently and cost effectively review and respond to electric issues affecting rates charged in AEP's service area.

Cities have engaged the services of a consultant, Mr. Karl Nalepa, to review the Company's filing. Mr. Nalepa will review the filing and identify adjustments that should be made to the Company's request. The consultants are recommending that Cities authorize participation in the proceedings, hire the law firm of Lloyd Gosselink and consultants to negotiate with the AEP

and make recommendations, and deny the proposed rates.

The Public Utility Commission's rules allow cities 60 days to act on this application. That deadline is June 2, 2023.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

All reasonable rate case expenses shall be reimbursed in full by AEP.

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution - Denial AEP Texas 2023 Distribution Rates
2. Model Staff Report Re Denial Resolution - 2023 AEP DCRF
3. Presentation - Resolution Denying AEP's Rate Increase

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF ABILENE, TEXAS FINDING THAT AEP TEXAS INC.'S APPLICATION TO AMEND ITS DISTRIBUTION COST RECOVERY FACTORS TO INCREASE DISTRIBUTION RATES WITHIN THE CITY SHOULD BE DENIED; AUTHORIZING PARTICIPATION WITH THE CITIES SERVED BY AEP TEXAS; AUTHORIZING HIRING OF LEGAL COUNSEL; FINDING THAT THE CITY'S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

WHEREAS, the City of Abilene, Texas ("City") is an electric utility customer of AEP Texas Inc. ("AEP" or "Company"), and a regulatory authority with an interest in the rates and charges of AEP; and

WHEREAS, the City is a member of the Cities Served by AEP ("Cities"), a membership of similarly situated cities served by AEP that have joined together to efficiently and cost effectively review and respond to electric issues affecting rates charged in AEP's service area; and

WHEREAS, on or about April 5, 2023 AEP filed with the City an Application to Amend its Distribution Cost Recovery Factor ("DCRF"), PUC Docket No. 54824, seeking to increase electric distribution rates by approximately \$39.7 million (an approximately \$1.63 increase to the average residential customer's bill from the rates approved in the Company's most recent DCRF case) and impose a Rider Mobile TEEE Facilities to recover \$30.67 million (an approximately \$1.30 increase to the average residential customer's bill) related to mobile generation facilities; and

WHEREAS, all electric utility customers residing in the City will be impacted by this ratemaking proceeding if it is granted; and

WHEREAS, Cities are coordinating its review of AEP's DCRF filing with designated attorneys and consultants to resolve issues in the Company's application; and

WHEREAS, Cities members and attorneys recommend that members deny the DCRF.

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

Section 1. That the City is authorized to participate with Cities in PUC Docket No. 54824.

Section 2. That subject to the right to terminate employment at any time, the City hereby authorizes the hiring of the law firm of Lloyd Gosselink and consultants to negotiate with the Company, make recommendations to the City regarding reasonable rates, and to direct any necessary administrative proceedings or court litigation associated with an appeal of this application filed with the PUC.

Section 3. That the rates proposed by AEP to be recovered through its DCRF and Rider Mobile TEEE Facilities charged to customers located within the City limits, are hereby found to be unreasonable and shall be denied.

Section 4. That the Company shall continue to charge its existing rates to customers within the City.

Section 5. That the City's reasonable rate case expenses shall be reimbursed in full by AEP within 30 days of presentation of an invoice to AEP.

Section 6. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

Section 7. That a copy of this Resolution shall be sent to Leila Melhem, American Electric Power Service Corporation, 400 West 15th Street, Suite 1520, Austin, Texas 78701 and to Thomas Brocato, General Counsel to the Cities, at Lloyd Gosselink Rochelle & Townsend, 816 Congress Ave., Suite 1900, Austin, Texas 78701.

PASSED AND APPROVED this 11th day of May, 2023.

Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Attorney

MODEL STAFF REPORT REGARDING AEP TEXAS'S DISTRIBUTION COST RECOVERY FACTOR FILING

On April 5, 2023, AEP Texas Inc. (“AEP” or “Company”) filed an Application to Amend its Distribution Cost Recovery Factor (“DCRF”) to increase distribution rates within each of the cities in their service area. In the filing, the Company asserts that it is seeking an increase in distribution revenues of approximately \$39.7 million (an approximately \$1.63 increase to the average residential customer’s bill from the rates approved in the Company’s most recent DCRF case). Moreover, the Company is seeking to impose Rider Mobile TEEE Facilities (“Rider”) to recover revenue related to mobile generation unit leasing and operation. The Rider would recover approximately \$30.67 million (an approximately \$1.30 increase to the average customer’s bill).

The resolution authorizes the City to join with the Cities Served by AEP (“Cities”) to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue.

Purpose of the Resolution:

The purpose of the Resolution is to deny the DCRF application proposed by AEP.

Explanation of “Be It Resolved” Paragraphs:

1. This section authorizes the City to participate with Cities as a party in the Company’s DCRF filing, PUC Docket No. 54824.
2. This section authorizes the hiring of Lloyd Gosselink and consultants to review the filing, negotiate with the Company, and make recommendations to the City regarding reasonable rates. Additionally, it authorizes Cities to direct any necessary administrative proceedings or court litigation associated with an appeal of this application filed with the PUC.
3. This paragraph finds that the Company’s application is unreasonable and should be denied.
4. This section states that the Company’s current rates shall not be changed.
5. The Company will reimburse Cities for their reasonable rate case expenses. Legal counsel and consultants approved by Cities will submit monthly invoices that will be forwarded to AEP for reimbursement.
6. This section recites that the Resolution was passed at a meeting that was open to the public and that the consideration of the Resolution was properly noticed.
7. This section provides that AEP and counsel for Cities will be notified of the City’s action by sending a copy of the approved and signed Resolution to counsel.

Resolution – Denying AEP’s Application to Increase Distribution Rates; Authorizing Participation with the Cities Served by AEP Texas; Authorizing the hiring of Legal Counsel; Finding that the City’s Reasonable Rate Case Expenses Shall Be Reimbursed





Resolution – Denying AEP’s Application to Increase Distribution Rates

- On April 5, 2023, AEP Texas Inc. (AEP) filed an application to amend its distribution cost recovery factor. In its filing, AEP is seeking an increase of \$1.63 to the average residential customer’s bill . In addition, AEP is seeking to recover mobile generation unit leasing and operation costs which would increase the average customer’s bill \$1.30.
- This resolution will deny AEP’s rate increase, authorize participation in the Cities Served by AEP Texas, the hiring of Lloyd Gosselink and consultants to review the rate case and make recommendations, and provide that AEP will reimburse for reasonable costs.





**City Council
Agenda Memo**

City Council Meeting Date: 5/11/2023

TO: Robert Hanna, City Manager

FROM: Max Johnson, Director of Public Works

SUBJECT: 10. Resolution: Receive a Report, Hold a Discussion, and Take Action authorizing an application for the State of Texas Department of Transportation 2023 Alternative (TA) Program call for projects for the Old Anson Road Walkability Project (West Stamford Street to Ambler Avenue) (Max Johnson)

GENERAL INFORMATION

On December 2, 2022, TxDOT announced a statewide Call for Projects for the 2023 Transportation Alternatives (TA), which provides funding for a variety of alternative transportation projects, including bicycle infrastructure improvements, shared use paths, sidewalk improvements, and infrastructure-related projects to improve safety for non-motorized transportation.

The City of Abilene submitted a preliminary application for an Old Anson Road Walkability Project from West Stamford Street to Ambler Avenue. On April 6, 2023, the City received permission from TxDOT to proceed with the detailed application for this project. The Old Anson Road Project will include a 5-foot sidewalk, pedestrian improvements, and a potential designated bike route from West Stamford Street to Ambler Avenue.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

The cost of this project is 80% TA funding with a 20% local match. The Old Anson Road project will require a \$489,079 local match (Total Project Cost \$2,445,397). In addition, any cost overruns will be the responsibility of the City. Funding for the City local match if the City's project is selected by TxDOT and the City elects to proceed will be from the Streets

Maintenance Funds.

STAFF RECOMMENDATION

Staff Recommends approval of the item.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Sponsor_Resolution TA-Old Anson Rd 051123
2. C_2_ABL_Abilene-1_OldAnsonRdWalkability- budget info CC
3. Old Anson Road Google Map HL
4. City Council Presentation Slides 2022 TA Project Old Anson Road 5-11-23

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
AUTHORIZING THE FILING OF AN APPLICATION WITH THE TEXAS
DEPARTMENT OF TRANSPORTATION (TXDOT) FOR THE 2023 TRANSPORTATION
ALTERNATIVES SET-ASIDE (TA) PROGRAM FOR THE OLD ANSON ROAD
WALKABILITY PROJECT.**

WHEREAS, the Texas Department of Transportation issued a call for projects in December 2022 for communities to apply for funding assistance through the Transportation Alternatives Set-Aside (TA) Program; and,

WHEREAS, the TA funds may be used for development of preliminary engineering (plans, specifications, and estimates and environmental documentation) and construction of pedestrian and/or bicycle infrastructure. The TA funds require a local match, comprised of cash or Transportation Development Credits (TDCs), if eligible. The City of Abilene would be responsible for all non-reimbursable costs and 100% of overruns, if any, for TA funds; and

WHEREAS, the Project will provide a safe route for pedestrians, children, older adults, and individuals with disabilities to access daily needs and encourage the overall safety of the traveling public; and,

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

Part I. That the City Manager is authorized to act on behalf of the City of Abilene in all matters related to the application and any subsequent activities associated with the application that may result, including but not limited to the submission of the application, acceptance of the awarded funds, and execution of all documents.

Part II. The City of Abilene supports funding this project as described in the 2023 TA Detailed Application (including the preliminary engineering budget, if any, construction budget, the department's direct state cost for oversight, and the required local match, if any) and is willing to commit to the project's development, implementation, construction, maintenance, management, and financing. The City of Abilene is willing and able to enter into an agreement with the department by resolution or ordinance, should the project be selected for funding.

Part III. This resolution is affected upon adoption.

ADOPTED this 11th day of May, 2023.

ATTEST:

Shawana Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

31. Additional Construction-Related Costs:

Appropriate costs for this section might include: construction engineering and inspection, construction-phase project administration, contract administration, land survey for right of way demarcation, materials testing, permitting, or geotechnical work. Items ineligible for reimbursement include associated with right-of-way acquisition (e.g., appraisal, parcel survey, title transfer) or legal services.

Work Activities	Quantity	Unit	Unit Price	Amount
				\$0
				\$0
				\$0
				\$0
				\$0
				\$0
				\$0
				\$0
				\$0
				\$0
				\$0
				\$0
				\$0
				\$0
				\$0
				\$0
Total:				\$0

32. Preliminary Engineering (PS&E and Environmental) Costs

Identify proposed preliminary engineering costs to be incurred by the project sponsor after project selection and after authorization to proceed.

Label attachment(s) as **P - Preliminary Engineering (PS&E and Environmental) Costs** - No more than 2 pages.

Work Activities	Cost/Value
Engineering	\$250,000
Total:	\$250,000

BUDGET SUMMARY

33. Project Budget Summary *(many lines automatically populate)*

Total Itemized Construction Cost Estimate <i>(topic 30 total, from Budget Page 3)</i>	1.	\$1,589,025
Contingency Costs <i>(line 1 X contingency percentage)</i>	2.	\$238,354
Inflation Adjustment <i>(line 1 X 4% X assumed years until construction)</i>	3.	\$129,664
Total Additional Construction-Related Costs <i>(topic 31 total, from Budget Page 4)</i>	4.	\$0
Total Construction Cost Estimate <i>[Sum of lines 1 through 4]</i>	5.	\$1,957,043
TxDOT Direct State Costs for project oversight <i>(15% of line 1)</i>	6.	\$238,354
Total Preliminary Engineering Cost <i>(topic 32 total, from Budget Page 4)</i>	7.	\$250,000
Total Project Cost Estimate <i>[Sum of lines 5 through 7]</i>	8.	\$2,445,397
Optional Local Match Increase*	20% of line 8	\$489,079
TxDOT Optional Discretionary Funds**	0.0%	-

TDCs: If a project sponsor is eligible to use TDCs, these credits will be applied to the project in lieu of the local match. See Cost Participation Summary below.

***Local Match:** Project sponsors may increase the required Local Match above 20% by adjusting the Local Match percentage in the box above. If the project is eligible for Transportation Development Credits (amount shown in number 9 below), then the federal share will be fixed at 100% federal participation in lieu of local match.

****TxDOT Discretionary Funds:** In a minority of cases, TxDOT Districts may participate financially in projects to reduce the local match. "Optional Local Match Increase" percentage and "TxDOT Optional Discretionary Funds" percentage must total 20%. See Detailed Application Instructions for more information.

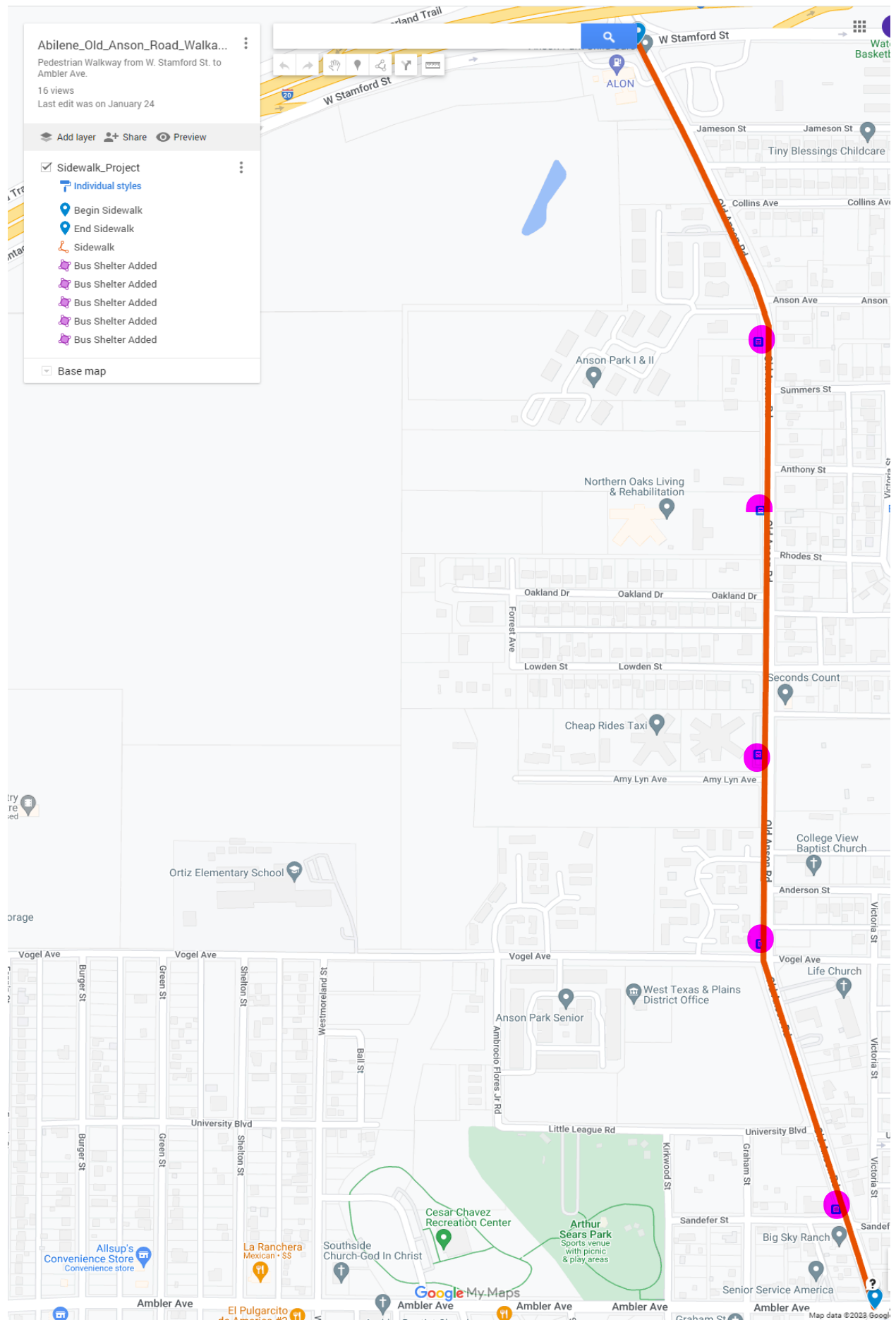
Eligibility for Transportation Development Credits

Select Project Sponsor from dropdown. If Project Sponsor is not listed, then it was determined to be ineligible for Transportation Development Credits.

(select) ▼

Eligible Transportation Development Credits	9.	\$0
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	Participation				
	Percent	Preliminary Engineering Costs	Construction Costs (plus contingency and inflation)	Direct State Costs	Total Project Costs
Federal	80.0%	\$ 200,000	\$ 1,565,635	\$ 190,683	\$ 1,956,318
State	0.0%	\$ -	\$ -	\$ -	\$ -
Local	20.0%	\$ 50,000	\$ 391,409	\$ 47,671	\$ 489,079
Total	100%	\$ 250,000	\$ 1,957,043	\$ 238,354	\$ 2,445,397



Agenda Item:

Application for TxDOT 2023 Alternative TA Program Call – Old Anson Road Walkability Project

(Max Johnson)





Resolution: Call for Projects for the Old Anson Road Walkability Project

On December 2, 2022, TxDOT announced a statewide Call for Projects for the 2023 Transportation Alternatives (TA)

City of Abilene submitted a preliminary application for the Old Anson Road Walkability Project; on April 6, 2023, the City received permission from TxDOT to proceed with the detailed application on the project.

Project includes a 5-foot wide sidewalk, pedestrian improvements, ADA accessibility improvements, bus shelters, and a potential designated bike route along the west side of Old Anson Road between W. Stamford Street and Ambler Avenue

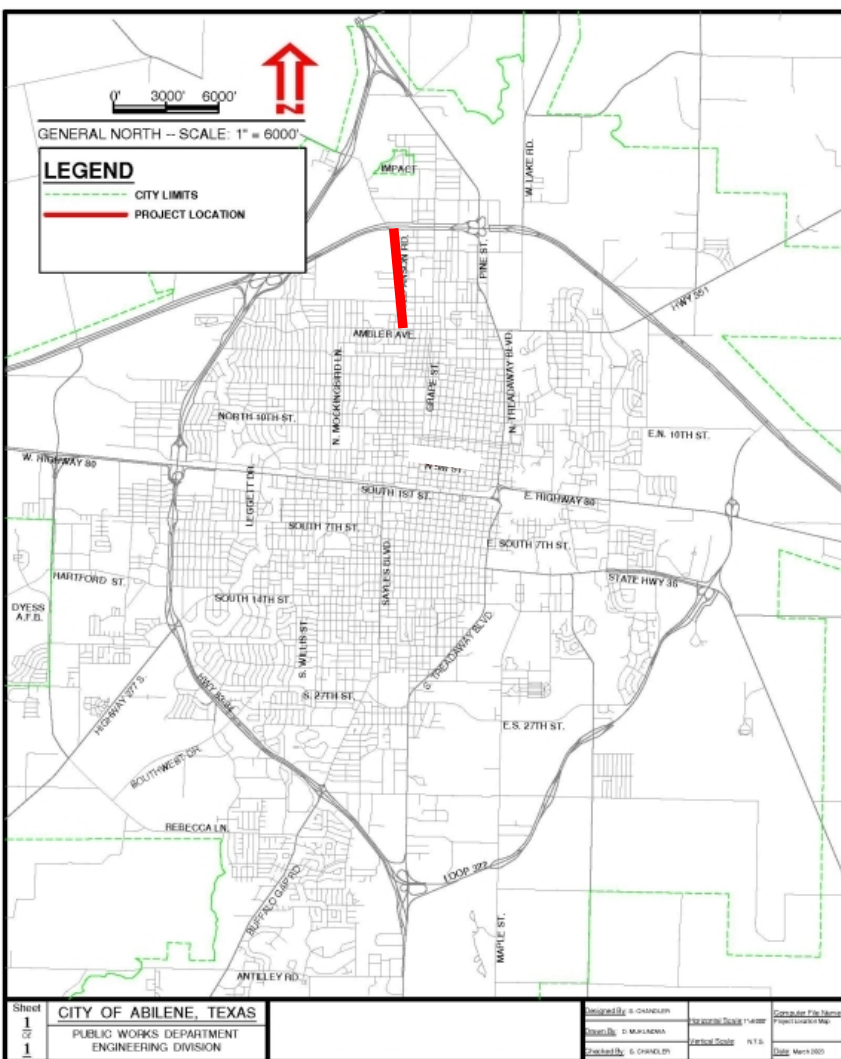
Total project cost is currently estimated at \$2.45M; project includes a 20% local match; City funding estimated at \$489K which will be funded through the Street Maintenance Fund

The final application is due on June 5, 2023.





Resolution: Call for Projects for the Old Anson Road Walkability Project





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 5/11/2023

TO: Robert Hanna, City Manager

FROM: Lesli Andrews, Director

SUBJECT: 11. Resolution: Receive a Report, Hold a Discussion and Take Action on Authorizing the City Manager to Enter Into a Contract with Jacob and Martin, LLC for the Design of Fire Station #9 (*Lesli Andrews*)

GENERAL INFORMATION

The City of Abilene continues to develop, especially along the Hwy 83/84 corridor. In order to accommodate this growth and provide adequate emergency services for this area, a Fire Station Bond was proposed and passed in May 2022. This is a \$9 million dollar bond project for Fire Station #9.

Fire Station #9 is a 10,000+ sq.ft. facility designed to house eight to ten full-time firefighters. The apparatus portion consists of four double bays that will house front-line and reserve fire apparatus. Station #9 will serve citizens located in South Abilene and will be situated at Hwy 707 and Spur 707.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

Fire Station #9 is funded by General Obligation Bonds approved at the April 27, 2023 City Council meeting.

STAFF RECOMMENDATION

Staff recommends approval of the contract with Jacob and Martin, LLC for the design of the

new Fire Station #9.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution Jacob & Martin Fire Station 9 Construction
2. 23112_FS#9_B101-2017 - ISD - Final - (1)
3. 2023 Presentation Jacob and Martin Contract Fire Station 9 Construction

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH JACOB & MARTIN, LLC FOR THE CONSTRUCTION OF FIRE STATION #9.

WHEREAS, the City of Abilene would like to make build a new fire station located at FM 707 and E Spur 707; and

WHEREAS, the City seeks to contract with Jacob & Martin, LLC and

WHEREAS, the funding for the project will come from the General Obligation Bonds approved at April 27, 2023 City Council Meeting; and

WHEREAS, Jacob & Martin, LLC will receive compensation in the amount of 7.5% of construction cost:

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 Jacob & Martin, LLC for the construction of a new fire station located at FM 707 and E Spur 707.

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

ADOPTED this ____ day of ____ 2023.

ATTEST:

Shawna Atkinson, City Secretary

Mayor

APPROVED:

Stanley Smith, City Attorney



AIA® Document B101® – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the ____ day of _____ in the year Two Thousand Twenty-Three
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Abilene
555 Walnut Street
Abilene, TX 79601
325.676.6206

and the Architect:
(Name, legal status, address and other information)

Jacob & Martin, LLC
3465 Curry Lane
Abilene, TX 79606
325.695.1070

for the following Project:
(Name, location and detailed description)

New Fire Station #9

The agreement will include professional services for the design of a new fire station. The initial site is located at the intersection of FM 707 and E Spur 707, the final location will be determined during the design process.

The Owner and Architect agree as follows.

The Owner will require Professional Architectural and Engineering Services during the terms of this Agreement. The purpose of this Agreement is to establish terms and conditions for performing these services pursuant to this Agreement

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

To be defined through mutual agreement between the Owner and Architect.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

To be defined through mutual agreement between the Owner and Architect.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

To be defined through mutual agreement between the Owner and Architect.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

To be defined through mutual agreement between the Owner and Architect.

.2 Construction commencement date:

To be defined through mutual agreement between the Owner and Architect.

.3 Substantial Completion date or dates:

To be defined through mutual agreement between the Owner and Architect.

.4 Other milestone dates:

Design complete within 9 months contract execution.

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

The Owner will determine the best value for each project.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

To be defined through mutual agreement between the Owner and Architect.

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Lesli Andrews
Director
Abilene Department of Parks and Recreation
633 Walnut Street
Abilene, TX 79601
325.676.6217

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

To be defined through mutual agreement between the Owner and Architect.

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

(Paragraphs deleted)
(Paragraphs deleted)
None

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

(List name, address, and other contact information.)

William Duncan, AIA, NCARB
JACOB | MARTIN
3465 Curry Lane
Abilene, Texas 79606
Ofc) 325.695.1070
Mbl) 214.886.6165

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural
(Paragraphs deleted)

Engineer
(Paragraphs deleted)

- .2 Mechanical Engineer
- .3 Electrical Engineer
- .4 Civil Engineer
- .5 Geotechnical Engineer

§ 1.1.11.2 Consultants retained under Supplemental Services:

As set forth in Article 4.

§ 1.1.12 Other Initial Information on which the Agreement is based:

None

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall

perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than one million dollars (\$ 1,000,000.00) for each occurrence and two million dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than one million dollars (\$ 1,000,000.00) each accident, one million dollars (\$ 1,000,000.00) each employee, and one million dollars (\$ 1,000,000.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than two million dollars (\$ 2,000,000.00) per claim and two million dollars (\$ 2,000,000.00) in the aggregate.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect and Owner shall create a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as a Basic Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known

deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review

shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1** conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2** issue Certificates of Substantial Completion;
- .3** forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4** issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Supplemental Services - Architect
§ 4.1.1.2 Multiple preliminary designs	Supplemental Services - Architect
§ 4.1.1.3 Measured drawings	Supplemental Services - Architect
§ 4.1.1.4 Existing facilities surveys	Supplemental Services - Architect
§ 4.1.1.5 Site evaluation and planning	Supplemental Services - Architect
§ 4.1.1.6 Building Information Model management responsibilities	Supplemental Services - Architect
§ 4.1.1.7 Development of Building Information Models for post construction use	Supplemental Services - Architect
§ 4.1.1.8 Civil engineering	Basic Services - Architect
§ 4.1.1.9 Landscape design	Supplemental Services - Architect
§ 4.1.1.10 Architectural interior design	Supplemental Services - Architect
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	Supplemental Services - Architect
§ 4.1.1.14 Conformed documents for construction	Supplemental Services - Architect
§ 4.1.1.15 As-designed record drawings	Not Provided
§ 4.1.1.16 As-constructed record drawings	Not Provided
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Supplemental Services - Architect
§ 4.1.1.21 Telecommunications/data design	Supplemental Services - Architect or Owner
§ 4.1.1.22 Security evaluation and planning	Supplemental Services - Architect
§ 4.1.1.23 Commissioning	Supplemental Services - Architect
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Supplemental Services - Architect
§ 4.1.1.25 Fast-track design services	Supplemental Services - Architect

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.26 Multiple bid packages	Supplemental Services - Architect
§ 4.1.1.27 Historic preservation	Supplemental Services - Architect
§ 4.1.1.28 Furniture, furnishings, and equipment design	Supplemental Services - Architect
§ 4.1.1.29 Other services provided by specialty Consultants	Supplemental Services - Architect
§ 4.1.1.30 Other Supplemental Services	Supplemental Services - Architect
§ 4.1.1.31 Surveys	Basic Services - Architect
§ 4.1.1.32 Geotechnical Engineer	Basic Services - Architect
§ 4.1.1.33 Food Service	Supplemental Services - Architect
§ 4.1.1.34 Acoustic	Supplemental Services - Architect
§ 4.1.1.35 Roofing Consultant	Supplemental Services - Architect
§ 4.1.1.36 Theatrical Consultant	Supplemental Services - Architect
§ 4.1.1.37 Traffic Engineer	Supplemental Services - Architect
§ 4.1.1.38 Environmental Graphics	Supplemental Services - Architect
§ 4.1.1.39 Wayfinding	Supplemental Services - Architect

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

Services are self-explanatory

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

Services are self-explanatory

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Bi-Monthly (2 per month) visits to the site by the Architect during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within twenty four (24) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 (Paragraph Omitted)

§ 5.5 (Paragraph Omitted)

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Architect and the Architect's consultants agree and understand that Owner is a governmental entity subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code, and that Owner may be required to release to the public any or all information received from the Architect.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to release and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

- ☒ [X] Arbitration pursuant to Section 8.3 of this Agreement
- ☐ [] Litigation in a court of competent jurisdiction
- ☐ [] Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

Zero Dollars

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

Five Thousand Dollars (\$5,000.00)

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1
(Paragraphs deleted)
Percentage Basis
(Insert percentage value)

Seven and one half (7.5) % of the Cost of the Work, as calculated in accordance with Section 11.6.
(Paragraphs deleted)

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Negotiated lump sum or percentage of construction cost as agreed to by Owner or Architect.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Negotiated lump sum or percentage of construction cost as agreed to by Owner or Architect.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus five percent (5%), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty	percent (	20	%)

Construction Documents Phase	Forty	percent (	40	%)
Procurement Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services through Construction Documents Phase shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Total Compensation will be calculated by multiplying the percentage identified in Section 11.1 by the Cost of Work which will be established by the selected bona fide bid or negotiated proposal for construction. Compensation paid in previous progress payments shall be adjusted based on Total Compensation established by the Cost of Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Reference Exhibit A

(Table deleted)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10 %) of the expenses incurred.

§ 11.9 **Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

None

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of ZERO DOLLARS (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of ZERO DOLLARS (\$ 0.00) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

1 % Monthly

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

LICENSING AUTHORITY: The following information is included in this agreement as required by Texas Occupations Code section 105.1.251: "The Texas Board of Architectural Examiners (333 Guadalupe Suite 2-350, Austin, Texas 78701 Telephone: 512-305-9000) has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas."

LICENSING AUTHORITY: The following information is included in this agreement as required by Texas Occupations Code Chapter 1001: "Texas Board of Professional Engineers, 1917 S Interstate 35, Austin, Texas 78741-3702 has jurisdiction over individuals licensed to practice engineering in the State of Texas."

In accordance with Texas Government Code section 2270.002, Architect verifies that it does not boycott Israel and will not boycott Israel during the term of this contract.

In accordance with Texas Government Code section 2274 enacted in SB13, Architect verifies that it does not boycott energy companies and will not boycott energy companies during the term of this contract.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
(Paragraphs deleted)

Init.

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User Notes:

(1129985098)

.2 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this agreement.)

☒ Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A – Architects Hourly Wage Rate

.3 Other documents:
(List other documents, if any, forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Robert Hanna, City Manager
(Printed name and title)



ARCHITECT (Signature)

Tal Fillingim, P.E., Senior Principal
(Printed name, title, and license number, if required)



INTEGRITY
EXCELLENCE
TRUST

EXHIBIT A
TO AGREEMENT FOR PROFESSIONAL SERVICES
FEES FOR PROFESSIONAL SERVICES

ENGINEERING SERVICES

Senior Principal Engineer	\$ 225.00
Principal Engineer	200.00
Registered Professional Engineer - 1	185.00
Registered Professional Engineer - 2	150.00
Engineer-in-Training (E.I.T.)	120.00
Engineering Technician - 1	120.00
Engineering Technician - 2	110.00
CAD Draftsman - 1	100.00
CAD Draftsman - 2	85.00
Engineering / Architectural Intern	60.00

ARCHITECTURAL SERVICES

Principal Architect	\$ 200.00
Licensed Architect - 1	175.00
Licensed Architect - 2	150.00
Licensed Interior Designer	115.00
Architectural Associate	110.00

ANCILLARY SERVICES

Environmental Scientist	\$ 120.00
Environmental Technician	75.00
GIS Technician - 1	120.00
GIS Technician - 2	90.00
Senior Land Man	100.00
Clerical - 1	90.00
Clerical - 2	75.00



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325.695.1070

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Weatherford, TX 76086
817.594.9880

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



SURVEYING SERVICES

INTEGRITY
EXCELLENCE
TRUST

Principal Surveyor	\$ 175.00
Registered Professional Land Surveyor	160.00
Surveyor-in-Training (S.I.T.)	110.00
1-Man Crew	100.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	125.00
2-Man Crew	150.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	175.00
3-Man Crew	175.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	200.00
GPS Equipment	75.00
Robotic Total Station	60.00
Vehicle Charge (per day) plus IRS rate per mile	50.00

FIELD SERVICES

Resident Project Representative - 1	\$ 100.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	120.00
Resident Project Representative - 2	80.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	100.00
Licensed Water/Wastewater Operator (A/B)	90.00
Licensed Water/Wastewater Operator (C/D)	75.00
Vehicle Charge (per day) plus IRS rate per mile	50.00

A FACTOR OF 1.1 SHALL BE APPLIED TO THE FOLLOWING

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

Effective 1/1/2023



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

Contract Jacob & Martin, LLC Construction of Fire Station #9

May 11, 2023





General Information:

- Design, Bid, Build Contract with Jacob & Martin, LLC for Fire Station #9.
- The agreement will include professional services for the construction of a new fire station located at FM 707 and E Spur 707.
- Cost of work to be performed is 7.5% of total construction cost.
- Funds approved in April 27, 2023 City Council Meeting from General Obligation Bonds.





**City Council
Agenda Memo**

City Council Meeting Date: 5/11/2023

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: **12. Ordinance (Final Reading) Z-2023-09:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Rolling Plains EV Stations LLC to change zoning of approximately 783 acres of land located at 5502 Spinks Road from Agricultural Open to Planned Development (PD-181) *(Tim Littlejohn)*

GENERAL INFORMATION

The subject property was zoned Agriculture Open Space (AO) when it was annexed in 2022. The purpose of this request is to establish the permanent zoning of the subject property.

The applicant was recruited by the Development Corporation of Abilene (DCOA) for green-energy and cryptocurrency production, with an electric substation, charging station, and potential corporate headquarters. The predominant use would be light industrial, with limited heavy industrial uses.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval subject to conditions.

BOARD OR COMMISSION RECOMMENDATION

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

ATTACHMENTS:

1. Z-2023-09 Ordinance
2. Z-2023-09 Staff Report RSA
3. Google Earth Zoning 20230323 (1)
4. Lancium Abilene Rezoning Overview - 20230327
5. PDD Zoning map EJ 20230323 (1)
6. 36494
7. 5613 Spinks Road
8. 6049 Spinks Rd & 133 Loma Vista
9. Z-2023-09

ORDINANCE NO. _____

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

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

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

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Two Thousand Dollars (\$2,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

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

PASSED ON FIRST READING the 27th day of April, 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 17th day of March, 2023, the same being more than fifteen (15) days prior to a public hearing held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m. on the 11th day of May 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 11th day of May, 2023.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

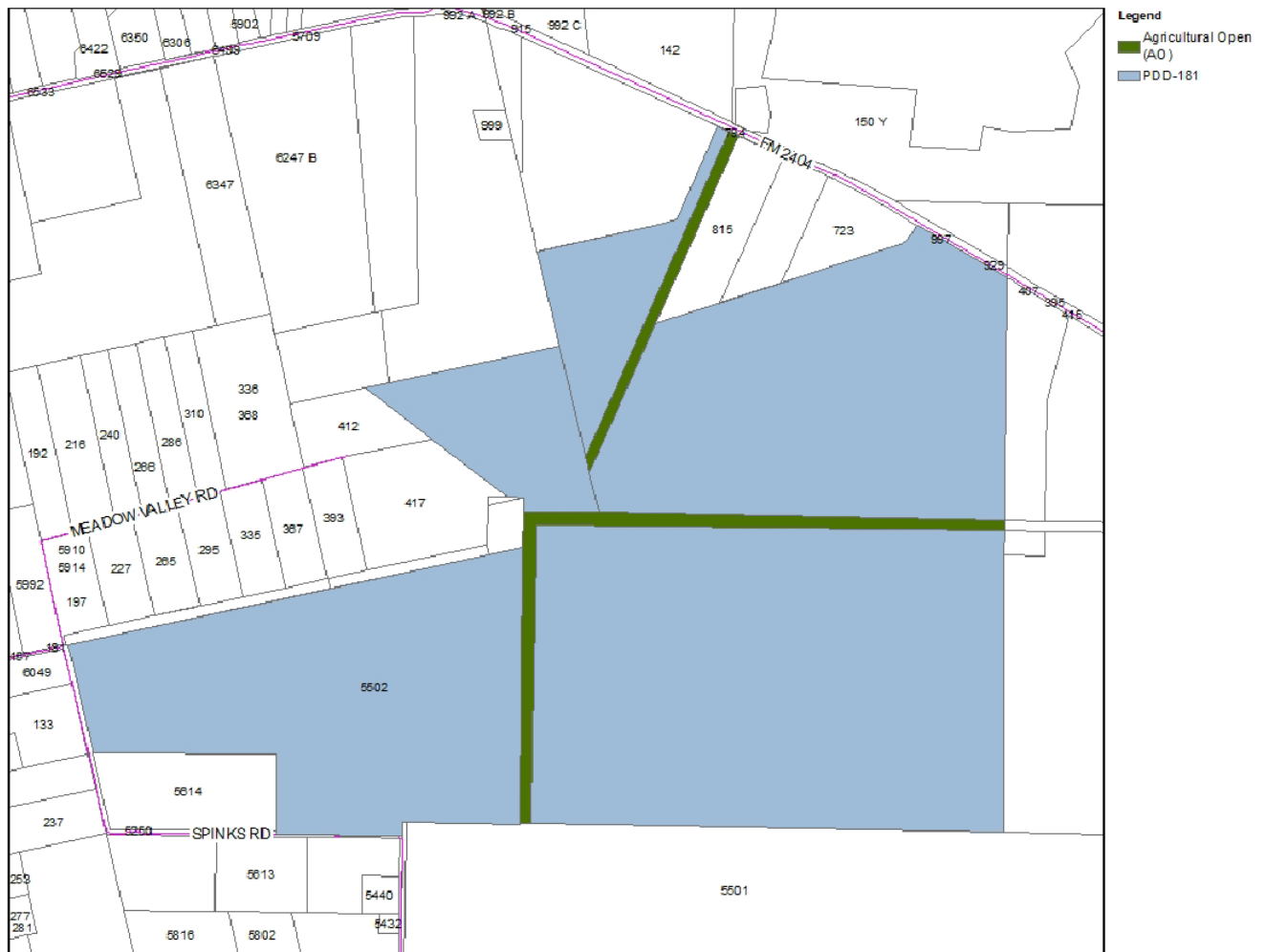
ORDINANCE NO. _____

EXHIBIT A

Request: Change the zoning classification of the following described land, from the Agricultural Open Space (AO) district to the Planned Development District (PDD-181). The property shaded blue in the below map comprises the extent of PDD-181. The property shaded green on the map is not a part of PDD-181 and will continue to be zoned Agricultural Open (AO).

Location: 5502 Spinks Road, as legally described as:

285.90 acres out of Section 53 and 54, Block 16, T.&P. RR. Company Surveys, Taylor County, Texas; and 191.18 acres of Section 55, Block 16, T & P RR. Company Surveys, Taylor County, Texas; and 305.95 Acres of Section 24, W. W. Sills Survey, Taylor County, Texas.



ORDINANCE NO. _____

EXHIBIT B
CONCEPT PLAN



ORDINANCE NO. _____

EXHIBIT C

Proposed Base Zoning District, Land Uses, and Development Standards

1. PDD-181 shall be developed in accordance with the Concept Plan (**Exhibit B**).
2. The base zoning district of PDD-181 shall be Light Industrial (LI).
3. The following Light Industrial uses shall be permitted by right at any location in PDD-181:
 - a. Data Center: High Performance Computing;
 - b. Data Center: Bitcoin Mining;
 - c. Operation and Maintenance Facilities;
 - d. Electric Vehicle Charging Station;
 - e. Solar Panel Array (green energy production);
 - f. Corporate Park (light industrial/office);
 - g. Warehousing;
 - h. Cold Storage;
 - i. Light Manufacturing;
 - j. Electric Substation; and
 - k. Corporate Headquarters (office).
4. The following Heavy Industrial (HI) uses shall be permitted by right on Lot 1:
 - a. Green Ammonia Production, Storage, and Loading Terminal;
 - b. Direct Air Capture (CO², carbon dioxide); and
 - c. Hydrogen Production, Storage, Loading Terminal.
5. The land area that comprises Lot 1 shall be the area highlighted in grey as shown in **Exhibit B**.
6. The 200-foot buffer designated on **Exhibit D** shall be maintained as open space, with all existing vegetation being maintained. Additional landscaping may also be installed as necessary.
7. The land area that comprises the 200-foot buffer area shall be the area as shown in **Exhibit D**.
8. PDD-181 shall be subject to all of the development standards that pertain to the LI zoning district.

ZONING CASE Z-2023-09

STAFF REPORT

Scheduled Hearings

Planning & Zoning Commission: April 4, 2023
City Council 1st Reading: April 27, 2023
City Council 2nd Reading: May 11, 2023

Applicant

Owner: Lancium LLC

Case Manager

Randal Anderson – Assistant Director

Request

Rezone approximately 826 acres from AO (Agricultural Open Space) to PDD-181 (Planned Development District) to create a green energy based business/industrial park.

Location

5502 Spinks Road

Background

The subject property automatically zoned Agriculture Open Space (AO) when it was annexed in 2022. The purpose of this request is to establish the permanent zoning of the subject property.

The applicant was recruited by the Development Corporation of Abilene (DCOA) for green-energy and cryptocurrency production, with an electric substation, charging station, and potential corporate headquarters. The predominant use would be light industrial, with limited heavy industrial uses.

Existing Land Uses and Zoning

Properties north, west, and east of the subject site are in the ETJ and are used for residential, agricultural, ranching purposes. Properties south of the subject site are in the city and are zoned AO and are used for residential, agricultural, ranching purposes.

Proposed Uses

The proposed PDD-181 would have a base zoning of Light Industrial (LI). The LI district allows office, retail, commercial, and light industrial uses. The proposed HI uses are green-hydrogen and green-ammonia production, storage, and a loading terminal. The HI uses would be insulated from any adjoining property by other less intensive LI uses. A 200-foot buffer would surround the perimeter of the subject site. All of the existing vegetation in the 200-foot buffer would be preserved. The attached Concept Plan shows the arrangement of these uses and the 200-foot buffer.

The following proposed light industrial uses were specifically identified by the applicant to be included on proposed Lots 2-5:

1. Data Center: High Performance Computing;
2. Data Center: Bitcoin Mining;
3. Operation and Maintenance facilities;

4. Electric Vehicle Charging Station;
5. Solar Panel Array (green energy production);
6. Corporate Park (light industrial/office);
7. Warehousing;
8. Cold Storage;
9. Light Manufacturing;
10. Electric Substation; and
11. Corporate Headquarters (office).

The following proposed heavy industrial uses were specifically identified by the applicant to be included in this proposed development on proposed Lot 1:

1. Green Ammonia Production, Storage, and Loading Terminal;
2. Direct Air Capture (CO², carbon dioxide); and
3. Hydrogen Production, Storage, Loading Terminal.

Criteria Assessment

Section 1.4.1.4 of Abilene's Land Development Code states that, in making a determination regarding a requested zoning change, the Planning and Zoning Commission and the City Council may consider the following factors:

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

The new Future Land Use Map (FLUM) recommend light industrial uses at this location. The new Comprehensive Plan and generally accepted planning principles recommend that new non-residential uses and zoning districts be constituted in a manner that will not adversely affect adjoining lower intensity zoning districts and land uses. Staff finds that the Concept Plan for PDD-181 will implement the FLUM recommendations in a manner that will not diminish the use and value of the surrounding properties.

- (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.**

Staff finds that the proposed zoning change, subject to the proposed Concept Plan, would be appropriate at this location and would not be detrimental to the use of existing surrounding properties.

- (3) Whether the proposed change is in accordance 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 City can provide adequate water and fire protection services for PDD-181. No public improvements are required to provide adequate services to this development.

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

The purpose of the proposed PDD-181 is to develop and implement new green-based technology to result in a positive impact the general welfare of society by reducing greenhouse gas, developing green energy solutions, and producing green energy.

P&Z Recommendation

The Planning and Zoning Commission recommends **approval** subject to the following conditions, as set out in the proposed ordinance:

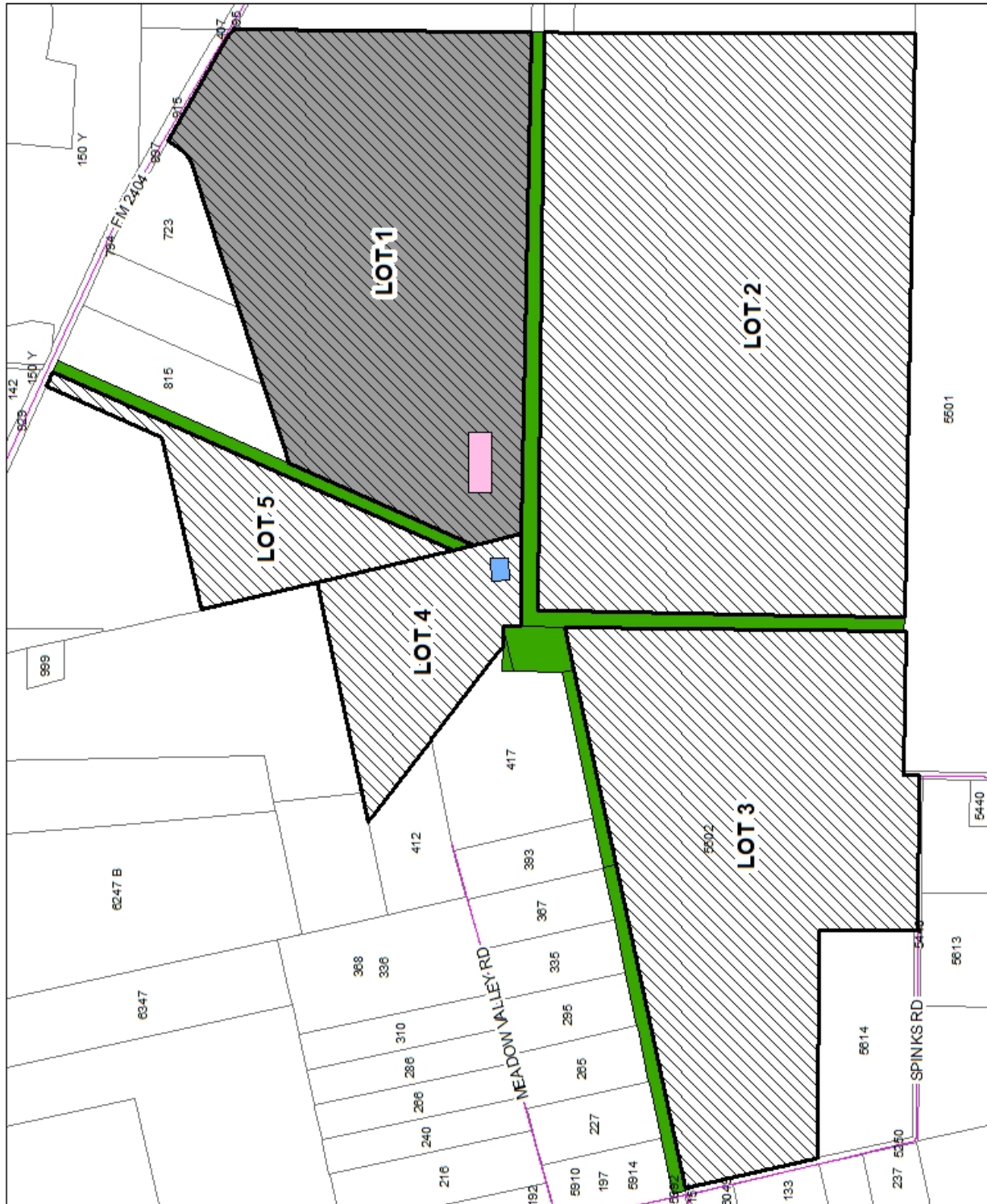
1. PDD-181 shall be developed in accordance with the Concept Plan attached as Exhibit A.
2. The base zoning district of PDD-181 shall be Light Industrial (LI) at any location in PDD, with the exception of the 200-foot buffer, and shall expressly permit the following uses:
 - a. Data Center: High Performance Computing;
 - b. Data Center: Bitcoin Mining;
 - c. Operation and Maintenance Facilities;
 - d. Electric Vehicle Charging Station;
 - e. Solar Panel Array (green energy production);
 - f. Corporate Park (light industrial/office);
 - g. Warehousing;
 - h. Cold Storage;
 - i. Light Manufacturing;
 - j. Electric Substation; and
 - k. Corporate Headquarters (office).
3. The following HI uses shall be permitted by right in the area designated for heavy industrial uses on the Concept Plan:
 - a. Green Ammonia Production, Storage, and Loading Terminal;
 - b. Direct Air Capture (CO², carbon dioxide);
 - c. Hydrogen Production, Storage, Loading Terminal.
4. PDD-181 shall be subject to all of the development standards that pertain to the LI zoning district.
5. The 200-foot buffer shown on the Concept Plan shall be maintained as open space, with all existing vegetation maintained.

Legend

- Z-2023-09
- Heavy Industrial Use
- Not included in PDD-181, to remain AQ

Substation

- 200 MW
- Future 1000 MW



Notification

TABLE 1
Owner

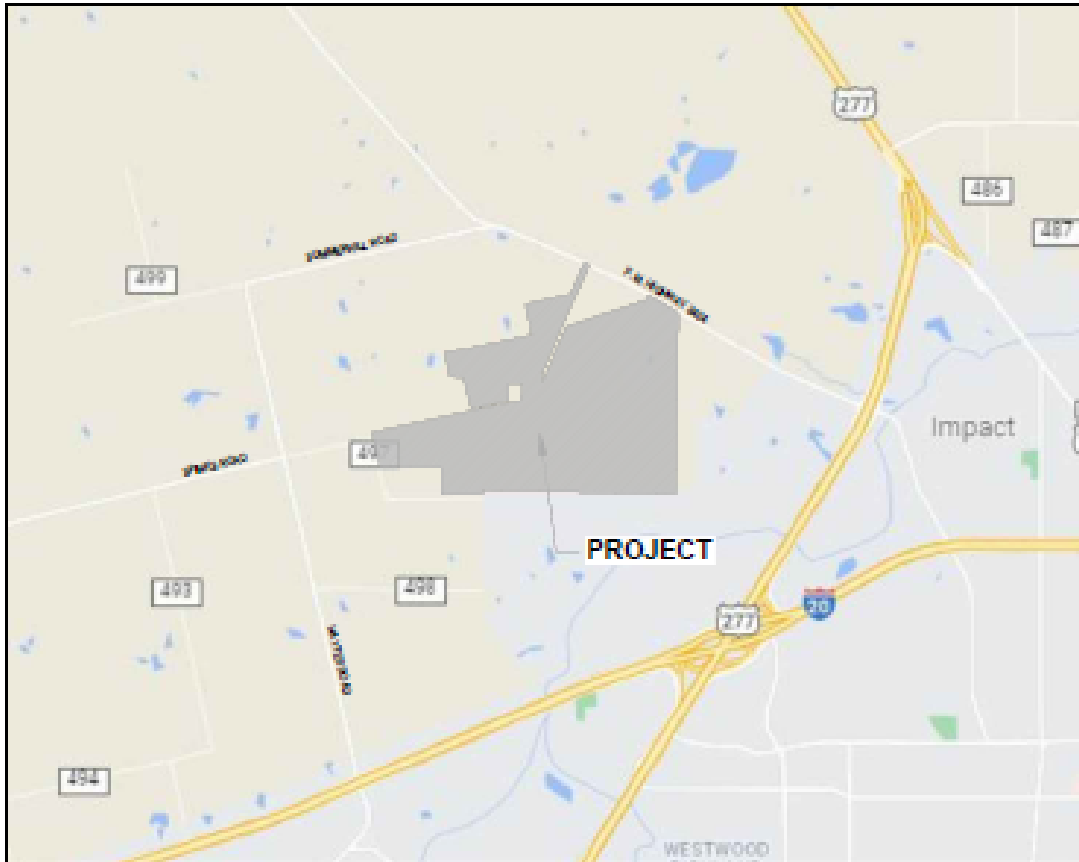
Owner	Property ID	Situs	Response
AEP TEXAS NORTH COMPANY	973980		F
BAUCUM CHARLES	36763	5613 SPINKS RD	O
BUNKLEY GARRY DOYLE &	47962	501 FM 2404	
DANKWORTH DAN & SHELIA	43217	142 CR 660	
DAVIS WESTON & CHERYL	36494	5448 SPINKS RD	O
DONAGHEY CALVIN WAYNE &	43336		
KENNEDY THOMAS R	67776		
MENDLER FRED & ARLENE	69755	133 LOMA VISTA	O
MENDLER FREDERICK W &	69352	6049 SPINKS RD	O
PINE STREET SALVAGE	48739	150 CR 660	
PINE STREET SALVAGE	48619		
PINE STREET SALVAGE	43093		
PINE STREET SALVAGE CO	47954		
ROLLING PLAINS EV STATIONS LLC	47960	515 FM 2404	F
ROLLING PLAINS EV STATIONS LLC	43815		F
ROLLING PLAINS EV STATIONS LLC	43449		F
ROLLING PLAINS EV STATIONS LLC	1062242		F
ROLLING PLAINS EV STATIONS LLC	117284		F
ROLLING PLAINS EV STATIONS LLC	1062207	815 FM 2404	F
ROLLING PLAINS EV STATIONS LLC	1062111	723 FM 2404	F
ROLLING PLAINS EV STATIONS LLC	1061063	5614 SPINKS RD	F
ROLLING PLAINS EV STATIONS LLC	37417	5502 SPINKS RD	F
ROLLING PLAINS EV STATIONS LLC	48205		F
ROLLING PLAINS EV STATIONS LLC	1062951		F
SMITH JUSTIN DARREL &	36827	5501 SPINKS RD	
TUCHER CRISTOFOR L & JONNA B	1010474		
TUCHER JOHN M & MARY JANE	33072		
WEST TEXAS UTILITIES CO	48087		F
WEST TEXAS UTILITIES CO	1086255		F
WEST TEXAS UTILITIES CO	15281		F
WEST TEXAS UTILITIES CO	32676		F
WEST TEXAS UTILITIES CO	32811		F
LEIJA LETICIA	33654	2601 E STAMFORD ST	
SS SRANI LLC	34253	1038 N LOOP 322	
AWTRY MIKE & BUFFI	105566	2598 EN 10TH ST	
AWTRY MIKE & BUFFI	1017941	2401 E STAMFORD ST	

Owner	Property ID	Situs	Response
LEIJA LETICIA	33654	2601 E STAMFORD ST	
SS SRANI LLC	34253	1038 N LOOP 322	
AWTRY MIKE & BUFFI	105566	2598 EN 10TH ST	
AWTRY MIKE & BUFFI	1017941	2401 E STAMFORD ST	

Prop ID

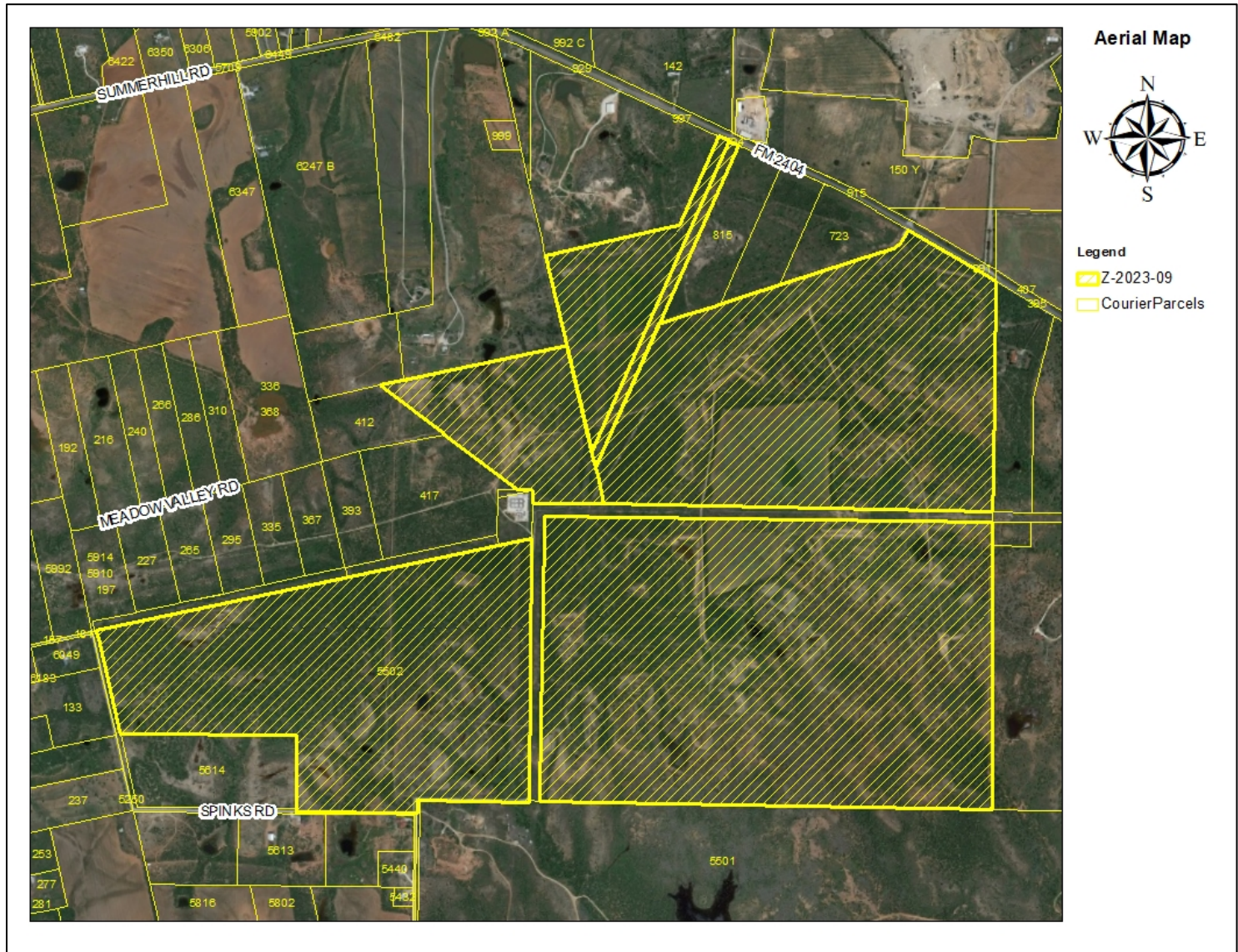
Owner	Property ID	Situs	Response
WEST TEXAS UTILITIES CO	15281		F
WEST TEXAS UTILITIES CO	32676		F
WEST TEXAS UTILITIES CO	32811		F
TUCHER JOHN M & MARY JANE	33072		
DAVIS WESTON & CHERYL	36494	5448 SPINKS RD	O
BAUCUM CHARLES	36763	5613 SPINKS RD	O
SMITH JUSTIN DARREL &	36827	5501 SPINKS RD	
ROLLING PLAINS EV STATIONS LLC	37417	5502 SPINKS RD	F
PINE STREET SALVAGE	43093		
DANKWORTH DAN & SHELIA	43217	142 CR 660	
DONAGHEY CALVIN WAYNE &	43336		
ROLLING PLAINS EV STATIONS LLC	43449		F
ROLLING PLAINS EV STATIONS LLC	43815		F
PINE STREET SALVAGE CO	47954		
ROLLING PLAINS EV STATIONS LLC	47960	515 FM 2404	F
BUNKLEY GARRY DOYLE &	47962	501 FM 2404	
WEST TEXAS UTILITIES CO	48087		F
ROLLING PLAINS EV STATIONS LLC	48205		F
PINE STREET SALVAGE	48619		
PINE STREET SALVAGE	48739	150 CR 660	
KENNEDY THOMAS R	67776		
MENDLER FREDERICK W &	69352	6049 SPINKS RD	O
MENDLER FRED & ARLENE	69755	133 LOMA VISTA	O
ROLLING PLAINS EV STATIONS LLC	117284		F
AEP TEXAS NORTH COMPANY	973980		F
TUCHER CRISTOFOR L & JONNA B	1010474		
ROLLING PLAINS EV STATIONS LLC	1061063	5614 SPINKS RD	F
ROLLING PLAINS EV STATIONS LLC	1062111	723 FM 2404	F
ROLLING PLAINS EV STATIONS LLC	1062207	815 FM 2404	F
ROLLING PLAINS EV STATIONS LLC	1062242		F
ROLLING PLAINS EV STATIONS LLC	1062951		F
WEST TEXAS UTILITIES CO	1086255		F

VICINITY MAP



LOCATION MAP
N.T.S.

LOCATION MAP

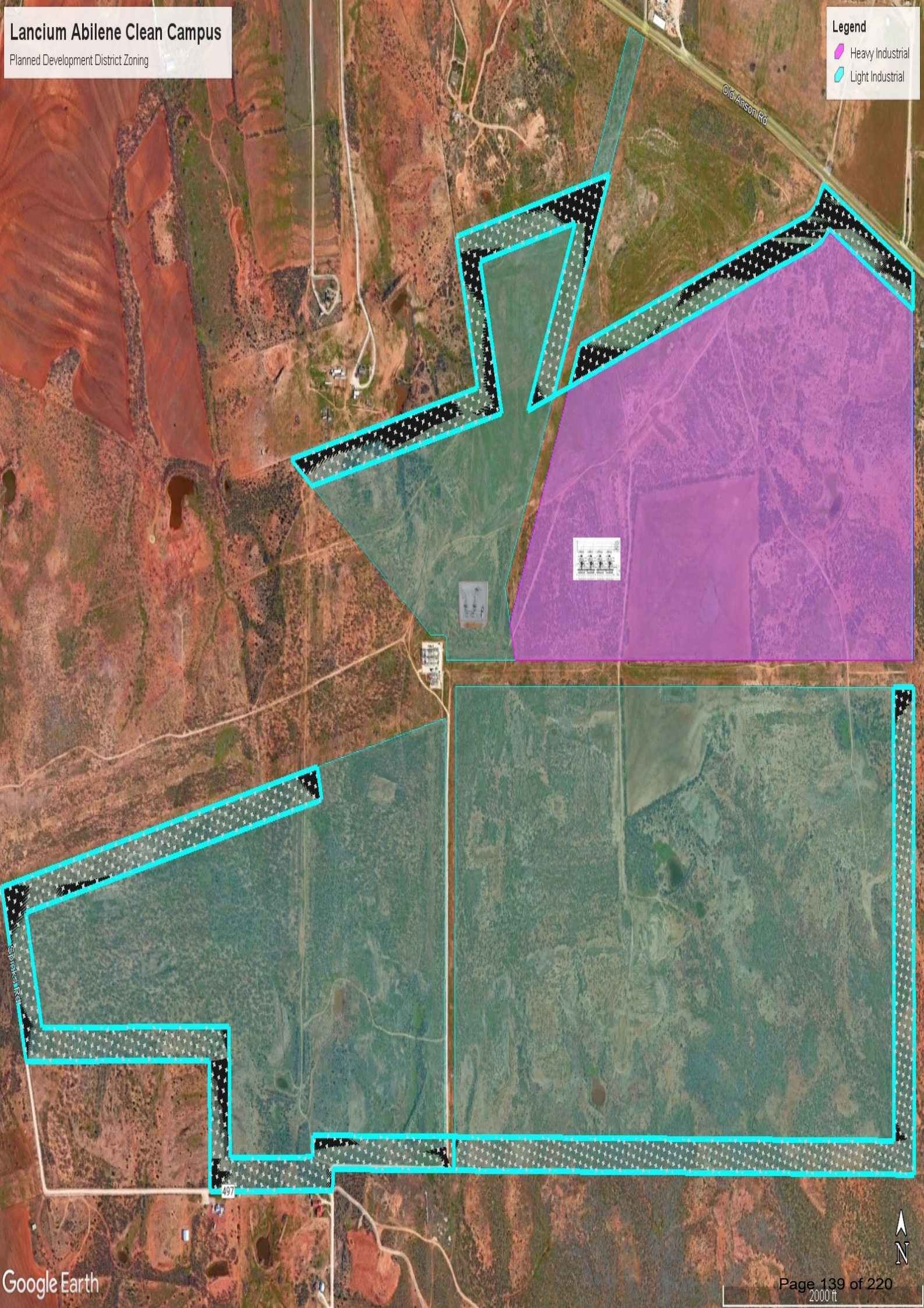


ZONING MAP



Legend

- Heavy Industrial
- Light Industrial



Lancium: Investing in Abilene

Rezoning Request Overview

Who we are

Lancium is a leading energy technology and infrastructure company dedicated to accelerating the energy transition.

What we do

We create technologies and build infrastructure that enable more clean energy production while balancing and stabilizing the power grid.



Headquarters: The Woodlands, TX



Industry-leading Lancium Smart Response™ technology protected by a large patent estate



First company to commercialize technology to transform large electric demand into a resource for the electric grid



Currently developing 1200+ acre, 1.2-Gigawatt Clean Campus in NW Abilene, as well as a Clean Campus in Ft. Stockton

Lancium Abilene Clean Campus Overview

We are making steady progress in developing our Abilene-based flagship facility



Site overview:

- 826 acres annexed into City of Abilene
- Zoned agricultural open space
- Approved for 1.2 Gigawatts of power by ERCOT

Potential uses Light Industrial:

- Datacenter
- Cold storage facility
- Electric Vehicle charging station
- Solar Panels
- Light Manufacturing

Potential uses Heavy Industrial:

- Green hydrogen / ammonia production

Key milestones:

- Dec. 2021: Taylor County & City of Abilene approve project
- Jun. 2022: Site construction begins
- Nov. 2022: Groundbreaking & community celebration
- Dec. 2022: 200MW substation completed
- Jun. 2023: Target for substation energization

Current status:

- Initial 200 MW capacity under contract negotiation for data center applications



Photo as of March 2, 2023

Lancium's Zoning Proposal

Zone approximately 180 acres of within the Plan Development District (PDD) for heavy industrial uses, creating greater opportunity and optionality



- **The Clean Campus Concept**

Lancium's initial plan was for the property to be home to large, energy-intensive data centers used for a variety of applications, including Bitcoin Mining and High-Throughput Computing (HTC).

- **Turning power users into a grid resource**

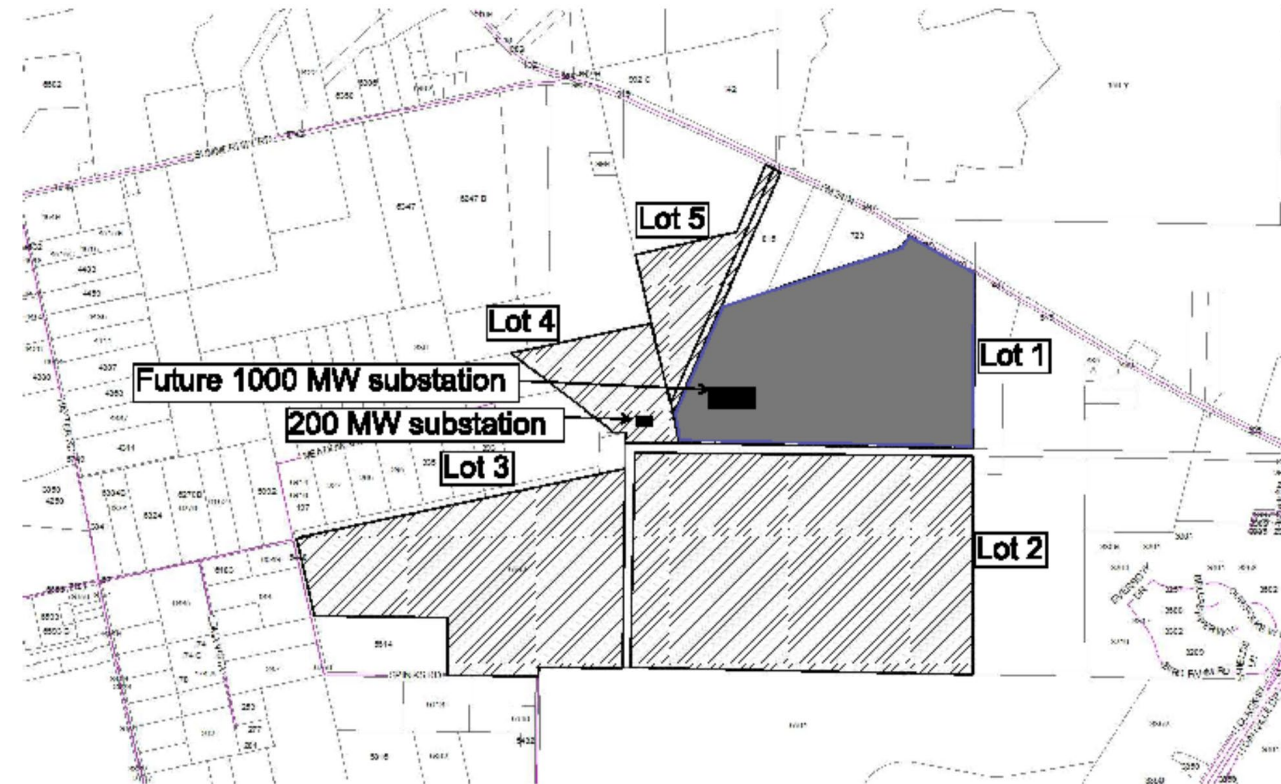
Site power consumption to be managed by Lancium Smart Response™, allowing tenants to “turn down” during high demand periods, lowering their costs and helping ERCOT to stabilize the power grid.

- **Significant interest from broader industries**

Lancium has experienced significant interest from industries beyond our initial target end markets. We are exploring additional potential options including green hydrogen and green ammonia production that would put Abilene on the leading edge of the energy transition.

- **Zoning proposal creates additional opportunities**

Zoning approximately 30 percent of the property for applications other than data centers creates additional opportunities for attracting new business.



Committed to supporting the community

We are committed to engaging with our stakeholders to answer any questions or concerns



Stakeholder Engagement

Visit [Lancium.com/Abilene](https://www.lancium.com/Abilene) to stay updated the latest news. We also engage with our immediate neighbors to address any concerns.

Incorporating Feedback Into Our Planning

As we design our site we are listening to feedback from the community.

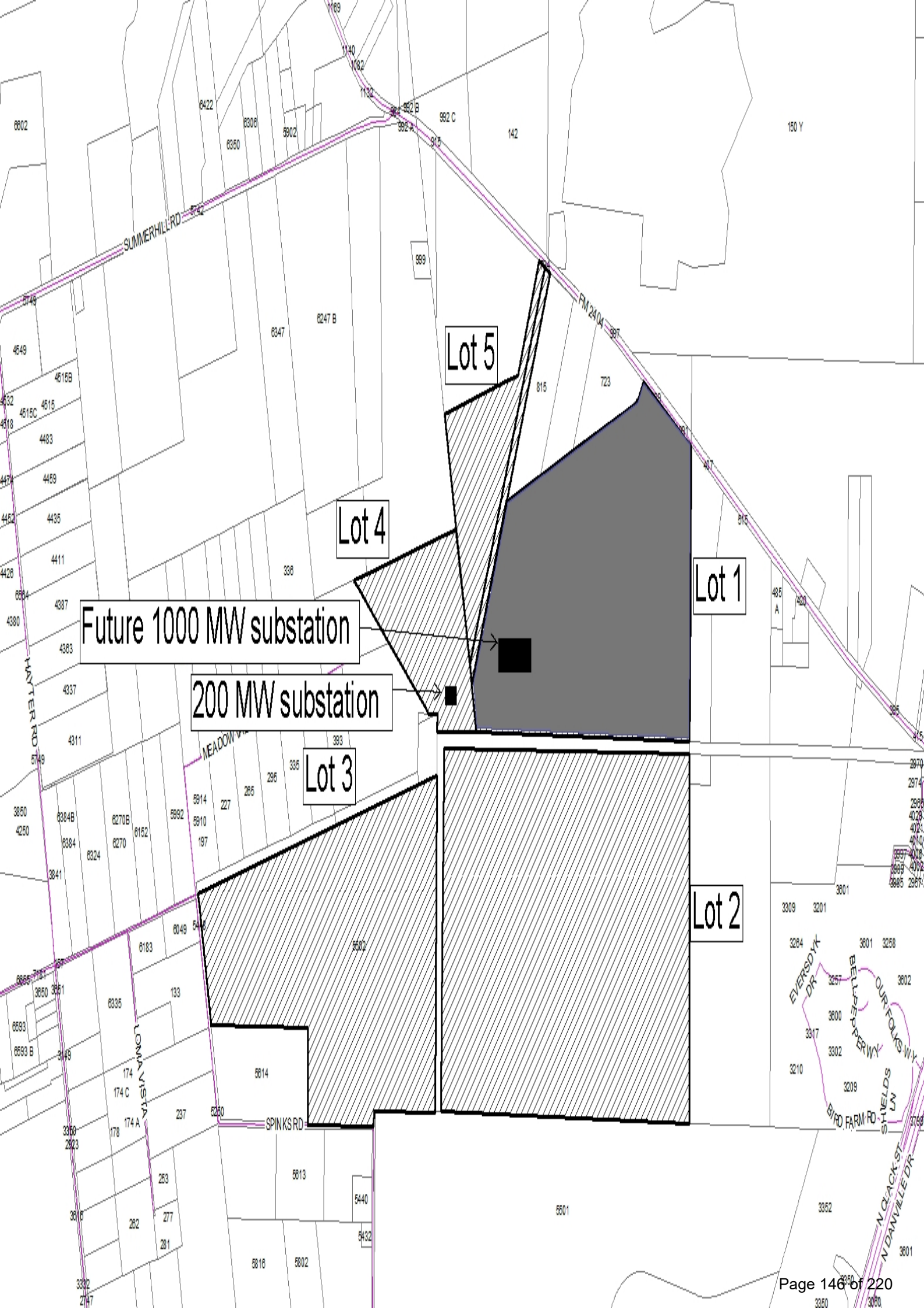
Supporting the Community

Lancium is committed to working with Abilene to foster economic growth for the next generation.



For more information: www.lancium.com/abilene

Questions? abilene@lancium.com



Future 1000 MW substation

200 MW substation

Lot 5

Lot 4

Lot 1

Lot 3

Lot 2

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

CASE #: Z-2023-09

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: DAVIS WESTON & CHERYL
Parcel I.D.: 36494
Address:

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

Email: planning@abilenetx.gov

I am in favor ☐

I am opposed ☒

Additional Comments:

Signature: Cheryl Davis

MAR 30 AM 8:43

For the PLANNING & ZONING COMMISSION

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

CASE #: Z-2023-09

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: BAUCUM CHARLES

Parcel I.D.: 36763

Address: 5613 SPINKS RD

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

Email: planning@abilenetx.gov

I am in favor ☐

I am opposed ☒

Additional Comments:

Signature: _____

*Should've had input before the
deal was made with Lincum.*

MAR 1 AM 10:19

1 March 2023

Re: Case Z-2023-09

To whom it may concern:

We would like to state our opposition to the above referenced case.
We do not want any land in our area designated to Light Industrial.

There is already an industrial area several miles from here – 5 Points.
Why do we need to put that in the middle of our country living.

Quite frankly, we are really surprised to have received this notice as we never got any kind of notification when the City decided to designate land for Lancium. No one up here wants that, but, unfortunately, the folks that live up here heard nothing about it until it was on the news when it was already a done deal.

I haven't found anyone else, yet, that received this letter. But please note our opposition to said case.

Thank You.

A handwritten signature in black ink, appearing to read 'Arlene Mendler', followed by a long horizontal flourish line.

Arlene Mendler

6049 Spinks Rd – Parcel ID 69352

133 Loma Vista – Parcel ID 69755

Abilene, Texas 79601

325-669-4089



Z-2023-09 REZONE REQUEST

Case: Z-2023-09

Owner: Lancium LLC

Request: Rezone 826 acres from AO to PDD-181

Location: 5502 Spinks Road

Notification: 17 in Favor, 4 Opposed

Planning & Zoning: April 4, 2023

Council Hearings: April 27, 2023
May 11, 2023





Z-2023-09 GENERAL VICINITY

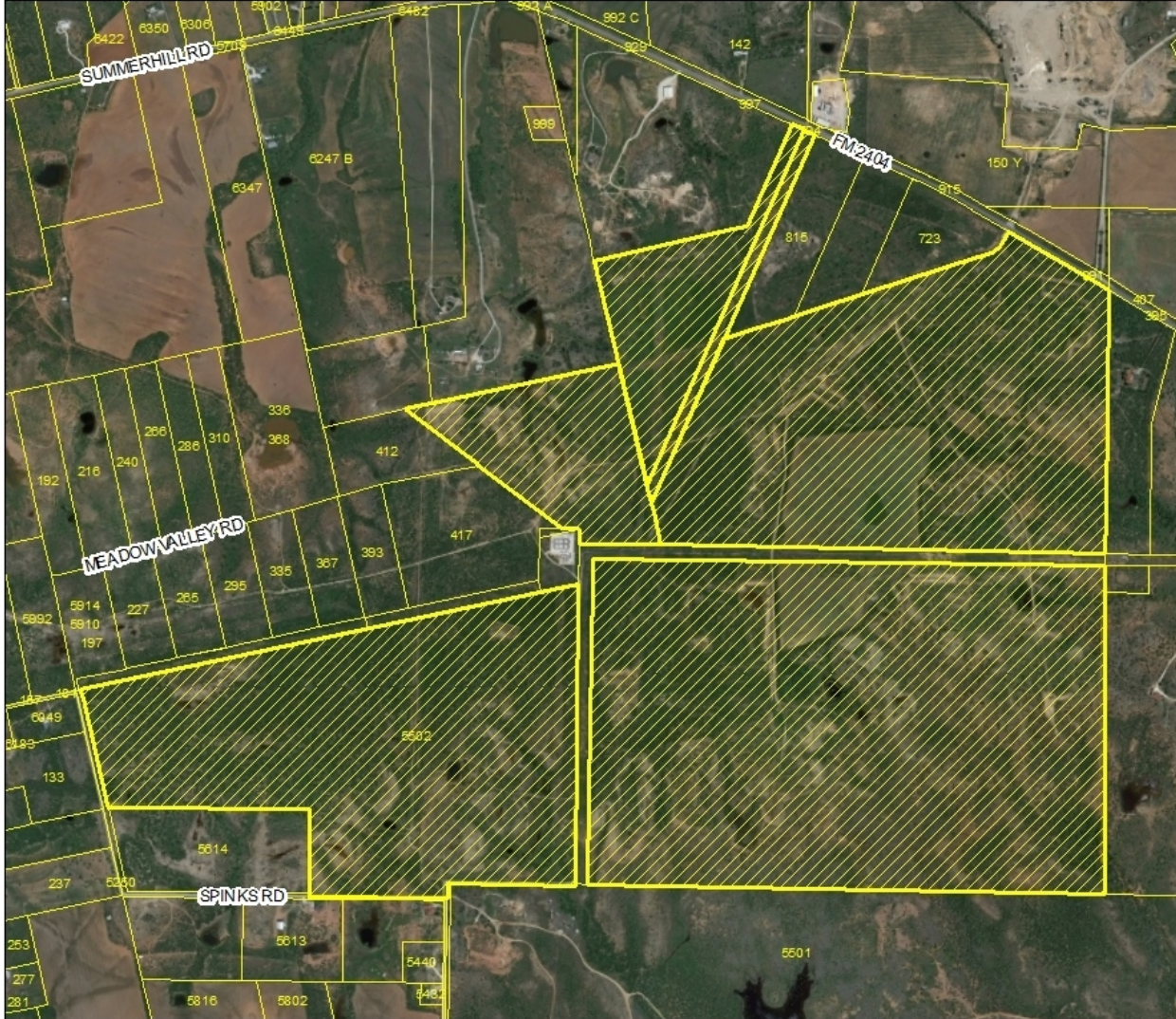


LOCATION MAP
N.T.S.





Z-2023-09 AERIAL MAP



Aerial Map



Legend

- Z-2023-09
- CourierParcels



CITY OF
ABILENE
TEXAS







BASE ZONING

Base Zoning - Light Industrial (LI)

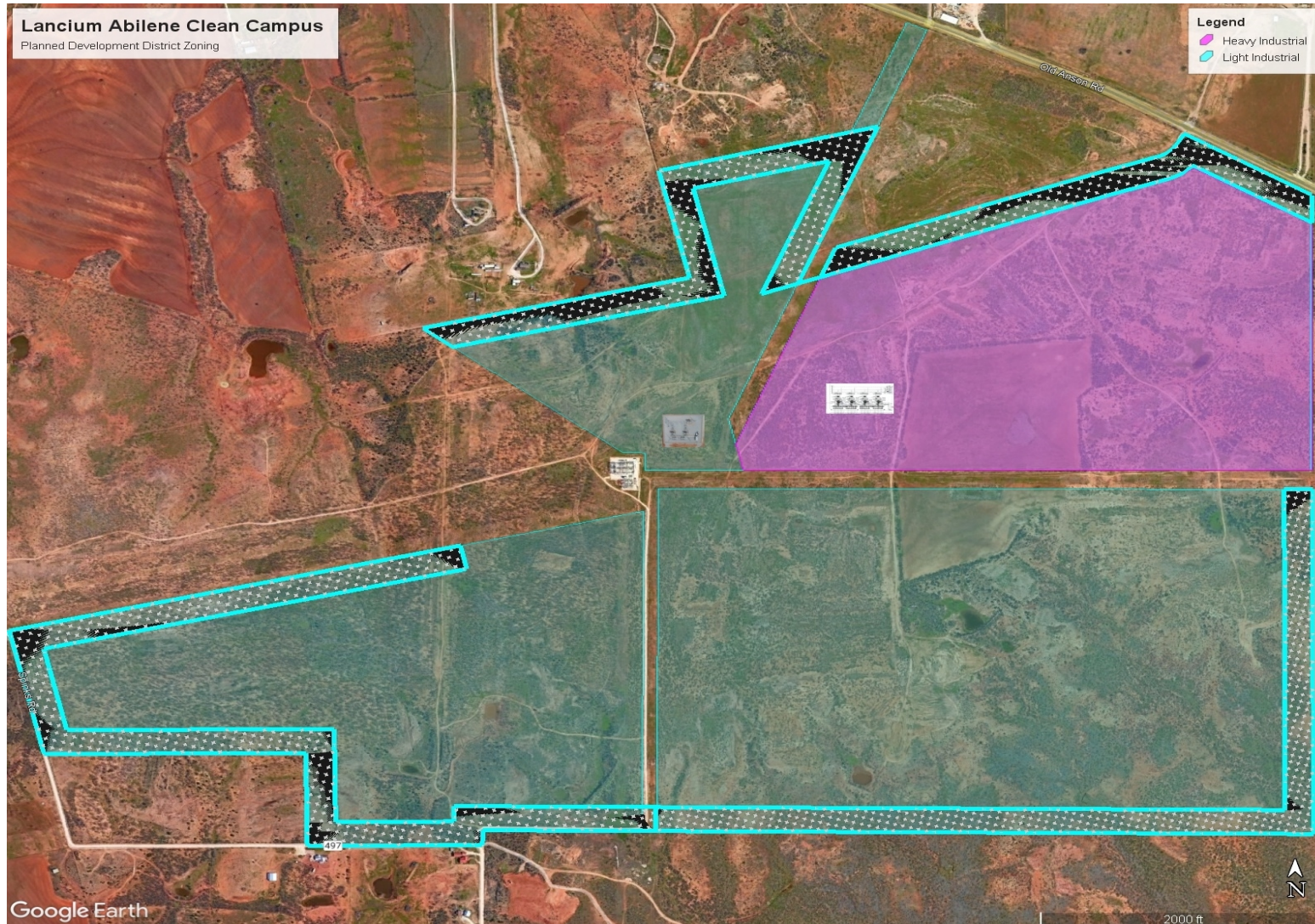
Development Standards: Light Industrial (LI)

200-Foot Buffer: Around PDD-181 and all adjoining properties not owned by the applicant





200-FOOT BUFFER LOCATION



CITY OF
ABILENE
TEXAS



PROPOSED USES LOT 1

Lot 1

Green Hydrogen Production, Storage, and Loading Terminal (Heavy Industrial);

Green Ammonia Production, Storage, and Loading Terminal (Heavy Industrial);

Direct Air Capture, Carbon Dioxide (Heavy Industrial); and

Light Industrial (LI) Uses.





PROPOSED USES LOTS 2-5

Lots 2-5

- Data Center: High Performance Computing;
- Data Center: Bitcoin Mining;
- Cold Storage;
- Operation and Maintenance Facilities;
- Electric Vehicle Charging Station;
- Solar Panels (Green Energy Production);
- Corporate Park (Light Industrial/Office);
- Light Manufacturing;
- Warehousing;
- Corporate Headquarters;
- Electric Substation; and
- Light Industrial (LI) Uses





PERMITTED USES IN LI DISTRICT

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



PHOTOS OF SUBJECT PROPERTY

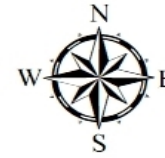




Z-2023-09 NOTIFICATION MAP



Notification Map



17- In Favor- ●
4- Opposed- ●
5.1% Opposed

Legend

□ Z-2023-09
□ Buffer
□ Z-2023-09



CITY OF
ABILENE
TEXAS



FINDINGS/RECOMMENDATION

The proposed request is *consistent* with:

- The proposed Comprehensive Plan;
- The proposed Future Land Use Map;
- Generally accepted planning principals; and
- The Criteria for Approval in the LDC.

P&Z recommends **approval** subject to the following conditions:





CONDITIONS

1. PDD-181 shall be developed in accordance with the Concept Plan attached as Exhibit A.
2. The base zoning district of PDD-181 shall be Light Industrial (LI) at any location in PDD, with the exception of the 200-foot buffer, and shall expressly permit the following uses:
 - a. Data Center: High Performance Computing;
 - b. Data Center: Bitcoin Mining;
 - c. Operation and Maintenance Facilities;
 - d. Electric Vehicle Charging Station;
 - e. Solar Panel Array (green energy production);
 - f. Corporate Park (light industrial/office);
 - g. Warehousing;
 - h. Cold Storage;
 - i. Light Manufacturing;
 - j. Electric Substation; and
 - k. Corporate Headquarters (office).





CONDITIONS

3. The following HI uses shall be permitted by right in the area designated for heavy industrial uses on the Concept Plan:
 - a. Green Ammonia Production, Storage, and Loading Terminal;
 - b. Direct Air Capture (CO², carbon dioxide); and
 - c. Hydrogen Production, Storage, Loading Terminal.
4. PDD-181 shall be subject to all of the development standards that pertain to the LI zoning district.
5. The 200' buffer shown on the Concept Plan shall be maintained as open space with all existing vegetation maintained.





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 5/11/2023

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: **13. Ordinance (Final Reading) Z-2023-10:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Bridgestone Bandag, LLC to change zoning from Agricultural Open (AO) to Heavy Industrial (HI), located at 4678 FM 18 *(Tim Littlejohn)*

GENERAL INFORMATION

The subject property was annexed in 1986 and automatically zoned Agricultural Open (AO). A non-conforming parking lot exists along portion of the eastern boundary line. It's unknown when the parking lot was built, but technically the subject should have been rezoned as industrial to allow it on this site.

The applicant now proposes to expand the parking lot further onto the subject site and is requesting rezoning for that purpose.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of 5-0.

ATTACHMENTS:

1. Z-2023-10 Ordinance
2. Z-2023-10 Staff ReportRSA
3. Z-2023-10 Presentation

ORDINANCE NO. _____

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

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

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

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

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

PASSED ON FIRST READING the 27th day of April, 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 17th day of March, 2023, the same being more than fifteen (15) days prior to a public hearing held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m. on the 11th day of May, 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 11th day of May, 2023.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

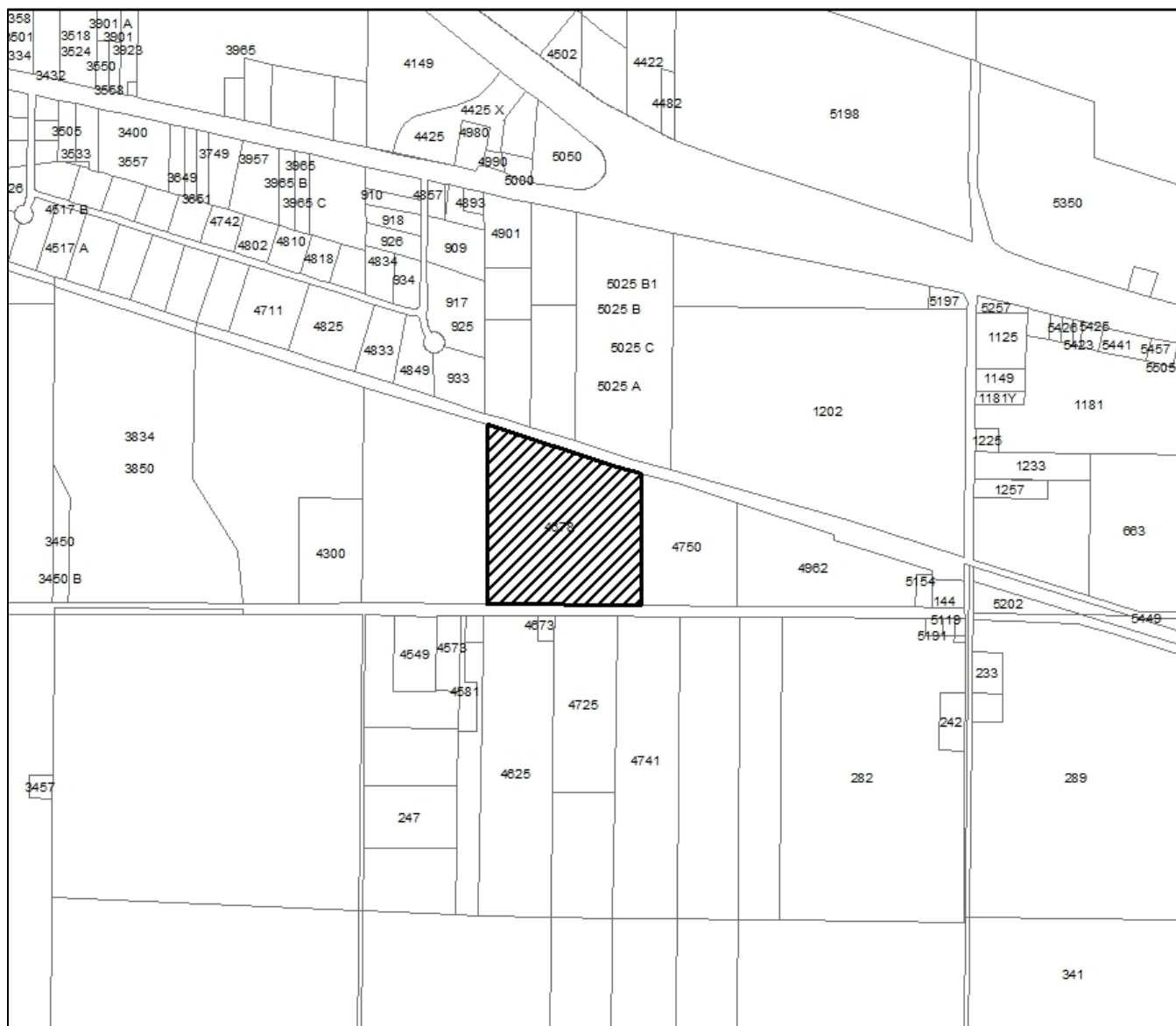
CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT A

Change the zoning classification of the following described land, from an Agricultural Open (AO) District to a Heavy Industrial (HI) District:

Location: 4678 FM 18, Legal description being 41.8 acres of the southwest quarter of Survey 44 Blind Asylum Lands, Abilene, Taylor County, Texas.



END

ZONING CASE Z-2023-10

STAFF REPORT

Scheduled Hearings

Planning & Zoning Commission: April 4, 2023

City Council 1st Reading: April 27, 2023

City Council 2nd Reading: May 11, 2023

Applicant

Owner: Bridgestone Bandag, LLC

Agent: Chris Daniel

Case Manager

Clarissa Ivey – Planner I

Request

Rezoning of approximately 41.8 acres from Agricultural Open (AO) to Heavy Industrial (HI). The owner intends to expand existing parking lot onto this property.

Location

The subject property is located at 4678 FM 18.

Legal description being 41.8 acres of the southwest quarter of Survey 44 Blind Asylum Lands, Abilene, Taylor County, Texas.

Background

- The subject property was annexed in 1986 and automatically zoned Agricultural Open (AO).
- A non-conforming parking lot exists along portion of the eastern boundary line, its unknown when the parking lot was built, but technically the subject should have been rezoned as industrial to allow it on this site.
- The applicant now proposes to expand the parking lot further onto the subject site and is requesting rezoning for that purpose.

Zoning, Existing and Proposed Land Use

Light Industrial (LI) zoning is located north of the subject property across the railroad tracks. Agricultural Open (AO) zoning to the west. To the south is a small tract of Agricultural Open (AO) zoning district surrounded by Heavy Industrial (HI) zoning. The Bridgestone Bandag facility is immediately east of the subject property and is zoned Heavy Industrial (HI) zoning.

Criteria Assessment

Section 1.4.1.4 of Abilene's Land Development Code states that, in making a determination regarding a requested zoning change, the Planning and Zoning Commission and the City Council may consider the following factors:

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

The proposed request is consistent with the spirit and intent of the Comprehensive Plan and Future Land Use Map (FLUM).

- (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 zoning classification would eliminate the nonconformity (parking lot) and allow the parking lot to be expanded to provide additional parking to the adjacent Bridgestone Bandag facility.

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

This property has access to all required utilities.

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

None.

P&Z Recommendation

The Planning and Zoning Commission recommends **approval**.

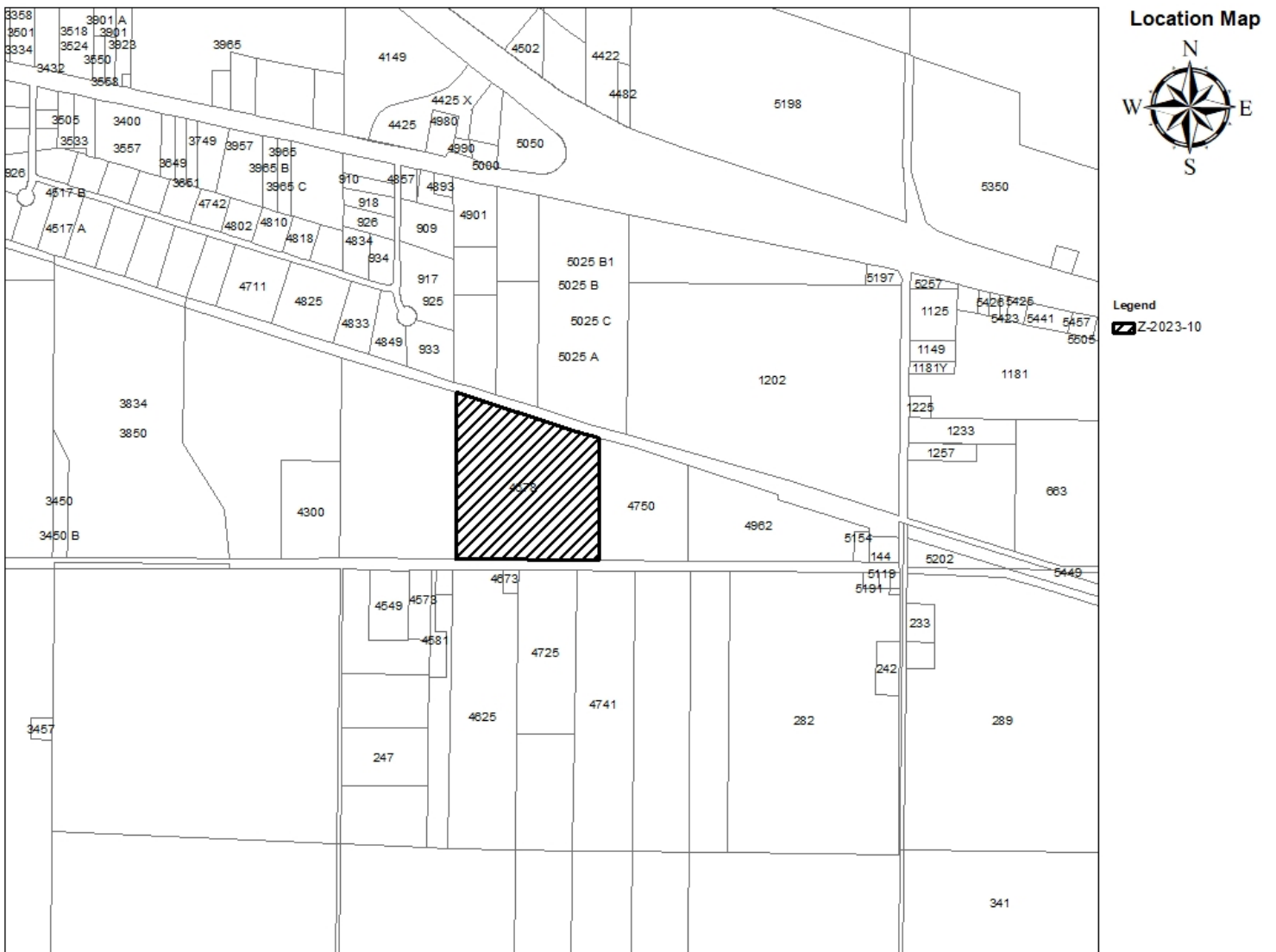
Notification

Owner			Legend O – Opposed F – In favor
Owner	Property ID	Situs	
ABILENE MAJESTIC LLC SERIES Q	31567	4725 FM 18	
BANDAG INC	73560	4678 FM 18	
BANDAG INC	64975	4750 FM 18	
BANDAG INC	73826		
C S ADVENTURES REAL EST	74559		
C S ADVENTURES REAL EST	34098	5025 C E HWY 80	F
C S ADVENTURES REAL EST	34098	5025 B E HWY 80	
C S ADVENTURES REAL EST	34098	5025 A E HWY 80	
C S ADVENTURES REAL EST	34098	5025 E HWY 80	
DEAVER CHAD & CORTNEY	30417	4741 FM 18	
MANKIN WELDON B SR	31693		
MOBILE HOME CONCEPTS	35640	933 OIL CENTER DR	
MUELLER INC	30805	4625 FM 18	
SKINNYS INC	31821	4673 FM 18	
WILLIAMSON RICHARD	74328		

Property ID

Owner	Property ID	Situs	Response
DEAVER CHAD & CORTNEY	30417	4741 FM 18	
MUELLER INC	30805	4625 FM 18	
ABILENE MAJESTIC LLC SERIES Q	31567	4725 FM 18	
MANKIN WELDON B SR	31693		
SKINNYS INC	31821	4673 FM 18	
C S ADVENTURES REAL EST	34098	5025 C E HWY 80	F
C S ADVENTURES REAL EST	34098	5025 B E HWY 80	
C S ADVENTURES REAL EST	34098	5025 A E HWY 80	
C S ADVENTURES REAL EST	34098	5025 E HWY 80	
MOBILE HOME CONCEPTS	35640	933 OIL CENTER DR	
BANDAG INC	64975	4750 FM 18	
BANDAG INC	73560	4678 FM 18	
BANDAG INC	73826		
WILLIAMSON RICHARD	74328		
C S ADVENTURES REAL EST	74559		

LOCATION MAP



ZONING MAP





REZONE REQUEST

Case: Z-2023-10

Owner: Bridgestone Bandag, LLC

Agent: Chris Daniel

Request: Rezone from AO to HI

Location: 4678 FM 18

Notification: 1 in Favor, 0 Opposed

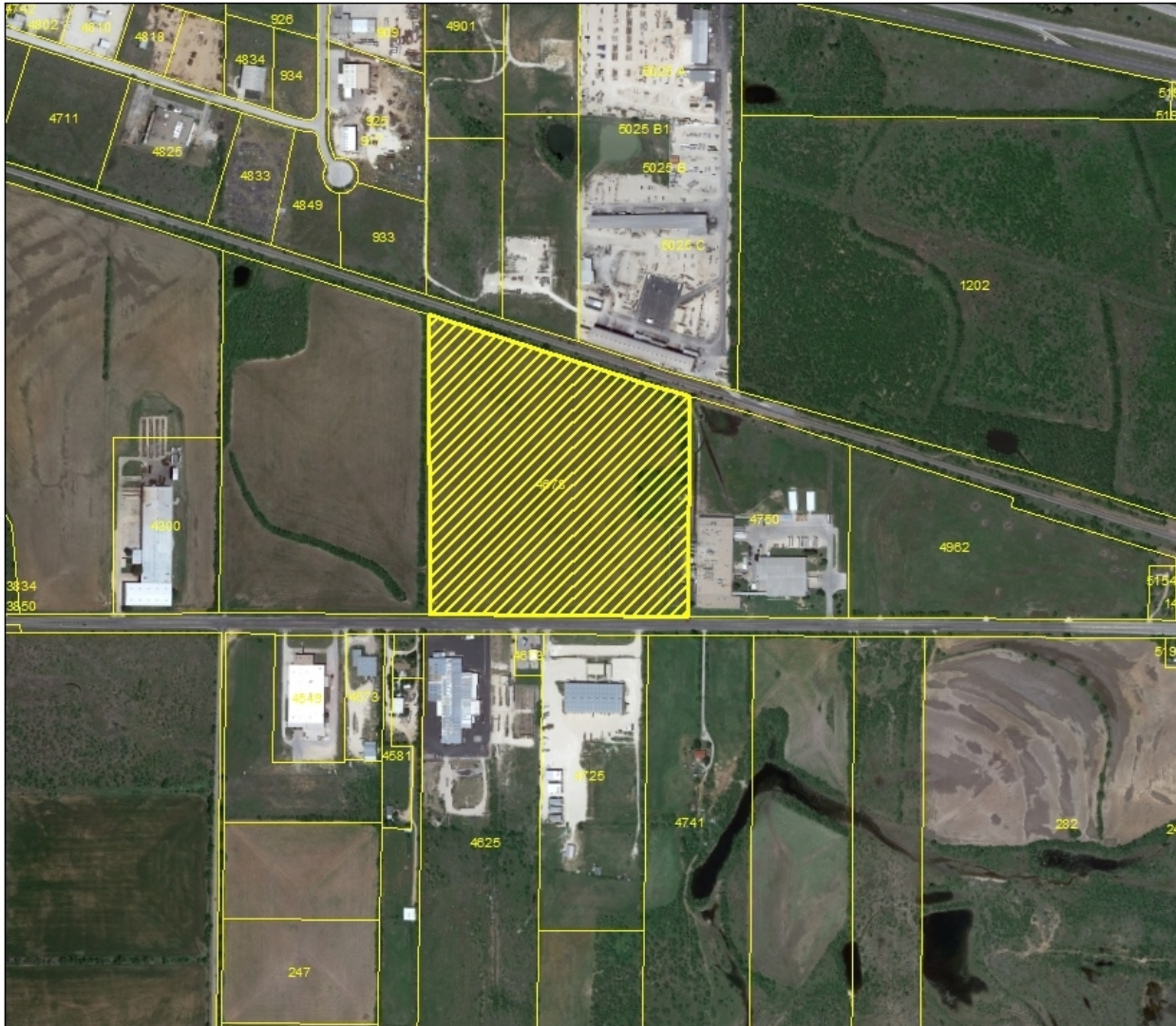
Planning & Zoning: April 4, 2023

City Council Hearing: April 27, 2023
May 11, 2023





Z-2023-10 AERIAL LOCATION MAP

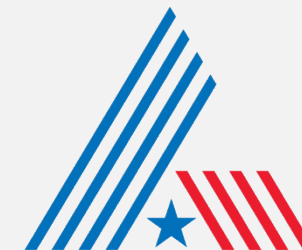


Aerial Map



Legend

- Z-2023-10
- CourierParcels



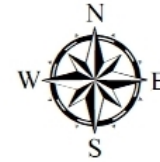
CITY OF
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Z-2023-10 ZONING MAP

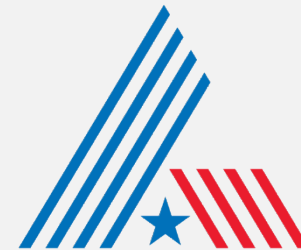


Zoning Map



Legend

- Z-2023-10
- Arterial
- Expressway
- Arterial
- Collector
- Expressway
- AO - Agricultural Open Space
- MH: Manufactured/M... Home
- GR: General Retail
- GC: General Commercial
- HC: Heavy Commercial
- LI: Light Industrial
- HI: Heavy Industrial
- PD: Planned Development



CITY OF
ABILENE
TEXAS



USES IN AGRICULTURAL OPEN ZONING

RESIDENTIAL USES:

- C Bed & Breakfast
- P Dwelling— Industrialized Housing Unit
- P Dwelling – Single-Family Detached
- C Vacation Travel Trailer Park

ACCESSORY AND INCIDENTAL USES:

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P Animal Lot
- P/C Day Care Operation – Home-Based*
- P Dwelling – Accessory*
- TP Field Office or Construction Office (temporary)*
- P Freight Container*
- P Garage Sale
- P Home Occupation
- C Mobile Home (permanent security residence)
- C Mobile Home (temporary security residence)
- TP Subdivision Sales Office (temporary)
- P Swimming Pool, Private (accessory to residential use)
- P Tennis Court, Private (accessory to residential use)
- P/SE Wind Energy Conversion Systems*

CULTURAL AND RECREATIONAL USES:

- p Civic, Social, and Fraternal Organization
- P Fairgrounds/Rodeo
- C Motorized Racing
- C Recreation – Outdoors (active)
- P Recreation – Outdoors (passive)
- P Zoo

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Community Home
- C Correction, Detention, or Penal Facilities
- P Fire/Police Station
- C Military and Armed Forces Reserve Center
- C Sanitary Landfill

EDUCATIONAL AND RELIGIOUS USES:

- C Cemetery, Crematorium, and Mausoleum
- P Church or Place of Worship
- P School: Public/Private

SERVICE

- C Kennel (with outdoor pens)
- P Kennel (without outdoor pens)
- P Veterinary Service (all size animals)

TRADE – RETAIL USES

- C Liquor Store (on premises consumption) (Defined under Liquor Store)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- C Airport, Heliport and Flying Field Terminals – Commercial
- C Antenna Tower – Commercial
- P Public Utility Facility
- C Utility Generation, Production, Treatment

RESOURCE PRODUCTION AND EXTRACTION USES:

- P Farming, Ranching & Livestock, Hatchery
- C Mining
- C Petroleum or Gas Well
- P Urban Garden

LEGEND

- P 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





USES IN HEAVY INDUSTRIAL 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
- TP Field Office or Construction Office (temporary)
- P Freight Container
- P Manufacturing (incidental)
- C Mobile Home (permanent security residence)
- TP Mobile Home (temporary security residence)
- P Recreation Building, Multipurpose
- P Recycling Collection Point
- P/SE Wind Energy Conversion Systems

CULTURAL AND RECREATIONAL USES:

- P Adult Entertainment Enterprise
- C Motorized Racing

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Fire/Police Station
- P Homeless/Emergency Shelter
- P Post Office
- P Sanitary Landfill

EDUCATIONAL AND RELIGIOUS USES:

- P Church or Place of Worship
- P Educational and Scientific Research
- P School: Public/Private

SERVICE

- P Contractor Services
- P Recycling Collection and Processing Center
- P Scales (public)
- P Wrecker/Towing

TRADE – RETAIL USES

- P Head Shop
- C Scrap and Waste Material

TRADE – WHOLESALE USES

- 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 Pressure Control Station
- P Public Utility Facility
- P Railroad Switching and Marshaling Yard
- P Utility Generation, Production, Treatment

RESOURCE PRODUCTION AND EXTRACTION USES:

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

LEGEND

- P Permitted as a Right-of-Use (may be subject to compliance with conditions described within Division 3- Requirements Applicable to Specific Land Uses of the Land Development Code)
- C Permitted as a Conditional Use Permit, Requiring Approval by City Council
- TP Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment





Z-2023-10 VIEWS OF SUBJECT PROPERTY



East Neighboring Property



Subject Property



Subject Property



South Neighboring Property

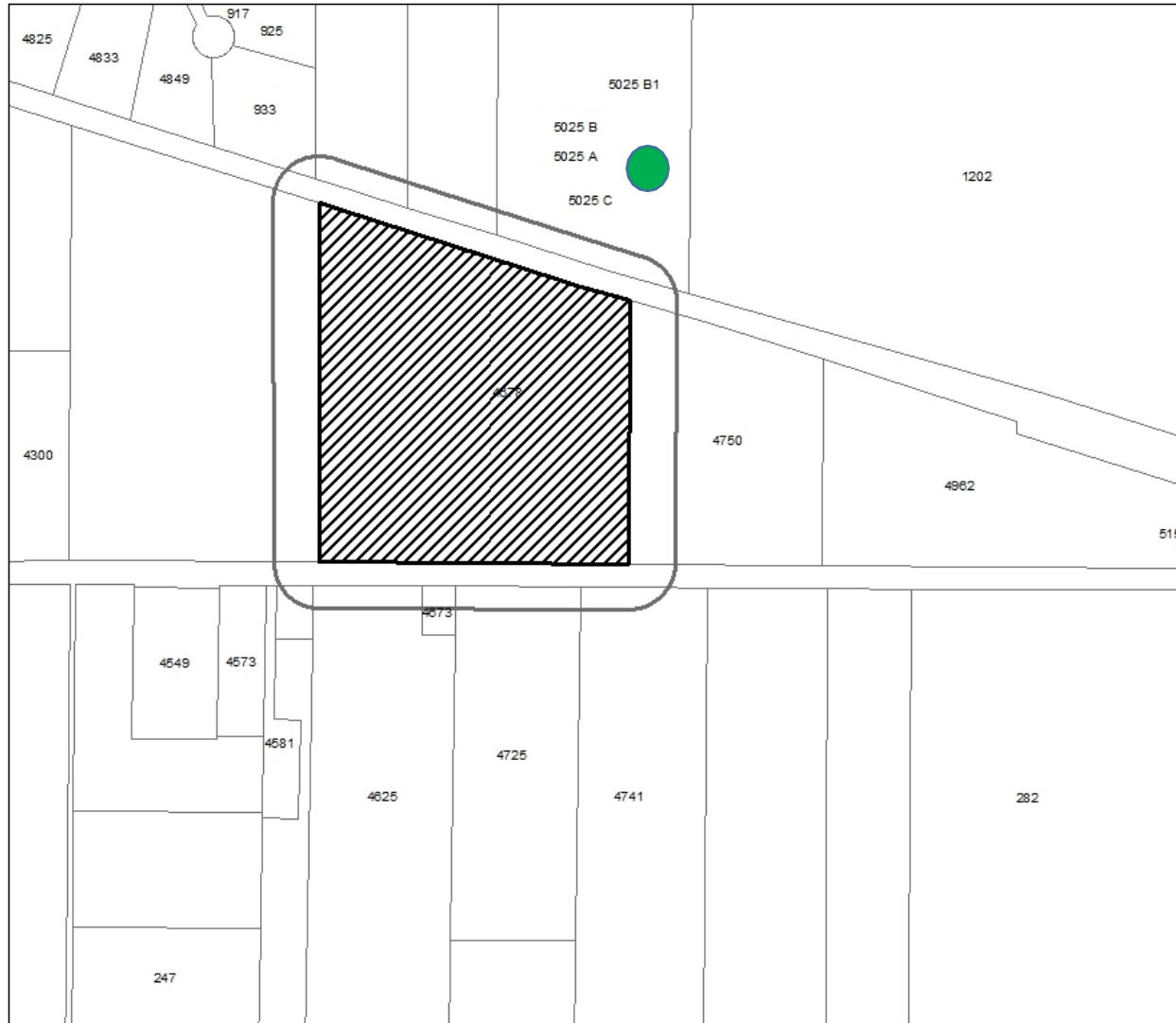


South Neighboring Property





Z-2023-10 NOTIFICATION AREA MAP



Notification Map



Legend

- 200' Buffer
- Z-2023-10

- 1- In Favor-
- 0- Opposed-





FINDINGS AND RECOMMENDATIONS

The proposed request is consistent with:

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

P&Z Recommendation: **Approval**





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 5/11/2023

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: **14. Ordinance (Final Reading) Z-2023-12:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from KPLB LLC to amend the terms of PDD-155. More specifically, this request is to change the base zoning of the north three hundred feet of this PD from Neighborhood Office (NO) to Neighborhood Retail (NR), located on the 4600 Block of Antilley Road
(Tim Littlejohn)

GENERAL INFORMATION

In 2016, Planned Development District Number 155 (PDD-155) was approved to allow for certain neighborhood office uses and single-family patio home residential use. The PD describes the northern three hundred feet (300') be governed by the terms and conditions of the Neighborhood Office (NO) zoning, except for multi-family residential use shall not be allowed. The remainder of the PD is designated to be used for Patio Home (PH). The applicant proposes to amend PDD-155 by changing the base zoning of the northern three hundred feet (300') of PDD from Neighborhood Office (NO) to Neighborhood Retail (NR).

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of 5-0.

ATTACHMENTS:

1. Z-2023-12 Ordinance
2. Z-2023-12 Staff ReportRSA
3. 32-2016_Zoning_PD_155_4500 Block of Antilley Rd
4. 4601 Antilley Road Z-2023-12
5. 4534 Ebbets Drive
6. 6250 Stadium Drive
7. Z-2023-12 Presentation

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING THE, "LAND DEVELOPMENT CODE" OF THE ABILENE CITY CODE, CONCERNING PDD-155 AND ORDINANCE NO. 32-2016 A PLANNED DEVELOPMENT DISTRICT; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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

PART 1: That Chapter 23 of the Land Development Code of the City of Abilene, is hereby amended by changing Ordinance No. 32-2016, 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 Two Thousand Dollars (\$2,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

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

PASSED ON FIRST READING the 27th day of April, 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 17th day of March, 2023, the same being more than fifteen (15) days prior to a public hearing held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m. on the 11th day of May 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 11th day of May, 2023.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT A

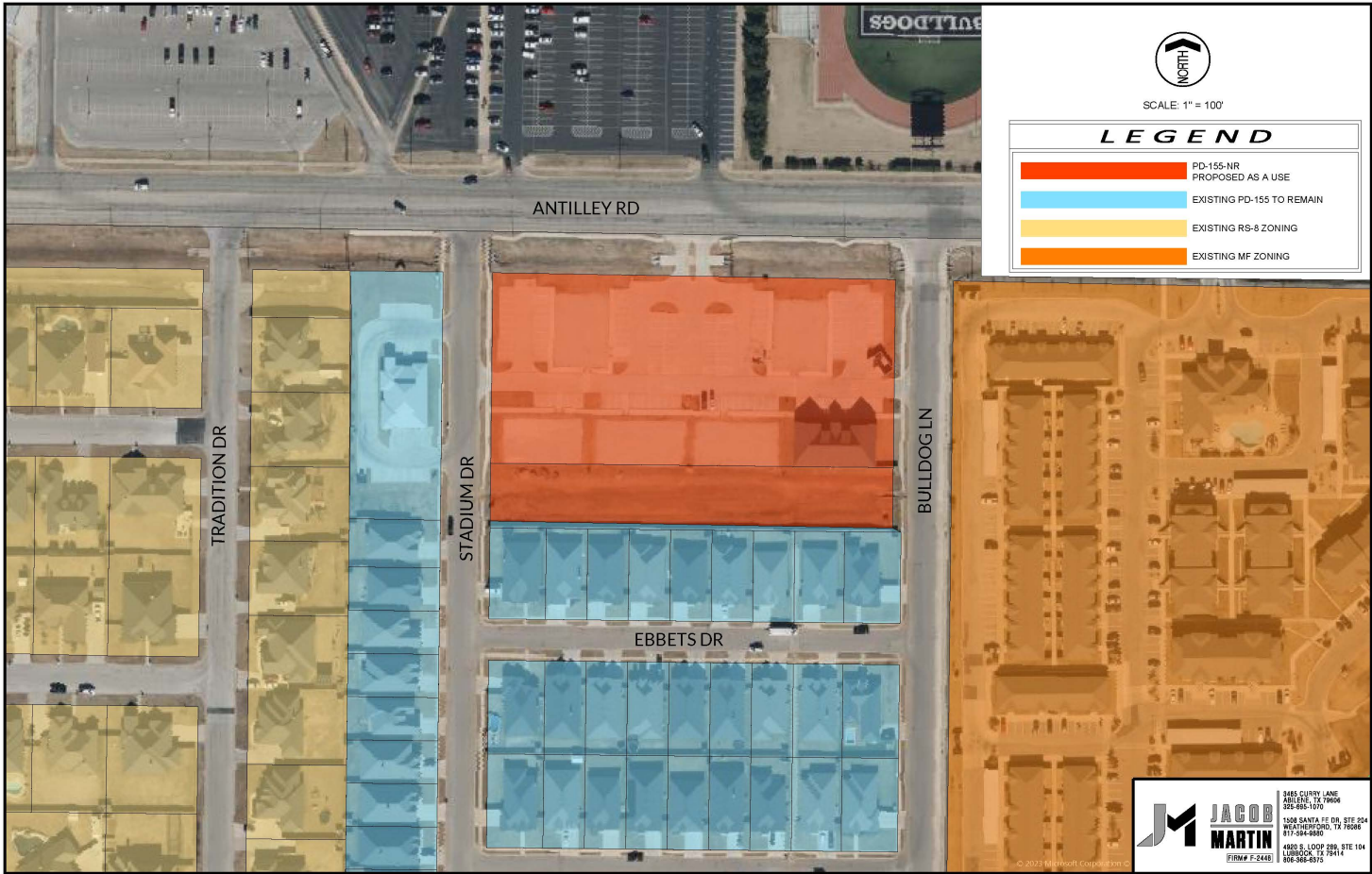
1st Amendment to Ordinance No. 32-2016

Location: 4601 Antilley Road, in the Antilley Road West Subdivision, Block A, Lot 101 & 102, Abilene, Taylor County, Texas.

AMEND: PART 7: Specific Modifications.

DELETE: Use and development of the northern three hundred (300) feet of this PD (Planned Development) District shall be governed by terms and conditions of the NO (Neighborhood Office) zoning classification, except that multi-family residential use shall not be allowed.

ADD: Use and development of the northern three hundred (300) feet of the 4600 block of Antilley Road within this PD (Planned Development) District shall be governed by terms and conditions of the NR (Neighborhood Retail) zoning classification, except that multi-family residential, fuel sales, and convenience store uses shall not be allowed.



END

ZONING CASE Z-2023-12

STAFF REPORT

Scheduled Hearings

Planning & Zoning Commission: April 4, 2023
City Council 1st Reading: April 27, 2023
City Council 2nd Reading: May 11, 2023

Applicant

Owner: KPLB LLC
Agent: Clayton Farrow

Case Manager

Mason Teegardin – Planner

Request

Amend the terms of PDD-155 by changing the base zoning of PDD-155.

Location

4601 Antilley Road, in the Antilley Road West Addition, Block A, Lot 101 and 102.

Background

In 2016, Planned Development District Number 155 (PDD-155) was approved to allow for certain neighborhood office uses and single-family patio home residential use. The PD describes the northern three hundred feet (300') be governed by the terms and conditions of the Neighborhood Office (NO) zoning, except for multi-family residential, Fuel Sales, and Convenience Store use shall not be allowed. The remainder of the PD is designated to be used as for Patio Home (PH).

Existing Uses/Zoning

Properties to the east are zoned Multi-Family (MF). Properties to the south are patio homes, located within PDD-155. Properties to the west are zoned Single Family Residential-8 (RS-8). To the north is Agricultural Open (AO) zoning.

Proposed Modification

The applicant proposes to amend PDD-155 by changing the base zoning of the northern three hundred feet (300') of PDD from Neighborhood Office (NO) to Neighborhood Retail (NR).

Criteria Assessment

Section 1.4.1.4 of Abilene's Land Development Code states that, in making a determination regarding a requested zoning change, the Planning and Zoning Commission and the City Council may consider the following factors:

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

The proposed changes are consistent with the new Comprehensive Plan and Future Land Use Plan and with the spirit and intent of PDD-155, which was to allow higher density single-family uses (patio homes) and low intensity office uses. The intensity of uses in the NO district are comparable with the intensity of the NR district.

- (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 Neighborhood Retail zoning would be compatible with the surrounding neighborhoods and school uses and appropriate at this location.

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

The subject site has adequate utility services for retail uses.

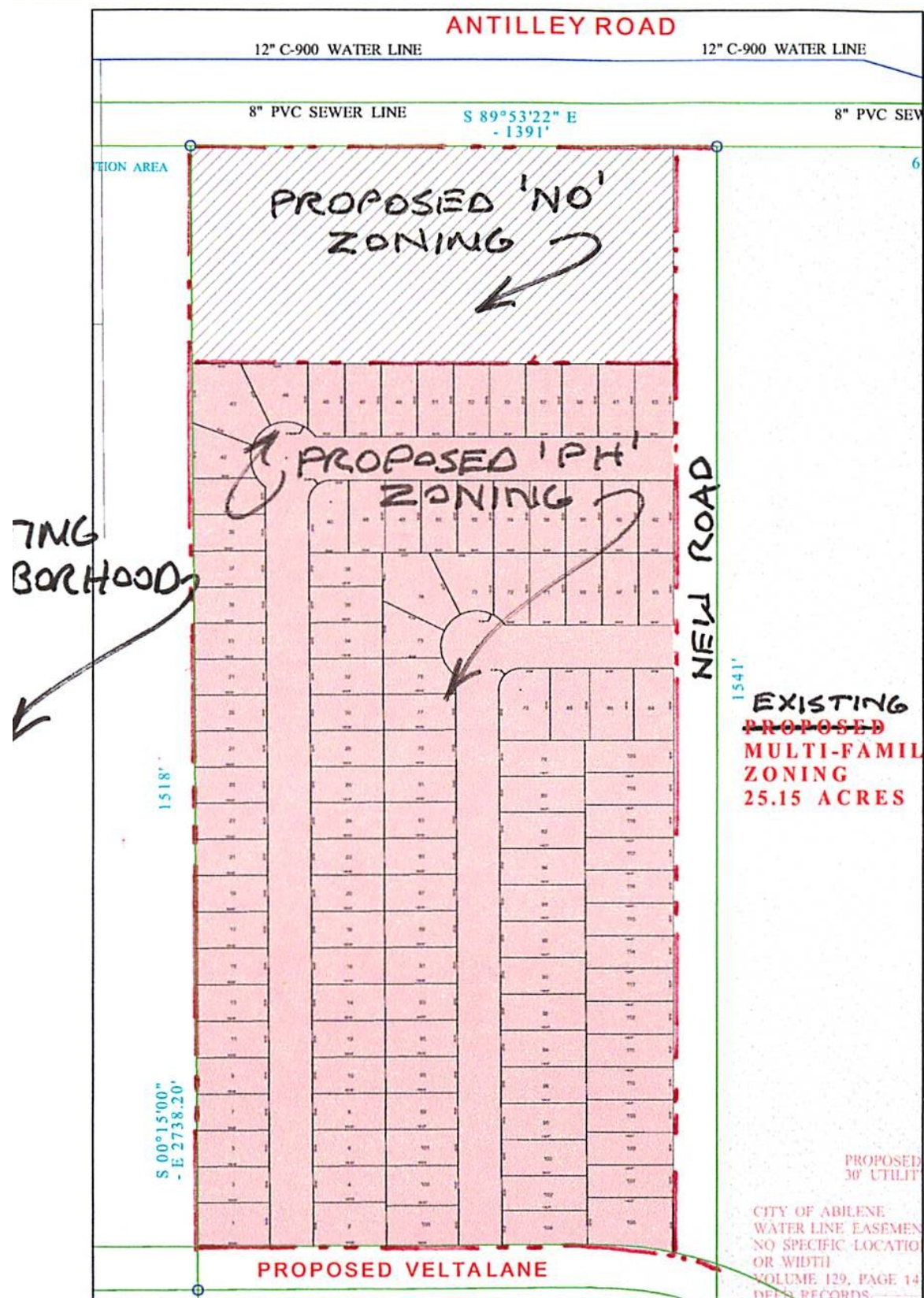
- (4) Any other factors, which will substantially affect the public health, safety, morals, or general welfare.**

None.

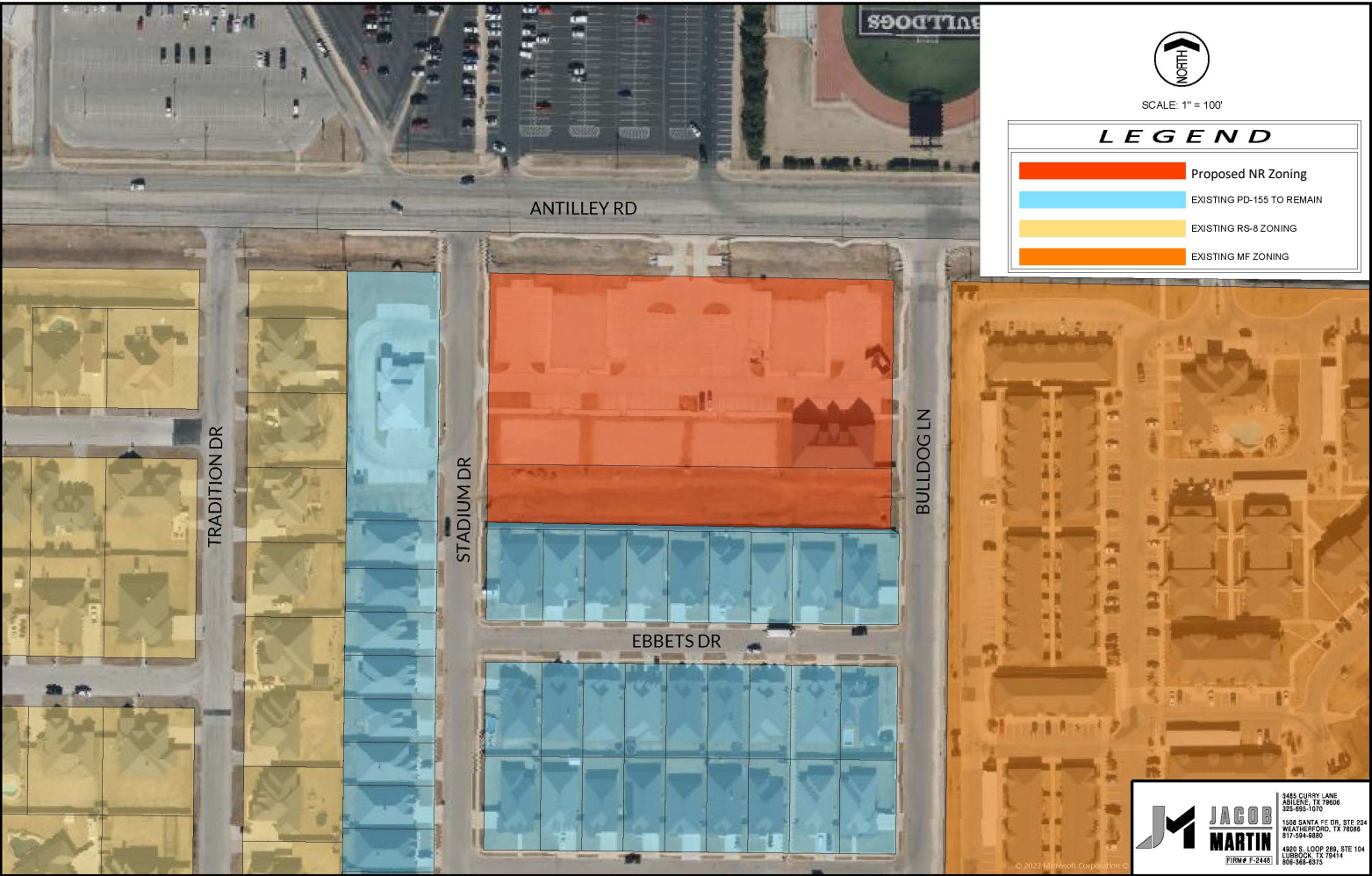
P&Z Recommendation

The Planning and Zoning Commission recommends **approval**.

Original Concept Plan



Proposed Concept Plan



Notification**X – Not applicable****O – Opposed****F – In favor**

Owner	Property ID	Situs	Response
GRANT DERRICK JR & LAUREN N	1016402	4525 EBBETS DR	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 2101	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 2102	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 2103	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 2104	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 2105	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 2106	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 2001	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 2002	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 2003	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 2004	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 2005	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 2006	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 1901	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 1902	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 1903	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 1904	
TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 1905	
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TIGRIS XIII LTD	1002028	4333 ANTILLEY RD APT 1603	

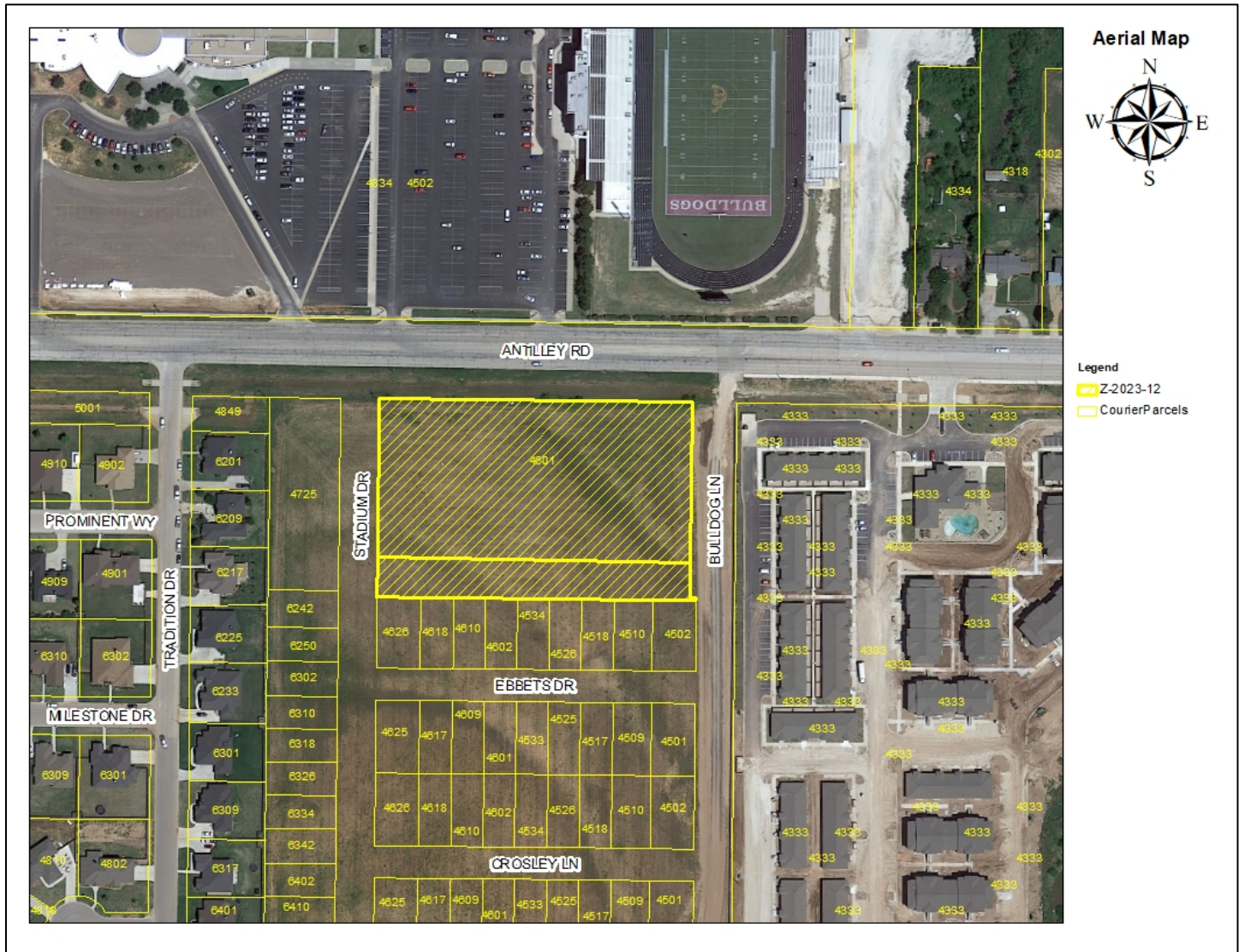
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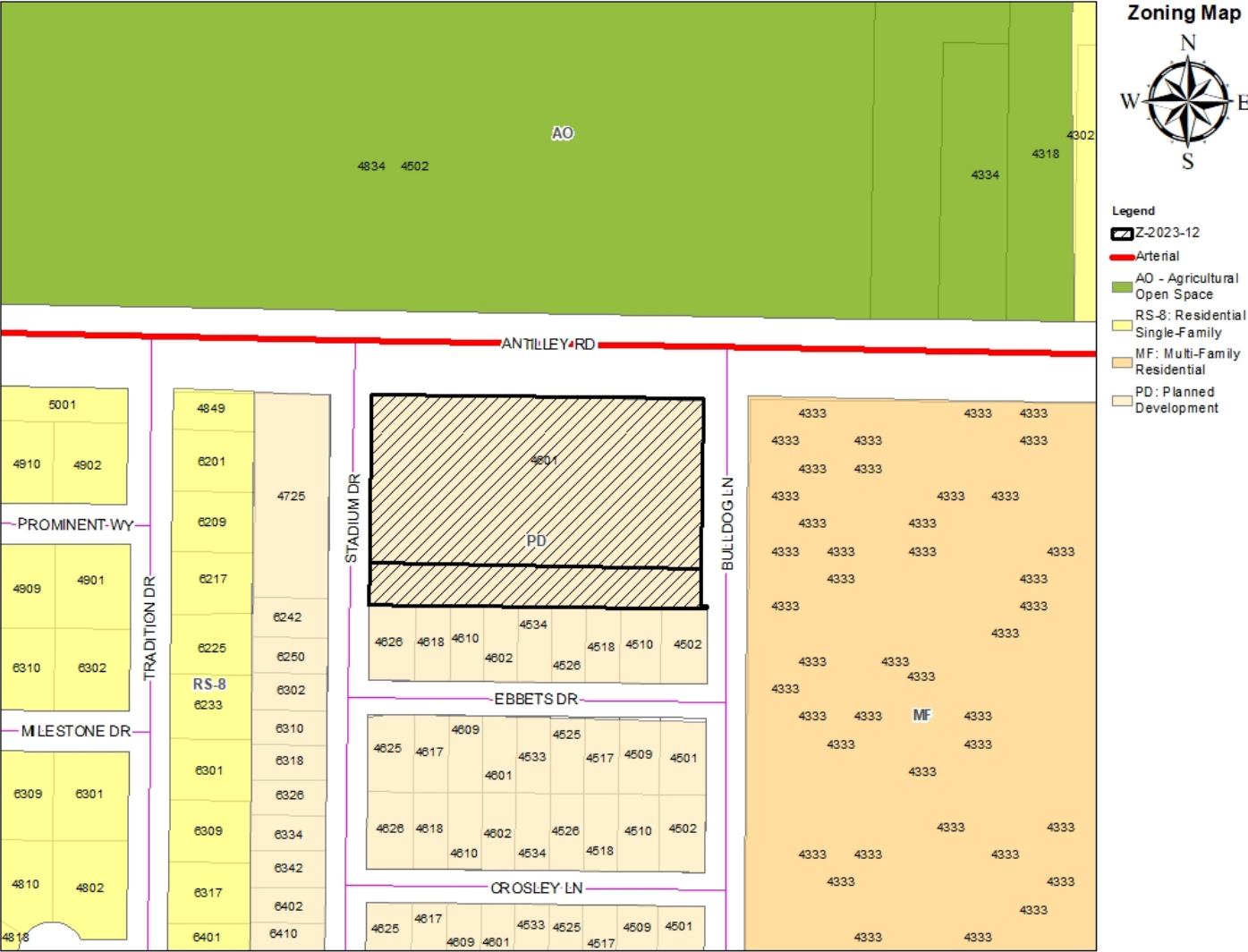
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RICHARDS JAMES Q & SANDRA Q	108909	6209 TRADITION DR	
C L B TRIBE INC	108913	4849 ANTILLEY RD	
COLE J DIANE	1016427	6302 STADIUM DR	
COLEYSQUARED MANAGEMENT LLC	1016424	4725 ANTILLEY RD	
GUERRA ELIAS SR & CORINA	108908	6201 TRADITION DR	
TRAN HA THU	1002566	6217 TRADITION DR	
VILLARREAL EDUARDO & KRYSTAL	108911	6225 TRADITION DR	
TRAN QUE VAN	1016428	6310 STADIUM DR	
RALEY BRADLEY & KAYLEY	1016390	4526 EBBETS DR	
BACON SARAH H	1016397	4625 EBBETS DR	
KENNEY RUTH	1016389	4534 EBBETS DR	O
QUINTANILLA BENJAMIN &	1016400	4601 EBBETS DR	
DACO AILEEN JAN	1016386	4618 EBBETS DR	
UHLE JOSEPH ROBERT & BRIDGET MOTT	1016405	4501 EBBETS DR	
CRAMER CAITLIN M	1062793	4610 EBBETS DR	
WINTERS STEPHEN C & DEBRA K	108912	6233 TRADITION DR	
PILLOT JAMES N JR & VERONICA	1016399	4609 EBBETS DR	
BONDOC ARTHUR S & IVY	1016392	4510 EBBETS DR	
HOBSON RANDALL & CLOANNE	1016385	4626 EBBETS DR	
HIGH COUNTRY RENTALS LLC	1016425	6242 STADIUM DR	
BOLLWITT ALEXANDER J & BRIANA L	1016426	6250 STADIUM DR	O
HEMLINGER MICHAEL & DEBORAH	1016403	4517 EBBETS DR	
KPLB LLC	1058243		F
JACKSON WILLIAM L & SARAH E	1016388	4602 EBBETS DR	
MAYOR JASON C & MA J	1016401	4533 EBBETS DR	
RAWLINGS JESSE EUGENE EDMONDSON &	1016393	4502 EBBETS DR	
KPLB LLC	1016394	4601 ANTILLEY RD	F
MOODY SALLY A	1016404	4509 EBBETS DR	
DUARTE KEVIN & MADISON	1016398	4617 EBBETS DR	
WYLIE IND SCHOOL DIST	980402	4502 ANTILLEY RD	
WYLIE IND SCHOOL DIST	980402	4834 ANTILLEY RD	
GORDON ANDRE STEVEN	1016391	4518 EBBETS DR	

LOCATION MAP



ZONING MAP



AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "LAND DEVELOPMENT CODE," OF THE ABILENE MUNICIPAL CODE, CONCERNING PD-155 A PLANNED DEVELOPMENT; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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

PART 1: That Chapter 23, part known as the Land Development Code of the City of Abilene, is hereby amended by changing the zoning district boundaries as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.

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

PASSED ON FIRST READING this 23th day of June A.D. 2016.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 15th day of April, 2016, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 p.m., on the 14th day of July, 2016, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING THIS 28th day of July, A.D. 2016.

ATTEST:


CITY SECRETARY


MAYOR

APPROVED:


CITY ATTORNEY

ORDINANCE NO. 32-2016

Exhibit "A"

PART 1: Land Title. Title to land not dedicated to public use and services or for utility purposes and not otherwise designated for development purposes shall remain in possession of the owner thereof, his heirs, assigns, lessees and successors in interest and shall not be the responsibility of the City of Abilene for any purpose.

PART 2: Development Specifications. All development in the Planned Development shall be in accordance with any maps, topographical and drainage plans, utility plans, architectural drawings, site plan, plat, and any other required plans filed in connection with this requested Planned Development, which are hereby incorporated by reference and included as part of this ordinance. All use and development within the Planned Development must be in compliance with the general Comprehensive Zoning Ordinance of the City of Abilene except as otherwise specifically provided herein.

PART 3: Building Specifications. All structures in the herein said Planned Development shall be constructed in accordance with all pertinent building and construction codes of the City of Abilene.

PART 4: Zoning. That Chapter 23, Abilene Municipal Code, part known as the Land Development Code of the City of Abilene, is hereby further amended by changing the zoning district boundaries, as hereinafter set forth: From RS-6 (Single-Family Residential) to PD (Planned Development) zoning.

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

PART 5: Legal Description. The legal description of this PD is as follows:

AO417 SUR 101 WM E VAUGHN, ACRES 26.299



Location:
Being ±26.3 acres located on the south side of
the 4500 block of Antilley Rd

PART 6: Purpose. The purpose of the Planned Development (PD) request is to allow for certain neighborhood office uses and single-family patio home residential uses on subject property.

PART 7: Specific Modifications. Use and development of the northern three hundred (300) feet of this PD (Planned Development) District shall be governed by terms and conditions of the NO (Neighborhood Office) zoning classification, except that multi-family residential use shall not be allowed.

PART 8: Specific Modifications. Use and development of the remaining part of this PD (Planned Development) District shall be governed by terms and conditions of the PH (Patio Home) zoning classification.

PART 9: Land Subdivision. Subdivision or re-subdivision of land within this PD (Planned Development) District shall be undertaken in conformance with Subdivision Regulations for the City of Abilene at the time of subdivision or re-subdivision.

-END-



KPLB LLC
3409 S 14TH ST STE 204
ABILENE, TX 79605-4956

NOTICE OF PUBLIC HEARING

RE: Zoning Application Number Z-2023-12

3/17/2023

The Planning and Zoning Commission will hold a public hearing on **April 4, 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 KPLB LLC to amend the terms of PDD-155. More specifically this request is to change the base zoning of the north three hundred feet of this PD from Neighborhood Office to Neighborhood Retail. Located at 4601 Antilley Road. Legal description being lots 101 and 102, Block A, Antilley Road West Addition, Abilene, Taylor County, Texas.

This hearing is open to any interested person. Opinions, objections and/or comments relative to this matter may be expressed in writing or in person at the hearing. At the bottom of this letter is a form that you may cut off, fill out, and mail. Comments are also accepted by email as indicated below. All written responses must be signed.

The attached map shows the area of this request. Only the area highlighted by striped lines shown on that map is being considered for a change of zoning. The solid boundary line surrounding this subject area is only a notification area. If approved by the Planning and Zoning Commission, or if denied and promptly appealed to Abilene's City Council, this case will be heard by City Council for 2nd and Final Reading with a public hearing on **May 11, 2023 at 8:30 AM** in Council Chambers on the second floor of City Hall, 555 Walnut Street.

If you have any questions, please contact Mason Teegardin at telephone 325-676-6490 or by email address planning@abilenetx.gov

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

CASE #: Z-2023-12

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: KPLB LLC
Parcel I.D.: 1058243
Address:

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

Email: planning@abilenetx.gov

I am in favor ☒ I am opposed ☐
Additional Comments:

Signature: _____

A handwritten signature in black ink, consisting of a stylized 'K' and 'L' followed by a large circular flourish.



KPLB LLC
3409 S 14TH ST STE 204
ABILENE, TX 79605-4956

NOTICE OF PUBLIC HEARING

RE: Zoning Application Number Z-2023-12

3/17/2023

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CASE #: Z-2023-12

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

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

Name: KPLB LLC
Parcel I.D.: 1016394
Address: 4601 ANTILLEY RD

Email: planning@abilenetx.gov

I am in favor ☒ I am opposed ☐
Additional Comments:

Signature: _____

A handwritten signature in black ink, appearing to be "KPLB", is written over a horizontal line.



KENNEY RUTH
4534 EBBETS DR
ABILENE, TX 79606-4928

NOTICE OF PUBLIC HEARING

RE: Zoning Application Number Z-2023-12

3/17/2023

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This hearing is open to any interested person. Opinions, objections and/or comments relative to this matter may be expressed in writing or in person at the hearing. At the bottom of this letter is a form that you may cut off, fill out, and mail. Comments are also accepted by email as indicated below. All written responses must be signed.

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

MAR 30 AM 8:43

CASE #: Z-2023-12

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: KENNEY RUTH
Parcel I.D.: 1016389
Address: 4534 EBBETS DR

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

Email: planning@abilenetx.gov

I am in favor ☐

I am opposed ☒

Additional Comments:

Signature:

Ruth Kenney

When I bought my house on Ebbets, I was told the property behind my fence would only be used for neighborhood office not for retail. Using it for retail purposes is not satisfactory. Also, this property is directly across the street from Wylie High School in a school zone. Using it for retail could certainly cause a hazardous situation with traffic and the students of the school.

Farr, Melissa <melissa.farr@abilenetx.gov>

[Planning] Zoning Application Number Z-2023-12

1 message

Alex Bollwitt <alex.bollwitt@gmail.com>
To: planning@abilenetx.gov

Mon, Apr 3, 2023 at 2:32 PM

Alexander Bollwitt, parcel ID 1016426

All,

Is this zoning request going to allow private retail business to build/open/sell on [4601 Antilley Road](#)?

If the answer is yes, as a resident of the neighborhood since 2019 I am opposed to the change of zoning. Antilley In this area is already overcrowded and dangerous with high school traffic and the amount of people that live in the houses and apartments.

Additionally, the construction would once again be overwhelming (as it has in the last 3 years with housing construction) and would be so detrimental to the livelihood of the community and high school. There is already enough horror stories of pets getting hit and left by transient drivers and kids almost getting hit.

There is also a retail strip not even .1 of a mile away from the proposed site around the corner on Buffalo gap. Please do not let this zone be changed. Thank you.

Alex Bollwitt
[6250 Stadium Drive, Abilene, Tx](#)

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You received this message because you are subscribed to the Google Groups "Planning Services" group.
To unsubscribe from this group and stop receiving emails from it, send an email to planning+unsubscribe@abilenetx.gov.
To view this discussion on the web visit <https://groups.google.com/a/abilenetx.gov/d/msgid/planning/CA%2B67oL15GHirK1KrGU4BLZa9bxHetpYN6TzBWFRboUQ71KRFHQ%40mail.gmail.com>.



PLANNED DEVELOPMENT AMENDMENT

Case: Z-2023-12

Owner: KPLB LLC

Agent: Clayton Farrow

Request: Amend PDD-155

Location: 4601 Antilley Road

Notification: 2 in Favor, 2 Opposed

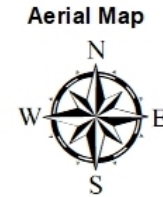
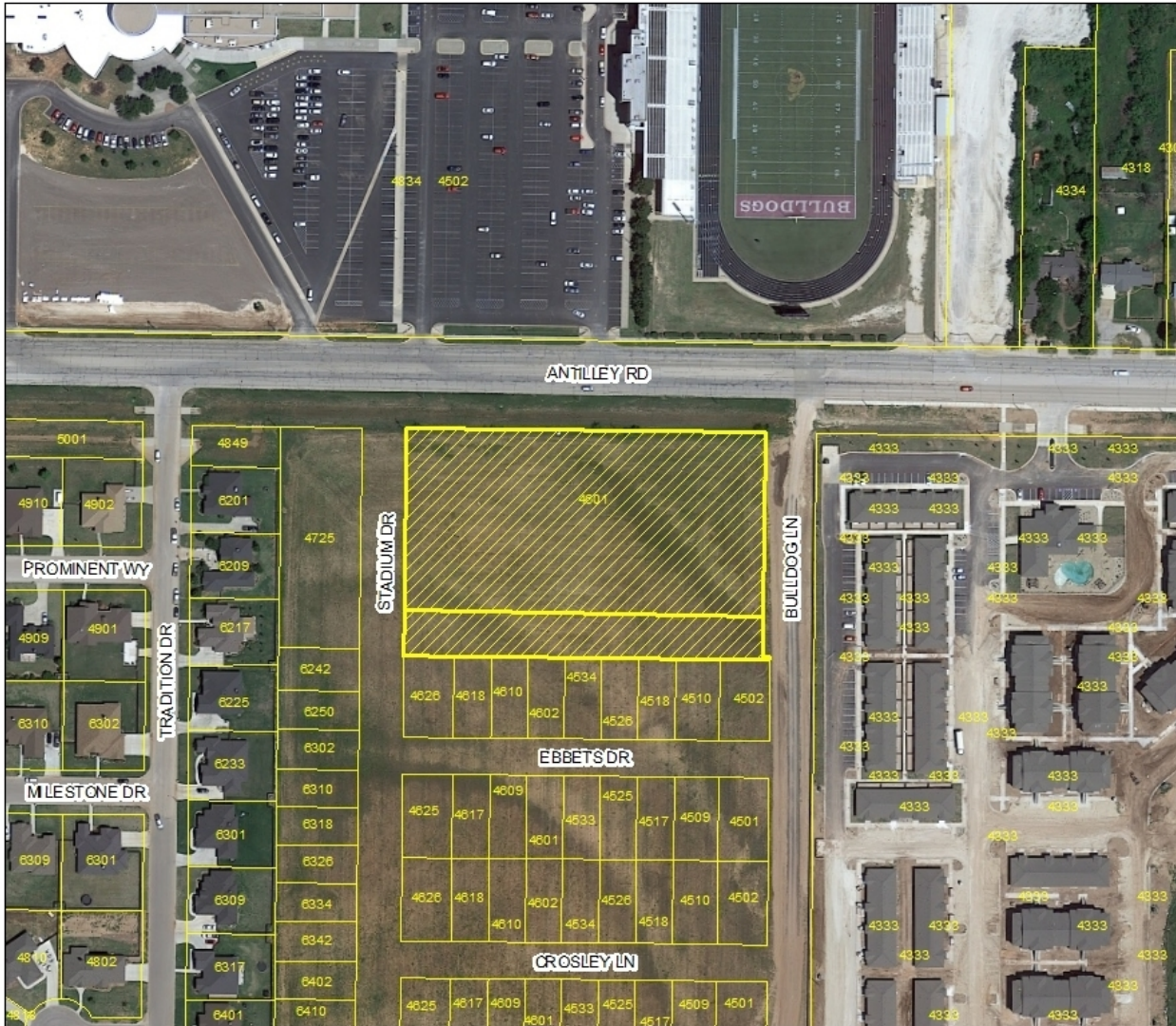
Planning & Zoning: April 4, 2023

City Council Hearing: April 27, 2023
May 11, 2023



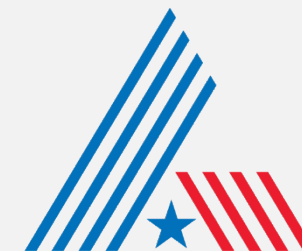


Z-2023-12 AERIAL LOCATION MAP

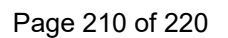


Legend

- Z-2023-12
- CourierParcels

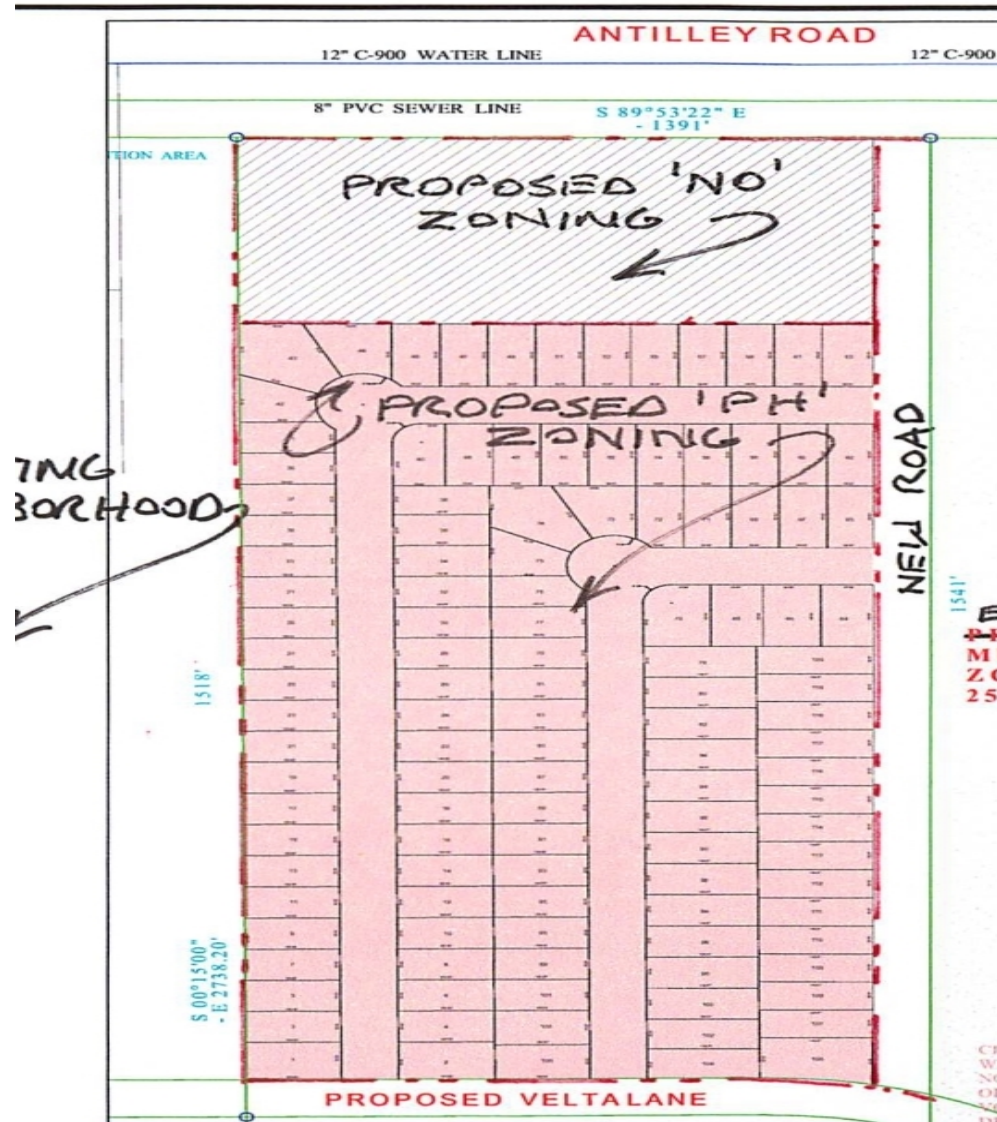


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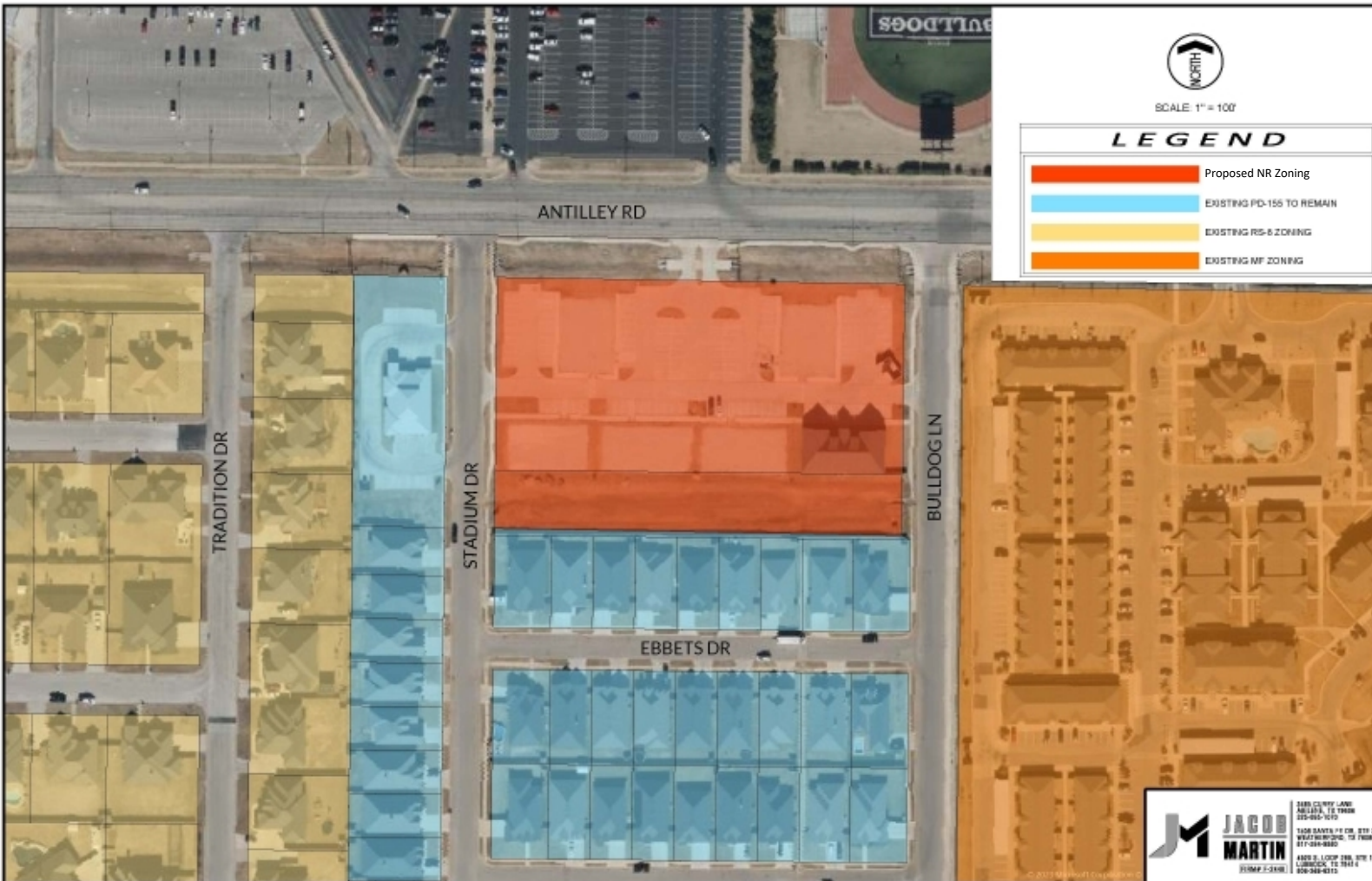


Z-2023-12 EXISTING CONCEPT PLAN





Z-2023-12 PROPOSED CONCEPT PLAN





USES IN NEIGHBORHOOD OFFICE ZONING

RESIDENTIAL USES:

- P Bed & Breakfast
- P Dwelling – Duplex
- P Dwelling – Industrialized Housing Unit
- P Dwelling – Institutional
- C Dwelling – Multiple-Family
- P Dwelling – Single-Family Detached

ACCESSORY AND INCIDENTAL USES:

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P ATM's, Self-Serve Kiosks, and Similar Facilities
- P/C Day Care Operation – Home-Based
- TP Field Office or Construction Office (temporary)
- P Garage Sale
- P Home Occupation
- C Mobile Home (temporary security residence)
- P Recreation Building, Multipurpose
- P Recreation Equipment, Mobile (storage & parking)
- P Subdivision Sales Office (temporary)
- P Swimming Pool, Private (accessory to residential use)
- P Tennis Court, Private (accessory to residential use)
- P/SE Wind Energy Conversion Systems

CULTURAL AND RECREATIONAL USES:

- P Civic, Social, and Fraternal Organization
- C Cultural Facilities
- P Recreation – Outdoors (passive)

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Fire/Police Station
- C Medical/Dental Laboratory
- P Post Office

EDUCATIONAL AND RELIGIOUS USES:

- C Arts School
- P Church or Place of Worship
- C Day-Care Operation - Center-Based
- P School: Public/Private

SERVICE

- P Office (general, professional, financial)
- P Personal Services
- C Printing, Copying, Reproduction, Publishing

TRADE – RETAIL USES

- P ATM's, Self-Serve Kiosks, and Similar Facilities
- P/C Restaurant, Fast Food
- P/C Restaurant, Standard

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- P Automobile Parking Lot or Structure - Commercial
- C Broadcast Studio
- P Public Utility Facility

RESOURCE PRODUCTION AND EXTRACTION USES:

- P Petroleum or Gas Well
- P Urban Garden

LEGEND

- P Permitted as a Right-of-Use (may be subject to compliance with conditions described within Division 3- Requirements Applicable to Specific Land Uses of the Land Development Code)
- C Permitted as a Conditional Use Permit, Requiring Approval by City Council
- TP Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment





USES IN NEIGHBORHOOD RETAIL ZONING

RESIDENTIAL USES:

- P Bed & Breakfast
- P Dwelling - Duplex
- P Dwelling – Industrialized Housing Unit
- P Dwelling – Institutional
- C Dwelling – Multiple-Family
- P Dwelling – Single Family Detached
- C 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
- C Drive-Thru Facility
- TP Field Office or Construction Office (temporary)
- C Fuel Sales
- P Garage Sales
- P Home Occupation
- C Mobile Home (temporary security residence)
- P Recreation Building, Multipurpose
- P Recreation Equipment, Mobile (storage and parking)
- C 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
- C Cultural Facilities
- P Recreation – Outdoors (passive)
- C Recreation and Commercial Entertainment - Indoor

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Fire/Police Station
- C 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 School: Public/Private

SERVICE

- C Automobile Wash
- P Laundry/Dry Cleaning Services & Facilities
- P Office (general, professional, financial)
- P Personal Services
- C Printing, Copying, Reproduction, Publishing
- 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
- C Fuel Sales
- P Liquor Store (Off Premises Consumption) (*Defined under Liquor Store*)
- C Restaurant, Brew Pub
- C Restaurant, Fast Food
- P Restaurant, Standard
- P Retail Sales/Rental (indoor)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- C 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-2023-12 VIEWS OF SUBJECT PROPERTY



Subject Property



East Neighboring Property



North Neighboring Property



West Neighboring Property

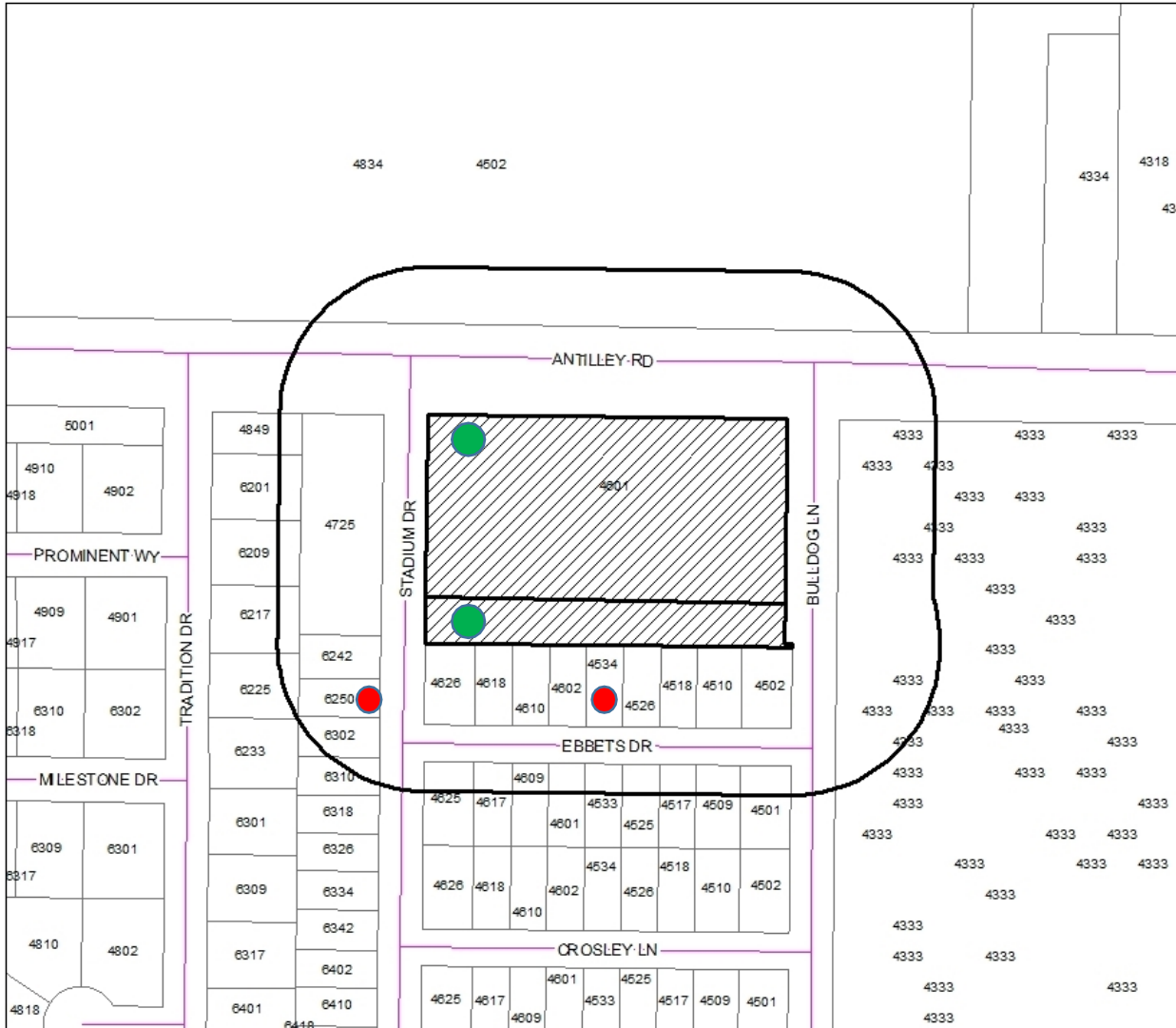


South Neighboring Property

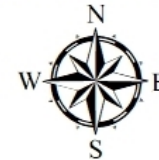




Z-2023-12 NOTIFICATION AREA MAP



Notification Map



Legend

- Buffer
- Z-2023-12

- 2- In Favor- ●
- 2- Opposed- ●
- 2.5% Opposed



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FINDINGS AND RECOMMENDATIONS

The proposed request is consistent with:

- The proposed *Comprehensive Plan*;
- The surrounding uses and zoning;
- Generally accepted planning principals; and
- The Criteria for Approval in the LDC.
- The PDD will prohibit multi-family, fuel sales, and convenience store uses.

P&Z Recommendation: **Approval**





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 5/11/2023

TO: Honorable Mayor and City Council Members

FROM: Stanley Smith, City Attorney

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

GENERAL INFORMATION

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

A. 551.071 (Consultation with Attorney)

1. Robert Steven Reitz v. City of Abilene, Texas, et al., Case No. 1:16-cv-00181-BL; In the U.S. District Court, Northern District of Texas, Abilene Division, filed October 10, 2016
2. 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. 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
4. Sharra Sampson v. City of Abilene; Cause No. 8144-B, In the 104th Judicial District Court, Taylor County, Texas; filed September 14, 2020
5. 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
6. 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
7. 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
8. 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
9. Richard Scheriger, et al. v. City of Abilene; Cause No. CV33253, In the 90th Judicial District Court, Stephens County, Texas, filed April 21, 2023

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