



City of Abilene City Council Agenda

Shane Price, Mayor Pro-tem
Lynn Beard, Deputy Mayor Pro-tem
Blaise Regan, Council Member
Robert Hanna, City Manager

Weldon Hurt, Mayor

Brian Yates, 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 March 14, 2024, at 8:30 a.m., at City Hall, 555 Walnut Street, Council Chambers, Abilene, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action. The City Council reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

CALL TO ORDER

INVOCATION

1. Councilmember Travis Craver

PLEDGE TO THE UNITED STATES FLAG AND THE TEXAS FLAG

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS AND ANNOUNCEMENTS

2. Service Awards:

- Twylia Walden - 35 Years - Water Department
- Robert "Buddy" Pope - 20 Years - Fire Department

3. Proclamation:

- American Red Cross Month
- Elsie Stark Day

CONSENT AGENDA AND PUBLIC COMMENTS

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

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

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

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

4. **Minutes:** Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on February 22, 2024 **(Shawna Atkinson)**
5. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Appointing Members to Various Boards and Commissions per the City Charter **(Shawna Atkinson)**
 - Animal Services Advisory Board
6. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Canceling the May 4, 2024 General Election and Declaring Shane Price, Place 1, and Lynn Beard, Place 2 Elected to Office **(Shawna Atkinson)**
7. **Resolution:** Receive a Report, Hold a Discussion and Take Action on the Purchase of One (1) John Deere 5067E Cab Utility Tractor through Sourcewell Co-operative Contract 082923-DAC through United Ag & Turf for Parks Department **(Tim Cass)**
8. **Resolution:** Receive a Report, Hold a Discussion and Take Action on the Approval to Purchase Four (4) Pursuit Rated Pickups from Reliable Chevrolet II using Sheriffs' Association of Texas Cooperative Purchasing Contract 23-04-1011R for Marshal's Division **(Tim Cass)**
9. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Awarding a Contract to King Consultants for the Demolition Specifications and Monitoring of the Current Recreation Centers **(Lesli Andrews)**
10. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Authorizing a Contract with Parkhill for the Design of Two Recreation Centers **(Lesli Andrews)**
11. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Entering Into a Contract with Extreme Exteriors for Repairs at Adventure Cove **(Lesli Andrews)**
12. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Approving a Professional Services Contract with Enprotec/Hibbs & Todd, Inc. for the PK Raw Water Roughing Facility RO Concentrate Pipeline Construction - Phase 2 **(Rodney Taylor)**
13. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Authorizing a Professional Services Contract with Jacob & Martin, LLC for the Elevated Storage Tank Improvements **(Rodney Taylor)**
14. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Approving the Strategic Plan for the Abilene Public Library **(Julee Hammer)**
15. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Entering into a Chapter 380 Agreement with Chowning Realty for a Major Remodel Located at 5337 Encino Road **(Tim Littlejohn)**

16. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Entering into a Chapter 380 Agreement with Mayhem Solutions for a New Single Family Residence Construction Project Located at 934 Graham St. **(Tim Littlejohn)**
17. **Resolution:** Receive a Report, Hold and Discussion and Take Action on Entering into a Chapter 380 Agreement with Mayhem Solutions for a New Single Family Residence Construdtion Project at 1406 Anson Avenue **(Tim Littlejohn)**
18. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Suspending the April 4, 2024, Effective Date of AEP Texas Inc.'s Requested Rate Change **(Mike Rains)**
19. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Approving an Agreement with Telecom Unlimited for the Telephone System Upgrade and Three Years of Support Services **(Troy Swanson)**

REGULAR AGENDA - ORDINANCES AND PUBLIC HEARINGS - RESOLUTIONS

20. **Ordinance (Final Reading) CUP-2024-01:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from the Owner, Represented By Enprotec/Hibbs & Todd, Inc., to Apply a Conditional Use Permit to Approximately 25.44 Acres Zoned Agricultural Open (AO) to Allow for an RV Park. Located At 9017 West Lake Road. **(Tim Littlejohn)**
21. **Ordinance (Final Reading) Z-2024-04:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from the Owner, Represented By Geotex Property Solutions, LLC, to Change the Zoning of Approximately 1.28 Acres From Agricultural Open (AO) To Mobile Home (MH). Located Within the 7500 Block of West Lake Road. **(Tim Littlejohn)**

EXECUTIVE SESSION

22. **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. 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
2. 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
3. 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
4. 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
5. 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
6. Richard Scheriger, et al. v. City of Abilene; Cause No. CV33253, In the 90th Judicial District Court, Stephens County, Texas, filed April 21, 2023
7. The Woodlands Pride, Inc., et al. v. Ken Paxton, Attorney General of Texas, et al., Case No. 4:23-cv-02847, In the United States District Court, Southern District of Texas, Houston Division, filed August 2, 2023
8. PFAS Litigation
9. Ginger Robertson v. City of Abilene and Abilene Zoological Society; Cause No. 13179-D, In the 350th Judicial District Court, Taylor County, Texas; filed December 5, 2023
10. City of Dallas, et al, v. Disney DTC, LLC, et al., Cause No. DC-22-09128, In the 14th Judicial District Court, Dallas County, Texas, filed August 3, 2022

B. 551.072 (Deliberations about Real Property)

1. Donation of Land to the Veteran's Land Board

C. 551.073 (Deliberations about Gifts and Donations)

1. Donation of Land to the Veteran's Land Board

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

23. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Donation of Land to the Veteran's Land Board for the Veteran's Cemetery Expansion **(Robert Hanna)**

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 7th day of March, 2024, at 4:40 p.m.

Shawna Atkinson, TRMC, CMC
City Secretary



**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO:

FROM:

SUBJECT: **3. Proclamation:**

- American Red Cross Month
- Elsie Stark Day

GENERAL INFORMATION

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

None



**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Honorable Mayor & Members of City Council

FROM: Shawna Atkinson, City Secretary

SUBJECT: 4. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on February 22, 2024
(*Shawna Atkinson*)

GENERAL INFORMATION

Approval of the Minutes from the Regular Meeting Held on February 22, 2024

SPECIAL CONSIDERATIONS

None.

FUNDING/FISCAL IMPACT

None

STAFF RECOMMENDATION

Approval of the Minutes

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 02-22-2024 Minutes - Regular - Morning

CITY COUNCIL MEETING
February 8, 2024 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 February 22, 2024, at 8:30 a.m. in the Council Chambers, 555 Walnut St. Mayor Weldon Hurt was present and presiding, along with Mayor Pro-tem Shane Price, Deputy Mayor Pro-tem Lynn Beard, and Councilmembers Blaise Regan, Brian Yates, Kyle McAlister, and Travis Craver. Also present were City Manager Robert Hanna, City Attorney Stanley Smith, and City Secretary Shawna Atkinson.

Deputy Mayor Pro-tem Lynn Beard delivered the invocation and led the Pledge of Allegiance to the Flag of the United States of America and State of Texas Flag.

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS AND ANNOUNCEMENTS

- Recognition:
 - Nick Cantu - Field Excellence Award from American Public Works Association
 - Chance Overton - Operations Excellence Award from American Public Works Association

PRESENTATION OF CONSENT AGENDA

The Consent Agenda consisted of items 3-20. Item 7 was pulled from consideration prior to the meeting.

PUBLIC COMMENTS

Mayor Hurt opened the public comment period. The following addressed the City Council:

- Dorothy Clay
- Tammy Fogle

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

CONSENT AGENDA

Deputy Mayor Pro-tem Beard moved to approve the consent agenda, now consisting of items 3-6 & 8-20. Mayor Pro-tem Price seconded the motion. Motion carried.

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

NAYS (0): None

3. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Special State of the City Address Meeting Held on February 6, 2024, and the Regular Meeting Held on February 8, 2024
4. Resolution: Receive a Report, Hold a Discussion and Take Action on Appointing Members to Various Boards and Commissions per the City Charter
[ASSIGNED RESOLUTION NO. 32-2024]

Board	Term End Date
<i>Animal Services Advisory Board</i>	
Dr. Andrew Houser [Reappointment]	November 2026
Lora Jones [New]	November 2027
Shelby Lawrence [New]	November 2027
Andrea Robinson [New]	November 2027
Lynn Beard [Reappointment]	November 2026

5. Resolution: Receive a Report, Hold a Discussion and Take Action on Amending the Bylaws of the Animal Services Advisory Board
[ASSIGNED RESOLUTION NO. 33-2024]
6. Resolution: Receive a Report, Hold a Discussion, and Take Action to Approve a Contract with Inreach for Vending Sales in City of Abilene Facilities
[ASSIGNED RESOLUTION NO. 34-2024]
8. Resolution: Receive a Report, Hold a Discussion, and Take Action on the Purchase of Four (4) 2024 Ford Escapes from Arrow Ford Through Bids Received from CB-2419 for Code Enforcement and Building Inspection
[ASSIGNED RESOLUTION NO. 36-2024]
9. Resolution: Receive a Report, Hold a Discussion and Take Action on the Purchase of Three (3) 2024 Ford Escapes from Arrow Ford Through Bid Received from CB-2422 for the Police Department
[ASSIGNED RESOLUTION NO. 37-2024]
10. Resolution: Receive a Report, Hold a Discussion, and Take Action on the Purchase of Two (2) Crafcro Supershot 125D Crack Sealing Machines from Crafcro Inc, through Sourcewell contract #080521-CFC for Streets Services
[ASSIGNED RESOLUTION NO. 38-2024]
11. Resolution: Receive a Report, Hold a Discussion, and Take Action on the Purchase of Three (3) 2025 Chevrolet 2500 with Hartsra Animal Control Bodies from Lawrence Hall Chevrolet Through bid CB-2421 for Neighborhood Outreach
[ASSIGNED RESOLUTION NO. 39-2024]
12. Resolution: Receive a Report, Hold a Discussion and Take Action on Approval of Food and Supply Purchases for Rose Senior Programming with Ben E. Keith through the Sourcewell Cooperative
[ASSIGNED RESOLUTION NO. 40-2024]
13. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving Acquisition of Heimdal Software and Services from SHI Government Solutions
[ASSIGNED RESOLUTION NO. 41-2024]
14. Resolution: Receive a Report, Hold a Discussion and Take Action to Approve a Professional Services Contract with Chanler Bull for Software Support Services
[ASSIGNED RESOLUTION NO. 42-2024]
15. Resolution: Receive a Report, Hold a Discussion and Take Action to Amend Year 2 of the Microsoft Enterprise License Agreement through SHI Government Solutions
[ASSIGNED RESOLUTION NO. 43-2024]

16. Resolution: Receive a Report, Hold a Discussion, and Take Action on Awarding S. 27th St. Traffic Signal Improvements to Willis Electric Co. Lp.
[ASSIGNED RESOLUTION NO. 44-2024]
17. Resolution: Receive a Report, Hold a Discussion, and Take Action on Awarding Street Resurfacing Project Work Zone S5 to Raydon Inc.
[ASSIGNED RESOLUTION NO. 45-2024]
18. Resolution: Receive a Report, Hold a Discussion, and Take Action Authorizing the City Manager to Execute a Contract with Steele Fire Apparatus, LLC or the Purchase of a Custom-Built Brush-Wildland Firefighting Vehicle
[ASSIGNED RESOLUTION NO. 46-2024]
19. Ordinance (First Reading) CUP-2024-01: Receive a Report, Hold a Discussion Take Action on A Request From The Owner, Represented By Enprotec/Hibbs & Todd, Inc., To Apply A Conditional Use Permit To Approximately 25.44 Acres Zoned Agricultural Open (AO) To Allow For An RV Park. Located At 9017 West Lake Road.
20. Ordinance (First Reading) Z-2024-04: Receive a Report, Hold a Discussion and Take Action on A Request From The Owner, Represented By Geotex Property Solutions, LLC, To Change The Zoning Of Approximately 1.28 Acres From Agricultural Open (AO) To Mobile Home (MH). Located Within The 7500 Block Of West Lake Road.

ITEM PULLED FROM CONSIDERATION

7. Resolution: Receive a Report, Hold a Discussion and Take Action to Approve Vehicle Lease with Capps Rent-A-Car Inc.
[NOT CONSIDERED]

REGULAR AGENDA

21. Ordinance (Final Reading): Receive a Report, Hold a Discussion and Public Hearing, and Take Action on an Ordinance Approving Revised Budget Figures for Fiscal Year 2023-2024; for the City of Abilene; Appropriating Funds; Repealing all Ordinances and Parts of Ordinances in Conflict Herewith; Calling a Public Hearing
[ASSIGNED ORDINANCE NO. 11-2024]

Mike Rains, Director of Finance, presented the item. Adoption of the item would remove the third Assistant Chief of Police position from the budget until the new Chief of Police has had the time to evaluate the position and make a selection. After he has chosen, it will be added back into the budget at that time.

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

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

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

NAYS (0): None

22. Ordinance (Final Reading) Z-2024-03: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on A Request From The Owner, Represented By Enprotec/Hibbs & Todd, Inc., To Change The Zoning Of Approximately 1.84 Acres From Residential Single Family (RS-6) To Patio Home (PH). Located at The 2500 Block Of Bel Air Drive
[ASSIGNED ORDINANCE NO. 07-2024]

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would rezone the above referenced property from Residential Single-Family (RS-6) to Patio Homes (PH).

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

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

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

NAYS (0): None

EXECUTIVE SESSION

Mayor Hurt recessed into Executive Session at 8:50 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:

23. A.551.071 (Consultation with Attorney)

1. Handling Public Comments

23. F.551.087 (Business Prospect/Economic Development)

1. 1525 & 1601 East Stamford

The Executive Session ended at 9:08 a.m. and reconvened to Open Session. Mayor Hurt reported no votes or action were taken in Executive Session.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:08 a.m.

Shawna Atkinson
City Secretary

Weldon Hurt
Mayor

Minutes approved on: _____



**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Honorable Mayor & Members of City Council

FROM: Shawna Atkinson, City Secretary

SUBJECT: 5.

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

- **Animal Services Advisory Board**

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
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 14th day of March, 2024.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

RESOLUTION NO. _____
EXHIBIT "A"

Board	Term End Date
<i>Animal Services Advisory Board</i>	
Vickie Coody [New]	November 2026
Matt Zimmerman [New]	November 2027



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

- Animal Services Advisory Board





**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Honorable Mayor & Members of City Council

FROM: Shawna Atkinson, City Secretary

SUBJECT: 6. Resolution: Receive a Report, Hold a Discussion and Take Action on Canceling the May 4, 2024 General Election and Declaring Shane Price, Place 1, and Lynn Beard, Place 2 Elected to Office (*Shawna Atkinson*)

GENERAL INFORMATION

On February 8, 2024, the City Council ordered a General Election to be held on May 4, 2024, (Resolution 22-2024) for the purposes of electing Council Places 1 and 2. As of Friday, February 16, 2024, only the two incumbents, Shane Price, Place 1, and Lynn Beard, Place 2, had filed for a place on the ballot. No write-in candidates filed by the Tuesday, February 20th deadline either. Therefore, each candidate on the ballot is unopposed for election to office. Under these circumstances, Subchapter C, Chapter 2, Election Code, authorizes the City Council to declare the candidates elected to office and cancel the election.

The following candidates are declared to office, and shall be issued certificates of election following the time the election would be canvassed:

- Shane Price - Place 1
- Lynn Beard - Place 2

SPECIAL CONSIDERATIONS

None

FUNDING/FISCAL IMPACT

None

STAFF RECOMMENDATION

Approval of the resolution to cancel the May 4, 2024, General Election

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 2024 Resolution of Unopposed Candidates
2. Certification of Unopposed Candidates
3. Cancelling the May 4, 2024 Election ppt

RESOLUTION NO. _____

AN ORDER OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, CANCELLING THE MAY 4, 2024 GENERAL CITY ELECTION, DECLARING UNOPPOSED CANDIDATES IN THE MAY 4, 2024 GENERAL CITY ELECTION, AND ELECTING TO OFFICE CITY COUNCIL PLACES 1 & 2

WHEREAS, General City Election was called on February 8, 2024, for the purpose of electing members to City Council Places 1 & 2; and

WHEREAS, the City Secretary has certified in writing that no person has made a declaration of write-in candidacy, and that each candidate on the ballot is unopposed for election to office; and

WHEREAS, under these circumstances, Subchapter C, Chapter 2, Election Code, authorizes the City Council to declare the candidates elected to office and cancel the election;

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

Section 1: That the following candidates, who have been certified as unopposed in the May 4, 2024, General City Election, are declared elected to office, and shall be issued certificates of election following the time the election would have been canvassed:

Shane Price – Place 1

Lynn Beard – Place 2

Section 2: That the City Council of the City of Abilene hereby cancels the General City election scheduled to be held on May 4, 2024.

Section 3: That the City Secretary is directed to cause a copy of this Order to be posted on election day at each polling place used or that would have been used in the election.

Section 3: It is declared to be the intent of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Order are severable, and if any phrase, clause, sentence, paragraph, or section of this Order is declared invalid by the judgment or decree of a court of competent jurisdiction, the invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Order since the City Council would have enacted them without the invalid portion.

Section 4: That this Order shall take effect immediately upon its final passage.

ADOPTED this 14th day of March, 2024.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

RESOLUCIÓN NUM. _____

UNA RESOLUCIÓN DEL CONSEJO MUNICIPAL DE LA CIUDAD DE ABILENE, TEXAS, CANCELANDO LA ELECCION GENERAL DEL 4 DE MAYO , DECLARARANDO LOS CANDIDATOS SIN OPOSICIÓN EN LA ELECCION MUNICIPAL GENERAL DEL 4 DE MAYO DE 2024, Y ELEGIR PARA EL MIEMBRO DEL CONSEJO MUNICIPAL EL LUGAR 1 & 2

CONSIDERANDO que, se convoco Eleccion General municipal el 8 de febrero 2024, con el fin de elegir miembros del Consejo Municipal para Lugar 1 & 2; y

CONSIDERANDO que ,la Secretaria de la Ciudad ha certificado por escrito que ninguna persona ha hecho una declaración de candidato por escrito, y que cada candidato en la boleta no tiene oposición para la elección de oficina; y

CONSIDERANDO que, bajo estas circunstancias, Subcapítulo C, Capítulo 2, Código Electoral, autorizando el Consejo Municipal de la Ciudad a declarar elegidos a los candidatos para el cargo de oficina y cancelar la elección; y

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

Sección 1: Que los siguientes candidatos que han sido certificados sin oposición en las eleccion general de la ciudad del 4 de mayo, 2024, son declarados elegidos para el cargo de oficina y se les emitirán certificados de elección después del momento en que se declara oficial la elección:

Shane Price – Lugar 1

Lynn Beard – Lugar 2

Sección 2: Que el Consejo Municipal de la Ciudad de Abilene cancelara la eleccion general de la ciudad programada para el 4 de Mayo de 2024.

Sección 3: Se ordena al Secretario de la Ciudad que haga que se publique una copia de esta orden el día de las elecciones en cada lugar de votación utilizado o que se habría utilizado en las elecciones.

Sección 3: Se declara la intención del Consejo de la Ciudad que las frases, cláusulas, oraciones, párrafos y apartados de esta orden sean divisibles, si hay alguna frase, oración, párrafo o sección, párrafo o sección de esta orden, es declarada inválida por sentencia o decreto de un tribunal de jurisdicción competente, la invalidez no afectará ninguna de las restantes frases, cláusulas, oraciones, párrafos y apartados de esta orden, ya que del Consejo Municipal de la Ciudad las habría promulgado sin la parte inválida.

Sección 4: Esta orden entrará en vigor inmediatamente después de su aprobación final.

ADOPTADO por el Consejo Municipal de la Ciudad de Abilene este dia, 14 de Marzo, 2024.

DA FE:

Secretaria de la Ciudad

Alcade

APROBADO:

**CERTIFICATION OF UNOPPOSED CANDIDATES FOR OTHER
POLITICAL SUBDIVISIONS (NOT COUNTY) CERTIFICACIÓN DE
CANDIDATOS ÚNICOS
PARA OTRAS SUBDIVISIONES POLITICAS (NO EL CONDADO)**

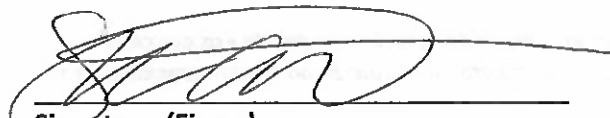
To: Presiding Officer of Governing Body
Al: Presidente de la entidad gobernante

**As the authority responsible for having the official ballot prepared, I hereby certify that
the following candidates are unopposed for election to office for the election scheduled to
be held on May 4, 2024.**

**Como autoridad a cargo de la preparación de la boleta de votación oficial, por la presente
certifico que los siguientes candidatos son candidatos únicos para elección para un cargo en
la elección que se llevará a cabo el 4 de Mayo 2024.**

List offices and names of candidates:
Lista de cargos y nombres de los candidatos:

Office(s) Cargo(s)	Candidate(s) Candidato(s)
Place (Lugar) 1	Shane Price
Place (Lugar) 2	Lynn Beard


Signature (Firma)

Shawna Atkinson

Printed name (Nombre en letra de molde)

City Secretary

Title (Puesto)

03/06/2024

Date of signing (Fecha de firma)

See reverse side for instructions
(Instrucciones en el reverso)

(Seal) (sello)



**Resolution: Cancelling the May 4, 2024
General Election, Declaring Unopposed
Candidates in the May 4, 2024 General
Election, and Electing to Office City
Council Places 1 & 2**





Cancellation of the May 4, 2024 General Election

On February 8, 2024, the City Council ordered a General Election to be held on May 4, 2024, (Resolution 22-2024) for the purposes of electing Council Places 1 and 2. As of Friday, February 16, 2024, only the two incumbents, Shane Price, Place 1, and Lynn Beard, Place 2, had filed for a place on the ballot. No write-in candidates filed by the Tuesday, February 20th deadline either. Therefore, each candidate on the ballot is unopposed for election to office. Under these circumstances, Subchapter C, Chapter 2, Election Code, authorizes the City Council to declare the candidates elected to office and cancel the election.

The following candidates are declared to office, and shall be issued certificates of election following the time the election would be canvassed:

- Shane Price - Place 1
- Lynn Beard - Place 2





**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Robert Hanna, City Manager

FROM: Don Green, Director

SUBJECT: 7. Resolution: Receive a Report, Hold a Discussion and Take Action on the Purchase of One (1) John Deere 5067E Cab Utility Tractor through Sourcewell Co-operative Contract 082923-DAC through United Ag & Turf for Parks Department (Tim Cass)

GENERAL INFORMATION

Fleet Services seeks to purchase one (1) John Deere 5067E Cab Utility Tractor through Sourcewell Co-operative Contract 082923-DAC through United Ag & Turf for Parks Department.

SPECIAL CONSIDERATIONS

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

FUNDING/FISCAL IMPACT

Funds for the purchase are to be provided by the Fleet Replacement Fund and total \$43,110.94. The funds for this purchase were planned and included in the FY24 Budget. This is \$41,889.06 under budget.

STAFF RECOMMENDATION

Fleet and Parks staff recommend the purchase of one (1) John Deere 5067E Cab Utility Tractor through Sourcewell Co-operative Contract 082923-DAC through United Ag & Turf of Abilene.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. FY24 CO-OP Ag Tractor Resolution
2. FY24 CO-OP Ag Tractor Additional Info
3. FY24 CO-OP AG Tractor Budget vs Actual
4. FY24 Co-Op Tractor Pricing Worksheet
5. FY24 CO-OP AG Tractor PiP

RESOLUTION NO _____

A RESOLUTION OF THE CITY OF ABILENE, TEXAS

**TO PURCHASE ONE 2024 JOHN DEERE 5067E CAB UTILITY TRACTOR FROM UNITED AG & TURF,
ABILENE, TEXAS THROUGH SOURCEWELL CO-OPERATIVE CONTRACT # 082923-DAC**

WHEREAS, City of Abilene has a need for one Utility Tractor; and

WHEREAS, City of Abilene budgeted this purchase for Fiscal Year 2024; and

WHEREAS, this purchase is to replace an existing end of life unit; and

WHEREAS, City of Abilene received pricing for one 2024 John Deere 5067E Cab Utility Tractor through Sourcewell Co-Operative Contract # 082923-DAC; and

WHEREAS, United Ag & Turf is the Sourcewell approved vendor for the tractor.

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

PART 1: That the City Council approves this purchase from United Ag & Turf of Abilene, Texas in the amount of Forty Three Thousand One Hundred Ten Dollars and Ninety Four Cents (\$43,110.94) for one 2024 John Deere 5067E Cab Utility Tractor through Sourcewell Co-Operative Contract # 082923-DAC.

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

ADOPTED this 14th day March, 2024

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

**ADDITIONAL INFORMATION FOR COUNCIL MEETING ITEM
TRACTOR**

Unit #	Assignment	Year	Make	Model	Mileage	Hours	Total Maintenance Costs	Disposal Method	Points	Replacement Reasoning
3588	PARKS	2005	CASE	IH JX65	N/A	3,225	\$34,876.48	AUCTION	3	MEETS 3 OF 4 REQUIREMENTS

BUDGET vs ACTUAL COSTS
AG TRACTOR

Repl For Unit #	Division #	Division Name	Type Equipment	Budgeted Cost	Actual Cost	Budgeted vs Actual Variance
3588	5301	Parks	Tractor	\$85,000.00	\$43,110.94	(\$41,889.06)
				\$85,000.00	\$43,110.94	(\$41,889.06) UNDER BUDGET

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

United Ag & Turf
4017 Loop 322
Abilene, TX 79602
US

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

United Ag & Turf
4017 Loop 322
Abilene, TX 79602
325-692-2255
abilenejd@unitedagt.com

Quote Summary
Prepared For:

City Of Abilene
TX

Delivering Dealer:

United Ag & Turf

Higgins Steve
4017 Loop 322
Abilene, TX 79602
Phone: 325-692-2255
stevehiggins@unitedagt.com

Quote ID: 30204320

Created On: 09 January 2024

Last Modified On: 09 January 2024

Expiration Date: 31 January 2024

Equipment Summary

JOHN DEERE 5067E Cab Utility
Tractor

Selling Price

\$ 43,110.94 X

Qty

1 =

Extended

\$ 43,110.94

Contract: Sourcewell Ag 082923-DAC (PG BA CG 76)

Price Effective Date: January 8, 2024

Equipment Total

\$ 43,110.94

* Includes Fees and Non-contract items

Quote Summary

Equipment Total \$ 43,110.94

Trade In

SubTotal **\$ 43,110.94**

Est. Service \$ 0.00

Agreement Tax

Total \$ 43,110.94

Down Payment (0.00)

Rental Applied (0.00)

Balance Due \$ 43,110.94

Salesperson : X _____

Accepted By : X _____

Selling Equipment

Quote Id: 30204320

Customer Name:
ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

 United Ag & Turf
 4017 Loop 322
 Abilene, TX 79602
 US

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

 United Ag & Turf
 4017 Loop 322
 Abilene, TX 79602
 325-692-2255
 abilenejd@unitedagt.com

JOHN DEERE 5067E Cab Utility Tractor

Hours:
Stock Number:
Contract: Sourcewell Ag 082923-DAC (PG BA CG 76)

Selling Price *
Price Effective Date: January 8, 2024

\$ 43,110.94

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
07C1LV	5067E Cab Utility Tractor	1	\$ 42,081.00	14.00	\$ 5,891.34	\$ 36,189.66	\$ 36,189.66
Standard Options - Per Unit							
183N	JDLink™ Modem	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
0202	United States	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
0409	English Operator's Manual	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
0500	Less Package	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
1363	SyncShuttle™ 9F/3R TSS Transmission with 540 PTO	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
1799	Less Loader Prep Package	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
2050	Standard Cab	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
3310	Single Mechanical Stackable Rear SCV	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
3400	Less Mid Valves	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
5185	16.9-28 In. 6PR R1 Bias	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
6040	Mechanical Front Wheel Drive (MFWD)	1	\$ 6,632.00	14.00	\$ 928.48	\$ 5,703.52	\$ 5,703.52
6111	11.2-24 10PR R1 Bias	1	\$ 1,416.00	14.00	\$ 198.24	\$ 1,217.76	\$ 1,217.76
Standard Options Total			\$ 8,048.00		\$ 1,126.72	\$ 6,921.28	\$ 6,921.28
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Total Selling Price			\$ 50,129.00		\$ 7,018.06	\$ 43,110.94	\$ 43,110.94

Quote ID :30204320

Product features, prices and specifications are based on published information at the time of publication and are subject to change without notice. All trademarked terms, including John Deere, the leaping deer symbol and the colors green and yellow used herein are the property of Deere & Company, unless otherwise noted. Products, product features, and other content on this site may only be accurate for products marketed and sold in North America.
Copyright © 1994- 2024 Deere & Company. All Rights Reserved.

File Created: 09-Jan-2024

2024 JOHN DEERE 5067E Cab Utility Tractor

Product Specification Details :

Manufacturer: John Deere 5067E (Model year 2023)
Model:

Engine specifications

Description	John Deere PowerTech™ 3029 EWR
Engine type	3029HPY110
Engine family	NJDXL02.9339
Rated speed	2100 rpm
Aspiration	Turbocharged
Cylinders liners	Wet sleeved
Emission level	Final Tier 4
After treatment type	DOC/EGR
Displacement	3 cylinders: 2.9 L 179 cu in.

Engine performance

Rated power	At 2100 rpm: 50.4 kW 67 hp
Rated PTO power (hp SAE)	At 2100 rpm: OOS 39.6 kW (53 PTO hp)
Maximum PTO power	---
Intelligent Power Management (IPM)	---
Transport and/or mobile PTO applications	---
Hydraulic applications	---
Power boost	0 percent
Maximum engine power	50.4 kW 67.6 hp
Engine peak torque	At 1500 rpm: 280 Nm 206 lb-ft
Drawbar power	---
PTO torque rise	21 percent
Fuel injection system and control	---
Air cleaner type	---

Transmission

Type	Standard: SyncShuttle™ 9F/3R
Reverser	SyncShuttle™: No
Clutch; wet/dry	SyncShuttle™: Dry
Creeper	Kit available for OOS SyncShuttle™ 9F/3R transmission

Rear power take-off (PTO)

Engine rpm (at rated PTO speeds)	SyncShuttle™: Independent 540 540 at 2100 rpm
Economy PTO speeds	---
Reverse PTO speeds	---
Multispeed PTO option availability	---
Ground speed PTO option availability	---
PTO actuation	SyncShuttle™: Mechanical (lever)

Hydraulic system

Pump rated output	Open center 68.8 L/min 18.2 gpm
Available flow at a single rear SCV	43.1 L/min 11.4 gpm
Available flow at front SCVs	---
Number of rear selective control valves (SCVs)	Standard: One
Number of mid selective control valves (SCVs)	Standard: Zero
Number of front selective control valves (SCVs)	---

Quote ID :30204320

Joystick SCV control	Mechanical
Auxiliary hydraulic features	---
Oil for external use - horizontal position, stationary	---
At maximum mark	---
SCV control	---
Operator station	
Rollover protective structure, OOS	---
Rigid - foldable - telescopic	Foldable, two-post
Platform - flat/straddle	Straddle
Gearshift location - console/floor	Floor, on the side
Seat	Standard: Mechanical
Degree of seat swivel, left hand	---
Degree of seat swivel, right hand	---
Cab suspension	---
Instructional seat	Optional
Display	Simple automotive-style instrument cluster
Radio	Optional
Inner cab volume	---
dB(A) rating	81 dBA
Cab glass area	---
Safety glass rating	---
Front visibility	---
Tires	
	2WD: 11L-15 in. F2-M (Ribbed Type) Bias
Rear	2WD: 16.9-28 R1 Bias
Wheel tread range	---
Turning radius with brakes	2WD: 3.1 m
	10.2 ft
Turning radius without brakes	2WD: 3.5 m
	11.5 ft
Central Tire Inflation System (CTIS)	---
Factory tread spacing	---
Compatible tire configurations	---
Compressor output	---
Miscellaneous	
AutoTrac ready	No
ISOBUS ready	No
CommandCenter video inputs	---
Immobilizer	---
Side slope rating	---
Uphill/downhill slope rating	---
Country of manufacture	Sub assembly in Pune, India, Final assembly in Augusta, GA
Extended specs	
Link to extended specs	---
Rear hitch	
Hitch draft control load sense type	Mechanical
Remote control valves available	Standard: One
Hitch category (SAE designation)	Category 2; convertible to 1
Maximum lift capacity behind lift points	1448 kg
	3192 lb
Lift capacity at standard frame	---
Sensing type	Top link
Rear axle differential lock	---
Drawbar	
Drawbar category	---
Maximum vertical load	Road/field use (short position): 1120 kg
	2470 lb
Rear axle	
	Flange
Final drive type	Planetary
Differential controls	Mechanical (pedal)
Axle type	---
Brakes, type and control	Hydraulic wet disc
Rear differential lock	---

Quote ID :30204320

Load rating	---
Front axle	
	Standard: Two-Wheel Drive (2WD)
Front axle differential lock	---

Steering	

Electrical system	
Alternator size	OOS: 70 amp
Battery options	12 V
Working lights	Standard: Halogen
Type of bulb in headlight (Halogen, Zenon, LED)	OOS: Halogen
Lumens for headlights	---
Type of bulb in beacon (Halogen, Zenon, LED)	Kit: Halogen
Lumens for beacon	---
Flashes per minute	---
dB(A) rating for backup alarm	---
Total cold cranking amps	---
Dimensions	
Wheelbase	2WD and MFWD: 2050 mm 80.7 in.
Overall width	---
Overall length	3639 mm 143.3 in.
Overall height	---
Drawbar clearance	---
Front axle center	---
Approximate shipping weight, Open;Cab	2WD OOS: 2520 kg 5555 lb
Weight	
Base machine weight	---
Front axle	---
Rear axle	---
Total	---
Maximum ballast level	---
Maximum permissible weight	---
Capacities	
Crankcase oil volume	---
Fuel tank	OOS: 72.5 L 19 U.S. gal.
Diesel exhaust fluid (DEF) tank	Not Applicable
Cooling system	---
Coolant type	---
Degree of freeze protection	---
Transmission-hydraulic system	---
Serviceability	
Interval for engine oil change	---
Interval for hydraulic/transmission oil change	---
Interval for engine coolant change	---
Loaders	
Loader	---
Lift capacity at full height	---
Maximum lift height	---
Leveling type	---
Precision AG	
Guidance	---
Telematic	---
Remote diagnostics	---
Front hitch	
Category	---
Electric power	---
Standard lift capacity	---
Front power take-off (PTO)	---
PTO speed	---
Key Specs	

Quote ID :30204320

Engine description	John Deere PowerTech™ 3029 EWR
Engine displacement	3 cylinders: 2.9 L 179 cu in.
Rated engine power	At 2100 rpm: 50.4 kW 67 hp 50.4 kW 67.6 hp At 2100 rpm: OOS 39.6 kW (53 hp) ---
Transmission type	Standard: SyncShuttle™ 9F/3R
Hydraulic pump rated output	68.8 L/min 18.2 gpm
Rear hitch category (SAE designation)	Category 2; convertible to 1 ---
Tracks	
Tread spacing	---
Drive type	---
Track width	---
Mid-rollers	---
Brakes	
Primary brake (foot brake)	---
Secondary brake	---
Park lock	---
MFWD braking	---
Front axle brakes	---
Auxiliary brakes	---
Hydraulic trailer brakes	---
Pneumatic trailer brakes	---
Additional information	
Date collected	31-May-2022

City Council Meeting

03/14/2024





UTILITY TRACTOR

- Replacement for unit 3588 for Parks Department
- Purchase for One 2024 John Deere 5067E Utility Tractor
- Unit to be Purchased from United Ag & Turf through Sourcewell Co-operative contract number #082923-DAC





UTILITY TRACTOR



CITY OF
ABILENE
TEXAS



**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Robert Hanna, City Manager

FROM: Don Green, Director

SUBJECT: 8. Resolution: Receive a Report, Hold a Discussion and Take Action on the Approval to Purchase Four (4) Pursuit Rated Pickups from Reliable Chevrolet II using Sheriffs' Association of Texas Cooperative Purchasing Contract 23-04-1011R for Marshal's Division (*Tim Cass*)

GENERAL INFORMATION

Fleet services seeks to Purchase Four (4) Pursuit Rated Pickups from Reliable Chevrolet II for the Marshal's Division. Three units are to replace existing units that have met the end of their useful life, and one is a new budget item required due to a staffing increase.

The Budget Variance vs. Quotes attachment is to show the pricing Fleet had to work with when developing the FY24 budget estimates for these vehicles.

SPECIAL CONSIDERATIONS

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

FUNDING/FISCAL IMPACT

The funds for this purchase will be provided by the Fleet Replacement Fund. The funds for three of the units were budgeted for in the Fiscal Year 24 replacement process and one is an un-budgeted item. The budgeted amount for this purchase is \$126,000 and the total for this purchase is \$208,046.20. The over-budget amount of \$82, 046.20 includes one additional vehicle that was not included in the budget.

The lighting and accessories for these units are not included in these figures and will be presented to the Council if they exceed a combined \$50,000.

STAFF RECOMMENDATION

Staff recommends the purchase of these four (4) PPV Chevrolet Silverado pickups for the Marshal's Division.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. FY24 CO-OP PPV PICKUPS Resolution
2. FY24 CO-OP PPV Pickups Addtl Info
3. FY24 CO-OP PPV Pickups Budget VS Actual
4. Budget Variance Published vs Quotes
5. FY24 CO-OP PPV Pickups PiP

RESOLUTION NO _____

A RESOLUTION OF THE CITY OF ABILENE, TEXAS

TO PURCHASE FOUR 2024 POLICE PACKAGE CHEVROLET SILVERADOS FROM RELIABLE CHEVROLET, RICHARDSON, TEXAS THROUGH SHERIFFS ASSOCIATION CO-OPERATIVE CONTRACT # 23-04-1011R

WHEREAS, City of Abilene has a need for four (4) Police Packaged Pickups; and

WHEREAS, City of Abilene budgeted this purchase for Fiscal Year 2024; and

WHEREAS, this purchase is to replace three existing end of life units and one new budget item; and

WHEREAS, City of Abilene received pricing for four (4) 2024 PPV Chevrolet Silverados through Sheriff's Association Co-Operative Contract # 23-01-1011R; and

WHEREAS, Reliable Chevrolet is the Sheriff's Association approved vendor for the PPV pickups.

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

PART 1: That the City Council approves this purchase from Reliable Chevrolet of Richardson, Texas in the amount of Two Hundred Eight Thousand Forty Six Dollars and Twenty Cents (\$208,046.20) for four 2024 PPV Chevrolet Silverados through Sheriffs Association Co-Operative Contract # 23-01-1011R.

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

ADOPTED this 14th day March, 2024

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

**ADDITIONAL INFORMATION FOR COUNCIL MEETING ITEM
CO-OP PPV PICKUPS ADDTL INFO.**

Unit #	Assignment	Year	Make	Model	Mileage	Hours	Total Maintenance Costs	Disposal Method	Points	Replacement Reasoning
NBI	Marshals									
3992	Marshals	2009	FORD	CROWN VICTORIA	75,601	1,625	\$ 16,134.65	Auction	3	MET 3 OUT OF 4 OF THE REPLACEMENT CRITERIA
4378	Marshals	2013	FORD	F150	157,772		\$ 34,213.01	Auction	3	MET 3 OUT OF 4 OF THE REPLACEMENT CRITERIA
4379	Marshals	2013	FORD	F150	166,533		\$ 27,091.11	Auction	3	MET 3 OUT OF 4 OF THE REPLACEMENT CRITERIA

BUDGET vs ACTUAL COSTS**Fully Outfitted Marshal's Pickups**

Repl For Unit #	Division #	Division Name	Type Equipment	Budgeted Cost	Actual Cost	Budgeted vs Actual Variance
NBI	2004	Marshals	PPV Pickup	\$0.00	\$52,011.55	(\$52,011.55)
3992	2004	Marshals	PPV Pickup	\$42,000.00	\$52,011.55	(\$10,011.55)
4378	2004	Marshals	PPV Pickup	\$42,000.00	\$52,011.55	(\$10,011.55)
4379	2004	Marshals	PPV Pickup	\$42,000.00	\$52,011.55	(\$10,011.55)
				\$126,000.00	\$208,046.20	(\$82,046.20)

** The NBI was unbudgeted and requested to add by City Administration.

The Local Government Purchasing Cooperative

For the Period 12/01/2023 to 11/30/2024

Final Catalog Award Report for Vehicles, Police Motorcycles, Trucks, Parts, and Maintenance Repair Services No. 724-23

21. Base Model Price for **Chevrolet Tahoe (SSV) Police Package** - 2WD, Police package with all manufacturer's standard equipment.

Vendor Name	Vendor Brand and Model Number	Bid Price	Award
5 Star Chevrolet	Chevrolet Tahoe (SSV) Police Package	\$41,462.00	Yes
Caldwell Country Chevrolet	Chevrolet Tahoe (SSV) Police Package	\$42,130.00	Yes
Sewell Family of Companies	Chevrolet Tahoe (SSV) Police Package	\$44,325.00	No
LAKE COUNTRY CHEVROLET, INC	Chevrolet Tahoe (SSV) Police Package	\$45,909.00	No
PARKWAY CHEVROLET INC.	Chevrolet Tahoe (SSV) Police Package	\$52,995.00	No

22. Base Model Price for **Chevrolet Silverado (SSV) Police Package** - 2WD, Police package with all manufacturer's standard equipment.

Vendor Name	Vendor Brand and Model Number	Bid Price	Award
PARKWAY CHEVROLET INC. - requires up fitting	Chevrolet Silverado (SSV) Police Package	\$37,267.50	Yes
5 Star Chevrolet only allotted 30 from GM	Chevrolet Silverado (SSV) Police Package	\$37,392.00	Yes
Caldwell Country Chevrolet	Chevrolet Silverado (SSV) Police Package	\$38,560.00	Yes
Gunn Chevrolet	Chevrolet Silverado (SSV) Police Package	\$40,292.00	No
LAKE COUNTRY CHEVROLET, INC	Chevrolet Silverado (SSV) Police Package	\$41,938.00	No
Sewell Family of Companies	Chevrolet Silverado (SSV) Police Package	\$45,000.00	No

23. Base Model Price for **Chevrolet Blazer EV (PPV) Police Package** - 2WD, Police package with all manufacturer's standard equipment.

Vendor Name	Vendor Brand and Model Number	Bid Price	Award
Caldwell Country Chevrolet	Chevrolet Blazer EV (PPV) Police Package	\$55,715.00	Yes
PARKWAY CHEVROLET INC.	Chevrolet Blazer EV (PPV) Police Package	\$56,842.00	Yes
5 Star Chevrolet	Chevrolet Blazer EV (PPV) Police Package	\$56,967.00	Yes
Gunn Chevrolet	Chevrolet Blazer EV (PPV) Police Package	\$58,648.00	No
LAKE COUNTRY CHEVROLET, INC	Chevrolet Blazer EV (PPV) Police Package	\$59,498.00	No

24. Base Model Price for **Chevrolet Camaro Sport Sedan** - Coupe 1LS base model, complete with all manufacturer's standard equipment.

Vendor Name	Vendor Brand and Model Number	Bid Price	Award
Sewell Family of Companies	Chevrolet Camaro Sport Sedan	\$25,850.00	Yes
LAKE COUNTRY CHEVROLET, INC	Chevrolet Camaro Sport Sedan	\$28,860.00	Yes

Bid Award**Contract:** 23-04-1011 R, Vehicle Procurement**Group:** Police Rated Vehicles**Item:** 7, General Motors, Chevrolet Silverado 1500 Crew Cab Short Box PPV 4WD, CK10543/9C1**Description:** Manufacturer's standard base model specifications and current model year for model/model number listed.**Model Upgrade/Downgrade:** There are no models offered as a model upgrade/downgrade for this vehicle.

Zone	Rank	Vendor	Price	Percent		Build File	Options File
				(Taken off MSRP for options)			
Longhorn	Primary	Caldwell Country Chevrolet	\$42,324.00	6.00%		Build	Options
	Alternate	Reliable Chevrolet II (TX) LLC	\$48,112.55	9.00%		Build	Options
Lupine	Primary	Caldwell Country Chevrolet	\$42,324.00	6.00%		Build	Options
	Alternate	Reliable Chevrolet II (TX) LLC	\$48,296.55	9.00%		Build	Options
Bluebonnet	Primary	Caldwell Country Chevrolet	\$42,324.00	6.00%		Build	Options
	Alternate	Reliable Chevrolet II (TX) LLC	\$48,423.05	9.00%		Build	Options
Mockingbird	Primary	Caldwell Country Chevrolet	\$42,324.00	6.00%		Build	Options
	Alternate	Reliable Chevrolet II (TX) LLC	\$48,756.55	9.00%		Build	Options
Yellow Rose	Primary	Caldwell Country Chevrolet	\$42,324.00	6.00%		Build	Options
	Alternate	Reliable Chevrolet II (TX) LLC	\$48,296.55	9.00%		Build	Options
Armadillo	Primary	Caldwell Country Chevrolet	\$42,324.00	6.00%		Build	Options
	Alternate	Reliable Chevrolet II (TX) LLC	\$48,388.55	9.00%		Build	Options
No Delivery	Primary	Caldwell Country Chevrolet	\$42,324.00	6.00%		Build	Options
	Alternate	Reliable Chevrolet II (TX) LLC	\$48,020.55	9.00%		Build	Options

CALDWELL COUNTRY CHEVROLET II LLC
800 HWY 21 E CALDWELL, TEXAS 77836
BUYBOARD 724-23

End User: CITY OF ABILENE
Contact: GEORGE REINERT
Phone/ Email: 325.676.6252/GEORGE.REINERT@ABILENETX.GOV
Product Description: 2024 Chevrolet Silverado 1500 (CK10543) 4WD Crew Cab 147" V

Caldwell Rep: Jake Schobinger #2157
Phone: (979) 429-8847
Date: Thursday, February 22, 2024
Email: jake@usaautomotivepartners.com

A. Bid Series: 14 - Chevrolet Silverado 1500 Full Size Crew Cab Truck

A. Base Price: \$ 57,655.00

B. Published Options [Itemize each below]

Code	Model Vehicle				
CK10543	2024 Chevrolet Silverado 1500 (CK10543) 4WD Crew Cab 147" Work Truck				
Code	Options	Bid Price	Code	Options	Bid Price
9C1	Police Pursuit Package	\$0.00	AKO	Glass, deep-tinted	\$0.00
AMF	Remote Keyless Entry Package	\$0.00	AZ3	Seats, front 40/20/40 split-bench	\$0.00
L84	Engine, 5.3L EcoTec3 V8	\$0.00	C5Y	GVWR, 7100lbs. (3221 kg)	\$0.00
PEB	WTValue Package	\$0.00	GBA	Black	\$0.00
QT5	Tailgate, gate function manual with EZ Lift	\$0.00	GU5	Rear axle, 3.23 ratio	\$0.00
UF2	LED Cargo AreaLighting	\$0.00	H1T	Jet Black, Cloth seat trim	\$0.00
VT2	LPO, Assist steps, 6 Black tubular rectangul	\$0.00	IOR	Audio system, Chevrolet Infotainment 3 system	\$0.00
ZTX	Suspension Package, Z71 Off-Road equipm	\$0.00	K34	Cruise control, electronic	\$0.00
6J7	Flasher System	\$0.00	KNP	Cooling, auxiliary external transmission oil cool	\$0.00
Total of B. Published Options					\$ -

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

Unpublished Options	Bid Price	Unpublished Options	Bid Price
Total of C. Unpublished Options:			\$ -

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

E. Upfitter/Quote Number:

F. Delivery ETA:

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

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

I. Contract Price Adjustment:

J. Additional Delivery Charge 260 miles

K. Subtotal

L. Quantity Ordered 4 x **K** =

M. Trade in:

N. Coop Fee per purchase order

O. Total purchase price with coop fee (Prices and availability are subject to change without notice)

\$ 780.00
\$ 58,435.00
\$ 233,740.00
\$ 400.00
\$ 234,140.00

DISCLAIMER

PRICES AND AVAILABILITY CAN CHANGE AT ANY TIME WITHOUT FURTHER NOTICE DUE TO SUPPLY CHAIN CHALLENGES. REVERIFY PRICING BEFORE ISSUING A PURCHASE ORDER. FINAL PRICE IS NOT CONFIRMED UNTIL VEHICLE ORDER IS ACCEPTED BY THE MANUFACTURER. ACKNOWLEDGE BY EMAIL RECEIPT THAT THE PURCHASE ORDER WAS RECEIVED BY USA AUTOMOTIVE PARTNERS, LLC. (CALDWELL COUNTRY CHEVROLET, ROCKDALE COUNTRY FORD, CAMERON COUNTRY CHRYSLER)

ESTIMATE

Parkway Chevrolet, Inc.
25500 TX 249
Tomball, TX 77375

jforbes@parkwayfamily.com
+1 (281) 932-1726
Buy Board Contract 698-23, SAT
Contract 22-03-008-RR

City of Abaline

Bill to
City of Abaline

Ship to
City of Abaline

Estimate details
Estimate no.: 60120
Estimate date: 02/14/2024

#	Date	Product or service	SKU	Qty	Rate	Amount
1.		DDQGC 2024 Chevy Silverado PPV, 4WD	DDQGC	5	\$55,707.00	\$278,535.00
2.		Stock Upfit Push Bumper, Console, & Spotlamp	Stock Upfit	5	\$5,340.00	\$26,700.00
3.		DDQVGB 2024 Tahoe PPV 2WD	DDQVGB	1	\$57,820.00	\$57,820.00
4.		Stock Upfit Push Bumper, Console, & Spotlamp	Stock Upfit	1	\$5,340.00	\$5,340.00
Total					\$368,395.00	

City Council Meeting

03/14/2024





FY24 CO-OP PPV Pickups

- New Budget Item purchase for Marshals, and replacing units 3992, 4378, and 4379
- Units to be 2024 PPV Chevrolet Silverados
- Purchased through Reliable Chevrolet of Richardson, Texas.





FY24 CO-OP PPV Pickups





**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Robert Hanna, City Manager

FROM: Lesli Andrews, Director

SUBJECT: 9. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Awarding a Contract to King Consultants for the Demolition Specifications and Monitoring of the Current Recreation Centers *(Lesli Andrews)*

GENERAL INFORMATION

The City of Abilene completed a Recreation Feasibility Study in 2020. One of the recommendations was to replace Cesar Chavez Recreation Center and G. V. Daniels Recreation Center due to health and safety concerns as well as the buildings being at their end of life. The citizens of Abilene voted to pass a 2023 bond for development of two recreation centers replacing the existing Cesar Chavez and G.V. Daniels Recreation Centers. King Consultants will be developing the demolition plans and performing the demolition monitoring of the two current recreation centers. The demolition of the center will begin approximately six weeks prior to the start of the construction of that center.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

The funds for the demolition of the two current recreation centers were approved in the 2023 bond proposition for two new recreation centers.

STAFF RECOMMENDATION

Staff recommend approval of the King Consultants contract for the demolition specifications and monitoring of the two current recreation centers.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 3_14_2024 Resolution King Consulting Chavez and Daniels Rec Centers
2. King Consultants Rec Centers 3142024
3. Presentation - City and King Consultants Asbestos Abatement Chavez and Daniels Rec Centers

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH KING
CONSULTANTS ENVIRONMENTAL FOR THE DEMOLITION SPECIFICATIONS AND
MONITORING AT CESAR CHAVEZ AND G.V. DANIELS RECREATION CENTERS**

WHEREAS, the City of Abilene completed a Recreation Feasibility Study in 2020 that recommended replacement of Cesar Chavez and G.V. Daniels Recreation Centers; and

WHEREAS, the citizens of Abilene voted to pass a 2023 bond for development of two new recreation centers replacing existing Cesar Chavez and G.V. Daniels Recreation Centers; and

WHEREAS, the City seeks to contract with King Consultants Environmental to conduct the demolition specifications and monitoring for both recreation centers; and

WHEREAS, King Consultants Environmental is an authorized contractor through contract #230601 of The Inter-Local Purchasing System (TIPS) purchasing co-op, and competitive bidding is not required.

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 King Consultants Environmental for demolition specifications and monitoring at both Cesar Chavez and G.V. Daniels Recreation Centers in the amount of \$70,800.00.

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

ADOPTED this 14th day of March 2024.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney



PROFESSIONAL SERVICES CONTRACT (Not Architect or Engineer)

This Contract, dated the 14 day of March, 2024, is between the City of Abilene, a home rule municipal corporation of the State of Texas ("City"), and King Consultants Environmental ("Professional").

The City is engaged in demolition design and abatement monitoring and desires to engage the services of Professional, as an independent contractor and not as an employee, to assist in the project and to render his or her services on the terms and conditions provided in this Contract.

The Professional is a[n] qualified Environmental properly licensed/certified to practice in the State of Texas. Professional desires to render professional services as further described in Attachment A to the City on the terms and conditions provided in this Contract.

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

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

I. TERM

In consideration of the compensation stated in Paragraph II and further described in Attachment B., the Professional must provide all services as described in Attachment A, which is incorporated by reference for all purposes. The Professional must complete all services by design by the end of 2024 with abatement monitoring occurring when construction timeline is established.

II. PAYMENT

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

III. ASSIGNMENT

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

IV. STATUS OF PROFESSIONAL

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

V. AMENDMENT OR MODIFICATION

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

VI. OWNERSHIP OF DOCUMENTS AND MATERIALS

Ownership of Documents and Materials is according to Attachment C.

VII. NONDISCLOSURE

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

VIII. INDEMNITY

A. Definitions

For the purpose of this section the following definitions apply:

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

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

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

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

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

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

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

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

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

B. Indemnity

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

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

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

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

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

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

IX. INSURANCE

A. GENERAL REQUIREMENTS

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

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

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

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

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

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

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

B. ADDITIONAL REQUIREMENTS

The required liability insurances and their certificates must:

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

C. TYPES AND AMOUNTS OF INSURANCE

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

	<u>Type</u>	<u>Amount</u>
X1.	Workers' Compensation Employer's Liability	Statutory \$100,000 per occurrence
X2.	Commercial (Public) Liability including, but not limited to: • Premises/Operations • Independent Contractors • Products/Completed Operations • Contractual Liability (insuring above indemnity) and where the exposures exist • Explosion Collapse and Underground	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
X3.	Business Automobile Liability to include coverage for: • Owned/Leased Autos • Non-Owned Autos • Hired Cars	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
___4.	Professional Liability	\$500,000 combined single limit (per occurrence)
___5.	See Addendum for Special Coverages and/or revisions	

___6. No Insurance Required

X. VENUE, CHOICE OF LAW, AND INTERPRETATION

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

XI. TERMINATION

This Contract may be terminated at any time upon thirty (30) days written notice by City to Professional. In the event of termination, Professional will be compensated for work satisfactorily performed before the termination date. For any funding beyond the current fiscal year, the City reserves the right to immediately terminate this Contract by giving written notice, without liability to the City, in the event that funding for this Contract is discontinued or is no longer available. The City's fiscal year runs from October 1st to September 30th.

If, through any cause, the Professional fails to fulfill his obligations under this Contract, or if the Professional violates any of the agreements of this Contract, the City has the right to terminate the Contract by giving five (5) days written notice to the Professional. The Professional will be compensated for work satisfactorily performed before the termination date.

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

XII. PROJECT REPRESENTATION

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

XIII. NOTICE

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

City – ATTN:
Lesli Andrews, City of Abilene
633 Walnut
Abilene, TX 79601

Professional – ATTN:
Benji Rumsey
2032 East Hwy 80
Abilene, TX 79601

XIV. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES

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

XV. NO INDEBTEDNESS

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

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

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

XVI. EQUAL EMPLOYMENT OPPORTUNITY

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

XVII. VERIFICATION OF EMPLOYMENT ELIGIBILITY

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

XVIII. MINORITY AND WOMEN BUSINESS ENTERPRISES

The City hereby gives notice that Minority and Women Business Enterprises will be afforded equal opportunities to submit bids for this Contract and will not be discriminated against on the grounds of race, ethnicity, color, sex, religion, or national origin in awarding the contract. Technical assistance is available to Minority and Women Business Enterprises through the Texas Tech University Small Business Development Center, 749 Gateway St., #301, Building C, Abilene, Texas, 79602, 325-670-0300.

XIX. SALES TAX

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

XX. LEGAL CONSTRUCTION

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

XXII. STATUTORY VERIFICATIONS

Verification Against Boycott of Israel Provision. In accordance with Chapter 2271 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. The term "company" does not include a sole proprietorship. Chapter 2271 of the Texas

Government Code only applies to an agreement that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000.00 or more that is paid wholly or partly from public funds of the governmental entity.

Verification Against Discrimination of Firearm or Ammunition Industries Provision. Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the company employs at least 10 full-time employees, and this agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company verifies that: (1) the company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the company will not discriminate during the term of the Agreement against a firearm entity or firearm trade association. The term “company” does not include a sole proprietorship. This provision does not apply to a governmental entity that contracts with a sole-source provider, or does not receive any bids from a company that is able to provide the written verification required.

Verification Against Boycott of Energy Companies Provision. Pursuant to Texas Government Code Chapter 2276, unless otherwise exempt, if the company employs at least 10 full-time employees, and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company represents that: (1) the company does not boycott energy companies; and (2) the company will not boycott energy companies during the term of this Agreement. The term “company” does not include a sole proprietorship. This provision does not apply to a governmental entity that determines the requirements are inconsistent with the governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

Prohibition on Contracts with Certain Companies Provision. In accordance with Section 2252.152 of the Texas Government Code, the company verifies that company is not on a list maintained by the State Comptroller’s office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

Unless the Professional is not subject to a provision above, the signatory executing this Agreement on behalf of the Professional verifies that the Professional: (1) does not boycott Israel and will not boycott Israel during the term of this Agreement; (2) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association; (3) does not boycott energy companies, and will not boycott energy companies during the term of this Agreement; and (4) is not on a list maintained by the State Comptroller’s office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

XXII. SECTIONS AND OTHER HEADINGS

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

XXIII. COUNTERPARTS

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

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

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

CITY OF ABILENE

PROFESSIONAL

By:

By:  Benji Rumsey

Title: City Manager

Title: VP/Owner

Address: 1205 E.46th Street Lubbock, Tx
79404

Phone Number: 325-669-8487

Federal Tax ID#: 75-2288552

ATTEST:

ATTEST: (if corporation)

City Secretary

Corporation's Secretary

APPROVED:

Corporate Seal (if available)

By: _____
City Attorney

ATTACHMENT A

Scope of Services

Develop the demolition specifications for G.V. Daniels and Cesar Chavez Recreation Centers. Perform abatement monitoring for G.V. Daniels and Cesar Chavez Recreation Centers. See attached for details.

ATTACHMENT B
PAYMENT SCHEDULE
PARTIES TO INITIAL OPTION(S) SELECTED

OPTION 1 ____

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

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

OPTION 2 ____

Payment is in a lump sum amount of \$Click or tap here to enter text. upon completion of the work and written acceptance by the City.

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

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

OPTION 3 __X__

Payment is a fixed fee amount of \$70,800.00 payable per pay app upon completion of the work and written acceptance by the City.

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

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

ATTACHMENT C

OWNERSHIP OF DOCUMENTS AND MATERIALS

Parties to initial option chosen

(Option 1) X

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

(Option 2) ____

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

ATTACHMENT D

STATE MANDATED WORKERS' COMPENSATION INSURANCE LANGUAGE

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

a. Definitions

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

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

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

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

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

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

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

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



TIPS# 230601		Date	2/26/2024
Client	City of Abilene		
Contact	Lesli Andrews	Title:	
Address	633 Walnut Street	City/State	Abilene, Texas 79601
Phone #	325-725-9282	Email	Lesli.andrews@abilenetx.gov
Site Name	G.V. Daniels Rec. Center		
Site Address	541 N. 8 th	City/State	Abilene, Texas 79602
Cost Estimation			\$ 25,000.00
Scope of Work			
I. PROJECT DESIGN/SPECIFICATIONS			
- Utilize licensed/accredited individuals to design asbestos abatement specifications. - Prepare drawings of project areas for inclusion in specifications. - Conduct site reviews/inspection as necessary to design project and prepare specifications. - Prepare bid documents for the project.			
II. PROJECT ADMINISTRATION/COMPLIANCE MONITORING			
- Act as Owner's full-time project representative throughout the abatement project and coordinate project with all staff. - Conduct pre-construction conference with selected Contractor prior to beginning work. - Utilize licensed/accredited individuals to conduct full-time monitoring of the activities of the Contractor throughout the project. - Coordinate activities of Contractor, General Contractor, Construction Management Team, air monitoring technicians, etc., required for the project. - Help insure, compliance with all state and Federal laws regulating asbestos abatement/demolition projects. - Document project activities for Owner's records. - Review, verify and approve Applications for payment from the Contractor prior to payment by Owner. - Evaluate all bids received from Abatement Contractors. - Review Abatement Contractor's pre and post job submittals. - Review required ten (10) day notification			
III. AIR MONITORING ACTIVITIES			
- Utilize NIOSH-582 trained and licensed/accredited individuals to collect air samples. - Complete detailed daily air sampling analytical sheet showing location, volume, and other pertinent data for each air sample. - Collection and archiving of PCM baseline samples for project documentation and contractor's reference prior to beginning project.			
Collection and analysis by a licensed/accredited laboratory of PCM area samples included with full-time project administration.			



• Collection of PCM final clearance samples as required by all regulatory agencies. • Review and/or interpretation of analysis results. • Collection and preparation of appropriate documentation for Owner's records.	
Break Down of Estimated Cost	
• Asbestos Specifications • Asbestos Project Managing and Air Monitoring (850.00 per day) • Demolition Specifications	• 1,250.00 • 850.00 per day • 2,150.00
The above services include \$1,000,000 per claim/\$1,000,000 aggregate Professional Liability Insurance (with pollution liability coverage) on a "claims made" basis, as well as \$1,000,000 General Liability Insurance for each project. We trust this estimate answers all the questions you might have regarding our activities on this project. If you should have any questions or require additional information, please contact me at <u>325-669-8487</u>.	
Authorization Signature	

Thank You,

Benji Rumsey
 King Consultants
 2032 East Hwy 80
 Abilene, Texas 79601



TIPS# 230601		Date	2/26/2024
Client	City of Abilene		
Contact	Lesli Andrews	Title:	
Address	633 Walnut Street	City/State	Abilene, Texas 79601
Phone #	325-725-9282	Email	Lesli.andrews@abilenetx.gov
Site Name	Sear Park Chavez		
Site Address	2250 Ambler	City/State	Abilene, Texas 79602
Cost Estimation			\$ 45,800.00

Scope of Work	
I.	PROJECT DESIGN/SPECIFICATIONS - Utilize licensed/accredited individuals to design asbestos abatement specifications. - Prepare drawings of project areas for inclusion in specifications. - Conduct site reviews/inspection as necessary to design project and prepare specifications. - Prepare bid documents for the project.
II.	PROJECT ADMINISTRATION/COMPLIANCE MONITORING - Act as Owner's full-time project representative throughout the abatement project and coordinate project with all staff. - Conduct pre-construction conference with selected Contractor prior to beginning work. - Utilize licensed/accredited individuals to conduct full-time monitoring of the activities of the Contractor throughout the project. - Coordinate activities of Contractor, General Contractor, Construction Management Team, air monitoring technicians, etc., required for the project. - Help insure, compliance with all state and Federal laws regulating asbestos abatement/demolition projects. - Document project activities for Owner's records. - Review, verify and approve Applications for payment from the Contractor prior to payment by Owner. - Evaluate all bids received from Abatement Contractors. - Review Abatement Contractor's pre and post job submittals. - Review required ten (10) day notification
III.	AIR MONITORING ACTIVITIES - Utilize NIOSH-582 trained and licensed/accredited individuals to collect air samples. - Complete detailed daily air sampling analytical sheet showing location, volume, and other pertinent data for each air sample. - Collection and archiving of PCM baseline samples for project documentation and contractor's reference prior to beginning project. - Collection and analysis by a licensed/accredited laboratory of PCM area samples included with full-time project administration.



• Collection of PCM final clearance samples as required by all regulatory agencies. • Review and/or interpretation of analysis results. • Collection and preparation of appropriate documentation for Owner's records.	
Break Down of Estimated Cost	
• Asbestos Abatement Specifications • Mercury Abatement Specifications • Mercury Project Managing and Air Monitoring (1500.00 per day) • Asbestos Project Managing and Air Monitoring (850.00 per day) • Demolition Specifications	• 1,250.00 • 2,150.00 • 1,500.00 per day • 850.00 per day • 2,150.00
The above services include \$1,000,000 per claim/\$1,000,000 aggregate Professional Liability Insurance (<u>with</u> pollution liability coverage) on a "claims made" basis, as well as \$1,000,000 General Liability Insurance for each project. We trust this estimate answers all the questions you might have regarding our activities on this project. If you should have any questions or require additional information, please contact me at <u>325-669-8487</u>.	
Authorization Signature	

Thank You,

Benji Rumsey
 King Consultants
 2032 East Hwy 80
 Abilene, Texas 79601

Enter Into Contract with King Consultants for Cesar Chavez and G.V. Daniels Recreation Centers

March 14, 2024





General Information:

- The City of Abilene completed a Recreation Feasibility Study in 2020 that recommended replacement of Cesar Chavez and G.V. Daniels Recreation Centers.
- The citizens of Abilene voted to pass a 2023 bond for development of two new recreation centers replacing existing Cesar Chavez and G.V. Daniels Recreation Centers.
- King Consultants Environmental will provide demolition specifications and monitoring of Cesar Chavez and G.V. Daniels Recreation Centers.
- King Consultants Environmental is an authorized contractor through contract #230601 of The Inter-Local Purchasing System (TIPS) purchasing co-op, and competitive bidding is not required.
- Contract amount of \$70,800.
- Cost to be funded from 2023 bond proposition for new recreation centers.
- Demolition will occur approximately 6 weeks prior to the construction of each recreation center.





**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Robert Hanna, City Manager

FROM: Lesli Andrews, Director

SUBJECT: 10. Resolution: Receive a Report, Hold a Discussion and Take Action on Authorizing a Contract with Parkhill for the Design of Two Recreation Centers (Lesli Andrews)

GENERAL INFORMATION

The City of Abilene completed a Recreation Feasibility Study in 2020. One of the recommendations was to replace Cesar Chavez Recreation Center and G. V. Daniels Recreation Center due to health and safety concerns as well as the buildings being at their end of life. The citizens of Abilene voted to pass a 2023 bond for development of two recreation centers replacing the existing Cesar Chavez and G.V. Daniels Recreation Centers. Parkhill was selected for the design of the two recreation centers.

The design is estimated to be completed in 9-12 months.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

The funds for the design were approved in the 2023 bond proposition for two new recreation centers.

STAFF RECOMMENDATION

Staff recommend approval of the Parkhill contract for the design of two new recreation centers.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 2024 Resolution Parkhill - Design Rec Centers
2. B101-2017-Agreement_Between_Owner_and_Architect(Parkhill_Signed)
3. 2024 Presentation Parkhill Contract Design Rec Centers

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PARKHILL
FOR THE DESIGN AND DEVELOPMENT OF TWO RECREATION CENTERS.**

WHEREAS, the citizens of Abilene voted to pass a 2023 bond for development of two recreation centers to replace existing Cesar Chavez and GV Daniels Recreation Centers; and

WHEREAS, in January of 2024 Parkhill was selected to design and develop two recreation centers; and

WHEREAS, the compensation to be paid Parkhill is as follows:

Task 1, Pre-Design Services

Topographic Survey, lump sum of \$35,000, plus reimbursable expenses,
Geotechnical Survey, supplemental service, lump sum of \$18,150, plus
reimbursable expenses,
Programming, lump sum of \$5,400, plus reimbursable expenses,
Concepting, lump sum of \$25,000, plus reimbursable expenses.

Task 2, Design Services

Basic Services, Structural Engineering, Architecture, Interior Design, MPE
Engineering, Schematic Design, Design Development, Construction Documents,
and Procurement Phases, for Building 1 and Building 2 as set forth in the
Contract.

Task 3, Construction Phase Services

Construction Phase services on an hourly basis using the Architect's standard
hourly rates set forth in the Contract, plus reimbursable expenses; and

WHEREAS, the estimated cost of construction of the two facilities is \$23,000,000.00.

**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 Parkhill for design and development of two recreation centers.

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

ADOPTED this 14th day of March 2024.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney



AIA® Document B101® – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Fourteenth day of March in the year Two Thousand Twenty-Four
(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 St
Abilene, TX 79601

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

Parkhill
340 Beech St
Abilene, Texas 79601
325.673.8178 phone

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

2023 Bond City of Abilene Recreation Centers:
Project A
G.V. Daniels Recreation Center
541 N 8th St.
Abilene, TX 79601

Project B
Cesar Chavez Recreation Center
2250 Ambler Ave.
Abilene, TX 79603

The Owner and Architect agree as follows.

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.)

Refer to Attachment 1

§ 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.)

Refer to Attachment 1

Project A

G.V. Daniels Recreation Center

541 N 8th St., Abilene, TX 79601

Project B

Cesar Chavez Recreation Center

2250 Ambler Ave., Abilene, TX 79603

§ 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.)

Refer to Attachment 1.

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

.1 Design phase milestone dates, if any:

TBD, Project to be Designed and Bid in 2024.

.2 Construction commencement date:

January 2025

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

§ 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.)

Construction Manager at Risk

§ 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.)

None

§ 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.)

None

§ 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.)

Lesli Andrews
Director of Parks and Recreation
City of Abilene
633 Walnut St.
Abilene, TX 79601
325.676.6220 phone

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

- .1** Other, if any:
(List any other consultants and contractors retained by the Owner.)

Asbestos removal
King Consultants DBA Construction Consulting-3

- .2** Other, if any:
(List any other consultants and contractors retained by the Owner.)

Building Demolition
Contractor to be determined by Owner.

- .3** Other, if any:
(List any other consultants and contractors retained by the Owner.)

Playground Design and Procurement
Contractor to be determined by Owner.

- .4** Other, if any:
(List any other consultants and contractors retained by the Owner.)

Security Evaluation and Planning
Verkada

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

Collin T Zalesak, AIA
340 Beech St
Abilene, TX 79601

§ 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 Engineer:

Parkhill
4222 85th St
Lubbock, TX 79423

- .2** Mechanical Engineer:

Parkhill
340 Beech St
Abilene TX 79601

.3 Electrical Engineer:

Parkhill
4222 85th St
Lubbock, TX 79423

§ 1.1.11.2 Consultants retained under Supplemental Services:

.1 Civil Engineer:

Parkhill
340 Beech St
Abilene TX 79601

.2 Landscape Architect:

Parkhill
4222 85th St
Lubbock, TX 79423

.3 Geotechnical Engineer:

EHT
402 Cedar St
Abilene, TX 79601

.4 Professional Surveyor:

Parkhill
4222 85th St
Lubbock, TX 79423

§ 1.1.12 Accelerated Project Delivery Advisory and Acknowledgement: In the event the Owner chooses to take advantage of the time and cost savings benefits of an accelerated project delivery process, the Owner acknowledges that it has been advised that the project will be affected by such a process. Some of the effects of an accelerated project delivery process include the necessity of making early or premature commitments to design decisions and the issuance of incomplete and uncoordinated construction documents for permitting, bidding and construction purposes in order to maintain a fast track, phased bid packages, or accelerated schedule, or the actual progress of the work of the Contractor. The Owner acknowledges that it has been advised that the Project, if developed, on an accelerated project delivery basis, may require associated coordination, design and redesign of part of the Project after construction documents are issued and the construction contract is executed, and may require removal of work in place, all of which events may cause an increase in the Cost of the Work and/or an extension of the Project construction schedule. Therefore, Owner acknowledges and understands that change orders arising from the accelerated project delivery process should be expected as part of and related to this process and the Owner understands the necessity of including sufficient contingencies in the budget for the Cost of the work to account for additional costs and construction schedule extensions arising from this process and agrees to include such contingencies in the Project construction budget commensurate with industry standards for projects of similar scope and quality of this Project.

§ 1.1.13 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

Init.

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 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, 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.

§ 1.3.1 DELETED

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 insurance listed in Exhibit A. If the Owner requires any other insurance types, coverage or limits from those, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 **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.

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

(Paragraphs deleted)

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 shall submit for the Owner's approval 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. Governmental authorities may issue and/or revised interpretations of applicable codes, statutes and ordinances and other applicable governmental agency requirements during the term of this agreement. The timing of which are beyond the control of the Architect and which may cause Owner to incur additional unforeseen project costs and/or delays. Architect shall be not responsible for such unforeseen costs and/or delays.

§ 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 Opinion of Probable 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 Opinion of Probable 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 Opinion of Probable 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 that are in effect at time of completion of the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in determining procurement information that describes the time, place, and conditions of receiving bids or proposals. The Architect shall also compile a Project Manual that includes the Owner's Conditions of the Contract for Construction, the Owner's form of agreement between the Owner and Contractor and Specifications and may include bidding or proposal requirements and sample forms. The Architect shall coordinate any Owner provided construction, procurement, and contractual requirements (usually referred to as "front-end" documents) for inclusion into the Project Manual.

§ 3.4.4 The Architect shall update the Opinion of Probable 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 Opinion of Probable 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, the Architect shall , 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, the Architect shall, 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. Work as used herein shall mean those elements of the Project within Architect's scope of service. However, the Architect shall not be required to make exhaustive or continuous on-site observations 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. Also at these site visits will be discussed the project schedule and progress of the Project. The Architect will meet with the Contractor during its site visits to answer any questions or discuss any problems on the Project. Extended Contract Administration Services, whether by extension of contract time as stipulated in Owner/Contractor Agreement or by additional site observation caused by delays in the project through no fault of the Architect, its representative, or its consultants, shall be provided by the Architect as Additional Services in accordance with Paragraphs 11.2, 11.3 and 11.4.

§ 3.6.2.2 The Architect will recommend to the Owner to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will recommend to the Owner 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 a recommendation of the Architect nor a decision made in good faith either to exercise or not to exercise such recommendation 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 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, 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 rendered in good faith. The Architect's interpretations 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 interpretations 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 observations 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 review 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, 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. The Architect shall not be required to review submittals that are not requested by the Contract Documents.

§ 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.

§ 3.6.5.3 The Owner recognizes and expects that certain Change Orders may be required to be issued as the result, in whole or in part, of the imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Contract Documents or in other services performed by Architect under this Agreement.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct site observations 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 observation 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 observations 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 (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	Owner
§ 4.1.1.2 Multiple preliminary designs	Architect
§ 4.1.1.3 Measured drawings	Not provided
§ 4.1.1.4 Existing facilities surveys	Not Provided
§ 4.1.1.5 Site evaluation and planning	Not Provided
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	Architect
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	Architect
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 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

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 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	Architect
§ 4.1.1.21 Telecommunications/data design	Owner
§ 4.1.1.22 Security evaluation and planning	Owner
§ 4.1.1.23 Commissioning	Not Provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Architect
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Land Survey	Not Provided
§ 4.1.1.31 Geotechnical Engineering	Architect
§ 4.1.1.32 Hazardous Materials & Building Demolition	Owner
§ 4.1.1.33 Building Acoustical Design	Not Provided
§ 4.1.1.34 Food Service Equipment and Kitchen Design	Not Provided
§ 4.1.1.35 Input of Existing Facilities for Building Information Model	Not Provided
§ 4.1.1.36 Presentation Materials, Renderings and Animation	Architect
§ 4.1.1.37 Public Address Systems, Sound Reinforcement System, Video Systems, Theatrical Lighting	Owner
§ 4.1.1.38 Site Entitlement Services	Not Provided
§ 4.1.1.39 Site Feasibility Study	Not Provided
§ 4.1.1.40 Other Supplemental Services	Not Provided

(Row deleted)

§ 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 in the table below.)

Supplemental Services	Scope
§ 4.1.1.1 Programming	As part of Basic Services, Architect will assist Owner in jointly developing and refining Owner's program.
§ 4.1.1.2 Multiple Preliminary Designs	As part of Basic Services, the preparation of two (2) floor plan options, for the Owner's selection. The schemes will identify representations of architectural systems, including floor, walls, ceilings/ roofs, doors windows, and specialties of the facility. It will not be a detailed floor plan showing all systems. After the Owner selects the preferred option, Architect will develop one in-depth, finishes submittal for the Owner's approval, to be used at both building locations. A maximum of two (2) meetings for the development of the final scheme is included in this

	Agreement. Additional meetings, if required, will be Additional Services and compensated in accordance with Section 11.3. After approval of the color scheme, a digital presentation board will be prepared in PDF format for use by the Owner. As an optional Additional Service plus reimbursable expenses, a product sample presentation board of the approved color scheme can be prepared for use by the Owner.
§ 4.1.1.3 Measured Drawings	
§ 4.1.1.4 Existing Facilities Survey	
§ 4.1.1.5 Site evaluation and planning	
§ 4.1.1.6 Building Information Model management responsibilities	
§ 4.1.1.7 Development of Building Information Models for post construction use	
§ 4.1.1.8 Civil Engineering	As part of Supplemental Services, Architect to provide on-site development services including modification to parking lots, sidewalks, drainage and vehicle circulation. Daniels: Includes Water supply and gravity sewer line relocation within property limits, excludes sewer line design outside of property and/ or by mechanical means, excludes coordination with TXDOT. Chavez: Excludes coordination with FEMA permitting and floodway analysis. Supplemental Services plus reimbursable expenses shall include extension of off-site utilities and/or roads, if any.
§ 4.1.1.9 Landscape Design	As part of Supplemental Services, Architect to provide planting and irrigation design services as Basic Service. Includes 2 landscape designs one for each site, excludes playground design.
§ 4.1.1.10 Architectural Interior Design	The Architect will include in its Basic Services, the preparation of two (2) color schemes, for the Owner's selection. The schemes will identify basic floor, wall and ceiling colors, finishes and textures; it will not be a detailed selection of all materials. After a selection of the schematic scheme by the Owner, Architect will proceed to develop one in-depth color, finish and texture submittal for the Owner's approval, to be used at both building locations. A maximum of two (2) meetings for development of the final scheme is included in this Agreement. Additional meetings, if required, will be Additional Services and compensated in accordance with Section 11.3. After approval of the color scheme, a digital presentation board will be prepared in PDF format for use by the Owner. As an optional Additional Service plus reimbursable expenses, a product sample presentation board of the approved color scheme can be prepared for use by the Owner.
§ 4.1.1.11 Value Analysis	Architect to provide services indicated in sections 3.2.5.1 as part of Basic Services. Efforts beyond these sections are Supplemental Services plus reimbursable expenses.
§ 4.1.1.12 Detailed Cost Estimating beyond that required in Section 6.3	
§ 4.1.1.13 On-site Project Representation	As part of Basic Services, Architect to provide services indicated in Sections 3.6.2.1. Site visits beyond those

	indicated in section 3.6.2.1 and/or fulltime on-site project representation shall be a Supplemental Service plus reimbursable expenses
§ 4.1.1.14	Conformed documents for construction
§ 4.1.1.15	As-designed record drawings
§ 4.1.1.16	As-constructed Record Drawings
§ 4.1.1.17	Post-occupancy evaluation
§ 4.1.1.18	Facility support services
§ 4.1.1.19	Tenant-related services
§ 4.1.1.20	Coordination of Owner's Consultants
§ 4.1.1.21	Telecommunications/data design
§ 4.1.1.22	Security Evaluation and Planning
§ 4.1.1.23	Commissioning
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3
§ 4.1.1.25	Fast-track design services
§ 4.1.1.26	Multiple Bid Packages
§ 4.1.1.27	Historic preservation
§ 4.1.1.28	Furniture, Furnishings and Equipment Design
	As part of Supplemental Services, the Architect will provide a basic furniture placement based upon Owner's written direction that will be included in Construction Documents. A maximum of three (3) meetings for development of the final scheme is included in this Agreement. Architect will validate programming and procurement process and prepare up to two (2) total furniture schemes, for the Owner's selection. The schemes will identify the basic style direction for consideration. After a selection of the schematic scheme by the Owner, Architect will proceed to develop one in-depth submittal along with fabric and finish selections for the Owner's approval. After approval of the fabrics and finishes, a digital document for specification of furniture will be provided for competitive bidding or invitation to quote by furniture dealer(s) of the Owner's choice. Architect will review final quote(s) with Owner and assist with dealer questions during procurement process. Additionally, Architect will perform a walk through with dealer and owner after the complete install of furniture and provide a punchlist document. Additional meetings, if required, will be Additional Services and compensated in accordance with Section 11.3 This service expressly excludes: • Architect reviewed alternates provided by dealer

Init.

AIA Document B101 – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 16:25:24 ET on 02/28/2024 under Order No.4104246981 which expires on 11/18/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(198557354)

	• Move management • Purchasing, Procurement and Installation of FF&E
§ 4.1.1.29 Other services provided by specialty Consultants	
§ 4.1.1.30 Land Survey	
§ 4.1.1.31 Geotechnical Engineering	Provided by the Architect, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating school conditions, with written reports and appropriate recommendations. Geotechnical Engineering will be a Supplemental Services .
§ 4.1.1.32 Hazardous Materials & Building Demolition	Asbestos testing will be completed by Owner. Owner will coordinate and contract out demolition of existing buildings outside of this contract.
§ 4.1.1.33 Acoustical Design	
§ 4.1.1.34 Food Service Equipment and Kitchen Design	As part of Basic Services, Architect to coordinate the Owner's provided requirements into the Work. Architect to provide design for typical residential kitchens. The kitchen is expected to include residential-type appliances; Refrigerator, Microwave, Oven and Range, hood and sink(s) to meet health department requirements. Exclusions include; walk-in-coolers, walk-in freezers, fryers, and other commercial-grade equipment. Owner will be responsible for procuring equipment once selected.
§ 4.1.1.35 Input of Existing Facilities For Building Information Model	
§ 4.1.1.36 Presentation Materials	As part of Basic Services, Architect to provide a maximum of 4 conceptual renders (non-photo realistic). Renders to be integrated into the project when appropriate with the status of the design phase and with Owner direction. Presentation materials renderings beyond those provided in Basic Services (3D images showing massing/proportion in a conceptual / non-photo realistic or photorealistic format) are Supplemental Services and may include: "fly through" animations, video presentation, exterior and interior renderings (photo realistic), printed brochures. The cost for these services will be determined based on desired level of presentation materials and will be a Supplemental Service plus reimbursable expenses .
§ 4.1.1.37 Public Address Systems, Sound Reinforcement System, Video Systems, Theatrical Lighting	As part of Basic Services, Architect to coordinate the Owner's provided requirements into the Work. Should Owner require more experience than that possessed by the Architect, then a security consultant will be hired as an Additional Service plus reimbursable expenses .
§ 4.1.1.38 Site Entitlement Services	
§ 4.1.1.39 Site Feasibility Study	
§ 4.1.1.40 Other Supplemental Services	

Intt.

§ 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.)

Refer to table 4.1.2.

§ 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 Failure of the Contractor to perform his work in accordance with his initial time schedule (with adjustments due to weather delays) which causes the Architect to provide Contract Administration Services beyond the initial time schedule prepared by the Contractor;
- .11 Failure of the Contractor to complete or correct the Work on the list of items attached to the Certificate of Substantial Completion within the Time indicated on the Certificate of Substantial Completion, causing the Architect to extend his service beyond such Time;
- .12 Project phasing during the construction period which causes an extended construction time schedule that was not known at the time the Agreement was negotiated;
- .13 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .14 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; or
- .6 Additional site visits and review made necessary by the fault of the Contractor, or by defects and deficiencies in the Work.

§ 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 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Two (2) visits to the site by the Architect during construction, per month.
- .3 Two (2) site observations 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) site observations 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 Forty-Eight (48) 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 Deleted

§ 5.5 Deleted

§ 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 or Supplemental Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner and Architect must agree to the reasonableness of these services. 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 including Special Instructions and Inspections mandated by building codes, such as structural, mechanical, and chemical tests, tests for air and water pollution, tests for hazardous materials and flood elevation certificates required for building permits.

§ 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, observes or otherwise acquires knowledge of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service. However, Owner shall have no obligation or duty to investigate whether such faults or defects exist.

§ 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.

§ 5.16 The Owner shall provide to the Architect any Owner required (1) procurement information and forms; (2) form of agreement between the Owner and Contractor; (3) Conditions of the Contract for Construction (General, Supplementary, and other Conditions); (4) sample forms; and (5) contractual, procurement and construction requirements (usually referred to as "front end" documents) for inclusion into the Project Manual.

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, surveys, geotechnical reports, construction material testing, mechanical testing and balancing, financing, or unused 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 Opinion of Probable Cost of the Work and updated Opinion of Probable 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 Opinion of Probable Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing the Opinion of Probable 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 Opinion of Probable Cost of the Work to meet the Owner's budget. The Architect's Opinion of Probable 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 Opinion of Probable 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.

Init.

§ 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, occupying, 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 indemnify 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, using a mutually agreed upon mediator. 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.

§ 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

(Paragraphs deleted)

litigation in a court of competent jurisdiction

(Paragraphs deleted)

§ 8.3 DELETED

(Paragraphs deleted)

§ 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. 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. 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 and Reimbursable Expenses incurred prior to termination.

§ 9.7

(Paragraphs deleted)

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

§ 9.8 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.

(Paragraph deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, Taylor County, Abilene, Texas.

§ 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. In the event the Architect, the Architect's consultants, or any other party encounters any hazardous toxic materials, or should it become known to the Architect that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of the Architect's services, the Architect may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the Owner retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations. The Owner agrees, notwithstanding any other provisions of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the Architect, its officers, partners, employees and consultants (collectively, Architect) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract of warranty, tort including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of the Architect.

§ 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. 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 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.

§ 10.10 The Owner and the Architect understand, acknowledge and agree that the Architect shall be acting as an independent contractor at all times during the performance of this Agreement and no provisions or obligation expressed or implied in this Agreement shall create an employment, agency, or fiduciary relationship.

ARTICLE 11 COMPENSATION

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

Task 1 | Pre-Design Services

Topographic Survey, lump sum of \$35,000, plus reimbursable expenses.

Geotechnical Survey, supplemental service, Lump sum of \$18,150, plus reimbursable expenses.

Programming, lump sum of \$5,400, plus reimbursable expenses.

Concepting, lump sum of \$25,000, plus reimbursable expenses.

Task 2 | Design Services

Basic Services; Structural Engineering, Architecture, Interior Design, MPE Engineering, as defined in 4.1.

Refer to Attachment 2, Task 2, Design Services, Basic Services for the percentage of the Cost of Work for Schematic Design, Design Development, Construction Documents and Procurement Phases, for Building 1 and Building 2.

Task 3 | Construction Phase Services

(Paragraph deleted)

Construction Phase services on an hourly basis using the Architect's attached standard hourly rates in Exhibit B "Parkhill Hourly Rate Schedule", plus Reimbursable Expenses.

§ 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.)

Civil Engineering, lump sum of \$110,528, plus reimbursable expenses.

Landscape Architecture, lump sum of \$54,258, plus reimbursable expenses.

Furniture, Finishings and Equipment Design, lump sum of \$22,000, plus reimbursable expenses.

§ 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.)

Hourly per Exhibit B "Parkhill Hourly Rate Schedule" attached hereto, plus Reimbursable Expenses.

§ 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

(Paragraphs deleted)

ten percent (10%).

§ 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	Twenty-Five	percent (	25	%)
Design Development Phase	Thirty-Eight	percent (	38	%)
Construction Documents Phase	Thirty-Two	percent (	32	%)
Procurement Phase	Five	percent (	5	%)
Construction Phase	Hourly		Hourly	
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 shall be calculated by multiplying the percentages identified in this Article by the Architect's most recent Opinion of Probable Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work during the design and procurement phases. The Cost of the Work used to determine the compensation for Basic Services will be adjusted at the end of the Procurement Phase to reflect the actual cost established in the Owner-Contractor Agreement and then again at the completion of the Construction Phase established with the final Change Order.

§ 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.)*

See attached Exhibit B.

(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 Local 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 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;

(Paragraph deleted)

- .7 All taxes imposed now or in the future that are levied on professional services and on reimbursable expenses;

(Paragraph deleted)

- .8 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .9 Color plots and mountings for presentations requested by Owner. Color plots and mountings required of the Architect to convey design ideas to the Owner are not reimbursable.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10.0%) of the expenses incurred.

§ 11.9 Architect's Insurance. If the Owner requires additional types and limits of insurance coverage provided by Exhibit A in Section 2.5, 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 Owner's requirements, and for which the Owner shall reimburse the Architect.)

None

§ 11.10 Payments to the Architect

§ 11.10.1 Deleted

§ 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 (\$) 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

(Paragraphs deleted)

Payments are due and payable pursuant to Texas Prompt Payment Act, Texas Government Code, 2251

§ 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.)

§12.1.1 Accessibility – Texas Accessibility Standard (TAS)

The Owner acknowledges that the requirements of the Americans with Disabilities Act (ADA), Texas Accessibility Standards (TAS) for projects in the State of Texas, and other federal, state and local accessibility laws, rules, codes, ordinances, and regulations will be subject to various and possibly contradictory interpretations. The Owner further acknowledges that the ADA is a Civil Rights law and not a building code, and does not have prescriptive language. The Architect, therefore, will use its reasonable professional efforts and judgment to interpret applicable accessibility requirements in effect as of the date of the execution of this Agreement, and as they apply to the Project. The Architect, however, cannot and does not warrant or guarantee that the Owner's Project will comply with all interpretations of the accessibility requirements and/or the requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project.

§12.1.2 All projects in the State of Texas must be submitted to the Texas Department of Licensing and Regulations (TDLR) – Elimination of Architectural Barriers (EAB) Division for plan review for compliance with TAS requirements. The Architect will include in the design of the Project all changes that are the result of the TDLR plan review. After construction of the project TDLR requires an inspection of the project for compliance confirmation. However, the Architect cannot and does not warrant or guarantee that different rules and or interpretation may be applied to the Owner's Project at the time of the final TDLR inspection. Compliance with changes required by the TDLR final inspection that were not mentioned in the TDLR plan review will be additional services. Architect's plan review and inspection basis of compensation will be time and materials unless otherwise specified.

§12.2.1 Delivery of Electronic Files

In accepting and utilizing any form of electronic media generated and furnished by the Architect, the Owner agrees that all such electronic files are Instruments of Service of the Architect. The Owner is aware that differences may exist between the electronic files delivered and the printed hard-copy Contract Documents. In the event of a conflict between the original signed Contract Documents prepared by the Architect and electronic files, the original signed and sealed hard-copy Contract Documents shall govern.

§12.2.2 Electronic files created by the Architect through the application of software licensed for the sole and exclusive use by the Architect will be furnished to the Owner in read-only format. The Owner is responsible to obtain and maintain software licenses as appropriate for the use of electronic files provided by the Architect.

§12.2.3 Under no circumstances shall delivery of electronic files for use by the Owner be deemed a sale by the Architect, and the Architect makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Architect be liable for indirect or consequential damages as a result of the Owner's use or reuse of the electronic files.

§12.3 Delays

§12.3.1 The Owner agrees that the Architect is not responsible for damages arising directly or indirectly from any delays for causes beyond the Architect's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in timely manner; failure of performance by the Owner or the Owner's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

§12.3.2 In addition, if the delays resulting from any such causes increase the cost or time required by the Architect to perform its services in an orderly and efficient manner, the Architect shall be entitled to a reasonable adjustment in schedule and compensation.

§12.4 Merger: Waiver. This Agreement constitutes the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations and/or agreements, written or oral. One or more waiver of any term, condition or other provision of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provisions.

§12.5 Third Party Beneficiaries. 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 the Architect. The Architect's services under this Agreement are being performed solely for the Owner's benefit, and no other party or entity shall have any claim against the Architect because of this Agreement or the performance or nonperformance of services hereunder. The Owner and Architect agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

§12.6 Maintenance/Wear and Tear. Both the Owner and Architect acknowledge that the Owner, and only the Owner, is responsible for maintenance, wear and tear on the project upon substantial completion. The Owner is responsible for providing routine inspections and maintenance of the project to maintain a safe and weather-tight facility. Should the Owner fail to provide routine inspections and maintenance, and damage occur to the project, the Architect is not responsible for any such resultant damage.

§12.7 Betterment. If, due to an omission by the Architect, any required item or component of the project is omitted from the Construction Documents, the Architect shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise add value or betterment to the project.

§12.8 Allocation of Risk. In recognition of the relative risks and benefits of the Project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Architect and Architect's officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including reasonable attorney's fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Architect and Architect's officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed \$50,000, or two times (2x) the Architect's total fee for services rendered (less third-party costs) on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

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)

.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 – Architect's Insurance Certificates

Exhibit B – Parkhill Hourly Rate Schedule

.3 Other documents:

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

Attachment 1 – Scope of Work

Attachment 2 – Preliminary Fee Proposal

Attachment 3 – Supplement to Agreement Between the City of Abilene, Texas, and Parkhill.

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

CITY OF ABILENE

PARKHILL

OWNER (Signature)

(Printed name and title)


ARCHITECT (Signature)

Scott Nelson, AIA, Architect | Principal

(Printed name, title, and license number, if required)


ARCHITECT (Signature)

Collin Zalesak, AIA, Architect | Associate

(Printed name, title, and license number, if required)

"The Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337, (512) 305-9000, www.tbae.state.tx.us has jurisdiction over complaints regarding the professional practices of persons registered as architects, interior designers, landscape architects in Texas."



Exhibit A
CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/18/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Risk Strategies 12801 North Central Expy. Suite 1725 Dallas, TX 75243	CONTACT NAME: Joe Bryant PHONE (A/C, No, Ext): (214) 323-4602 FAX (A/C, No): (214) 503-8899 E-MAIL ADDRESS: RSCcertrequest@risk-strategies.com <table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="text-align: center;">INSURER(S) AFFORDING COVERAGE</td><td style="text-align: center;">NAIC #</td></tr><tr><td>INSURER A : Travelers Casualty and Surety Co of Amer</td><td>31194</td></tr><tr><td>INSURER B :</td><td></td></tr><tr><td>INSURER C :</td><td></td></tr><tr><td>INSURER D :</td><td></td></tr><tr><td>INSURER E :</td><td></td></tr><tr><td>INSURER F :</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Travelers Casualty and Surety Co of Amer	31194	INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A : Travelers Casualty and Surety Co of Amer	31194														
INSURER B :															
INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															
INSURED Parkhill 4222 85th St. Lubbock TX 79423															

COVERAGES**CERTIFICATE NUMBER:** 78262560**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability		✓	106653747	1/10/2024	1/10/2025	Per Claim \$2,000,000 Annual Aggregate \$4,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The claims made professional liability coverage is the total aggregate limit for all claims presented within the annual policy period and is subject to a deductible. Thirty day notice of cancellation in favor of the certificate holder on all policies.
Re: Project #40657.24, City of Abilene Recreation Centers.

CERTIFICATE HOLDER**CANCELLATION**

City of Abilene Attn: Leslie Andrews 633 Walnut Abilene TX 79601	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE  Joe Bryant
---	---

© 1988-2015 ACORD CORPORATION. All rights reserved.

ACORD 25 (2016/03)

The ACORD name and logo are registered marks of ACORD



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/18/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Sanford & Tatum Insurance Agency PO Box 64790 Lubbock TX 79464		CONTACT NAME: Dee Bartlett PHONE (A/C, No, Ext): (806) 792-5564 FAX (A/C, No): (806) 792-9344 E-MAIL ADDRESS: dee.bartlett@sanfordtatum.com	
INSURED Parkhill, Smith & Cooper, Inc. 4222 85th Street Lubbock TX 79423		INSURER(S) AFFORDING COVERAGE INSURER A: Phoenix Insurance Co INSURER B: Charter Oak Fire Ins. Co INSURER C: Travelers Property Casualty Co. of America INSURER D: Standard Fire Insurance Co INSURER E: INSURER F:	
		NAIC # 25623 25615 25674 19070	

COVERAGES **CERTIFICATE NUMBER:** 23/24 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:			6305H948872	09/30/2023	09/30/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			BA4N167444	09/30/2023	09/30/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			CUP5H948872	09/30/2023	09/30/2024	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	UB5H948872	09/30/2023	09/30/2024	☒ PER STATUTE ☐ OTH-ER E.I. EACH ACCIDENT \$ 1,000,000 E.I. DISEASE - EA EMPLOYEE \$ 1,000,000 E.I. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Reference Project: 40657.24 City of Abilene Recreation Centers
The General Liability & Auto Policies include a Blanket Automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder only when there is a written contract between the Named Insured and the Certificate Holder that requires such status. The General Liability, Auto & Workers' Comp policies include a Blanket Waiver of Subrogation endorsement that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it. The General Liability, Auto & Workers' Comp. policies include a Blanket Notice of Cancellation endorsement, providing for 30 Days Advance Notice if the policy is canceled by the company other than for nonpayment of premium, 10 day's notice after the policy is canceled for nonpayment of premium. Notice is sent to Certificate Holders with mailing addresses on file with the agent or the company.

CERTIFICATE HOLDER City of Abilene Attn: Leslie Andrews 633 Walnut Abilene TX 79601	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--

© 1988-2015 ACORD CORPORATION. All rights reserved.

Exhibit B

Parkhill
Hourly Rate Schedule
January 1, 2024 through December 31, 2024

Client: City of AbileneProject: Abilene Recreation Centers; Cesar Chavez and GV DanielsAgreement Date: February 22, 2024Location: Abilene, TX

CLASSIFICATION	HOURLY RATE	CLASSIFICATION	HOURLY RATE	CLASSIFICATION	HOURLY RATE
SUPPORT STAFF I	\$64.00	PROFESSIONAL LEVEL III		PROFESSIONAL LEVEL VI	
SUPPORT STAFF II	\$75.00	Architect	\$159.00	Architect	\$262.00
SUPPORT STAFF III	\$103.00	Civil Engineer	\$195.00	Civil Engineer	\$295.00
SUPPORT STAFF IV	\$110.00	Electrical Engineer	\$190.00	Electrical Engineer	\$307.00
SUPPORT STAFF V	\$122.00	Interior Designer	\$142.00	Interior Designer	\$226.00
SUPPORT STAFF VI	\$132.00	Landscape Architect	\$153.00	Landscape Architect	\$244.00
PROFESSIONAL LEVEL I		Mechanical Engineer	\$181.00	Mechanical Engineer	\$294.00
Architect	\$129.00	Structural Engineer	\$188.00	Structural Engineer	\$282.00
Civil Engineer	\$141.00	Survey Tech	\$146.00	Professional Land Surveyor	\$228.00
Electrical Engineer	\$144.00	Other Professional	\$140.00	Other Professional	\$222.00
Interior Designer	\$123.00	PROFESSIONAL LEVEL IV		PROFESSIONAL LEVEL VII	
Landscape Architect	\$123.00	Architect	\$194.00	Architect	\$336.00
Mechanical Engineer	\$135.00	Civil Engineer	\$227.00	Civil Engineer	\$352.00
Structural Engineer	\$135.00	Electrical Engineer	\$223.00	Electrical Engineer	\$352.00
Survey Tech	\$115.00	Interior Designer	\$155.00	Interior Designer	\$253.00
Other Professional	\$121.00	Landscape Architect	\$166.00	Landscape Architect	\$336.00
PROFESSIONAL LEVEL II		Mechanical Engineer	\$213.00	Mechanical Engineer	\$336.00
Architect	\$140.00	Structural Engineer	\$217.00	Structural Engineer	\$352.00
Civil Engineer	\$158.00	Survey Tech	\$177.00	Professional Land Surveyor	\$274.00
Electrical Engineer	\$163.00	Other Professional	\$165.00	Other Professional	\$336.00
Interior Designer	\$129.00	PROFESSIONAL LEVEL V			
Landscape Architect	\$129.00	Architect	\$236.00		
Mechanical Engineer	\$155.00	Civil Engineer	\$274.00		
Structural Engineer	\$153.00	Electrical Engineer	\$272.00		
Survey Tech	\$125.00	Interior Designer	\$187.00		
Other Professional	\$127.00	Landscape Architect	\$202.00		
		Mechanical Engineer	\$259.00		
		Structural Engineer	\$262.00		
		Professional Land Surveyor	\$206.00		
		Other Professional	\$184.00		

Expenses: Reimbursement for expenses as listed, but not limited to, incurred in connection with services, will be at cost plus 15 percent for items such as:

1. Maps, photographs, postage, phone, reproductions, printing, equipment rental, and special supplies related to the services.
2. Consultants, soils engineers, surveyors, contractors, and other outside services.
3. Rented vehicles, local public transportation and taxis, road toll fees, travel, and subsistence.
4. Special or job-specific fees, insurance, permits, and licenses applicable to work services.
5. Mileage at IRS-approved rate.

Rate for professional staff for legal proceedings or as expert witnesses will be a rate one-and-a-half times these Hourly Rates. Excise and gross receipt taxes, if any, will be added as an expense.

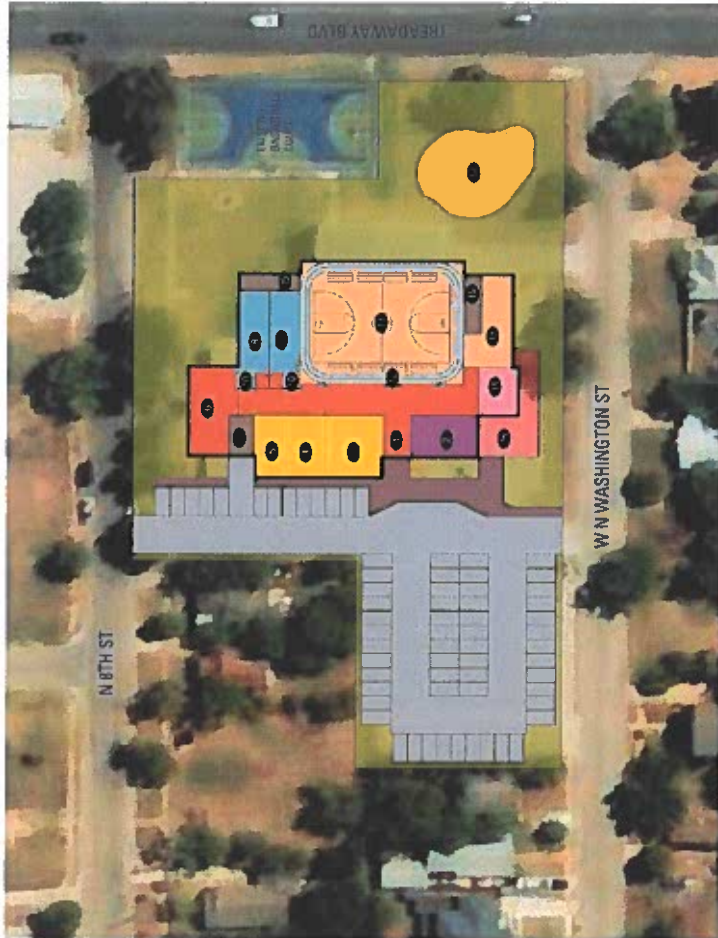
Foregoing Schedule of Charges is incorporated into the Agreement for Services provided, effective January 1, 2024 through December 31, 2024.

After December 31, 2024, invoices will reflect the Schedule of Charges currently in effect.



GV Daniels Site & Design

Attachment 1 Project A



LEGEND	
1. ENTRY/LOBBY/CIRCULATION/DUNGE	3,420 SF
2. ADMINISTRATION	1,100 SF
3. YOUTH/GAMES ROOM	1,400 SF
4. CLASSROOM/PARTY/DRY CRAFT ROOM	900 SF
5. 25 PERSON CLASSROOM	800 SF
6. SENIOR LOUNGE	1,500 SF
7. HEALTHY COOKING/PREP KITCHEN	415 SF
8. WALKER/RESTROOM/CHANGING	1,000 SF
9. WALKER/RESTROOM/CHANGING	1,000 SF
10. UNISEX/FAMILY CHANGING	200 SF
11. HIGH SCHOOL GYMNASIUM	5,325 SF
12. WALK/JOG TRACK	1,000 SF
13. FITNESS & WEIGHTS	1,200 SF
14. INDOOR PLAY	725 SF
15. BUILDING SUPPORT	750 SF
TOTAL AREA +/-	22,727 SF

16. OUTDOOR PATIO	1,535 SF
17. OUTDOOR PLAY GROUND	3,165 SF
TOTAL AREA +/-	4,700 SF

08 PARKING STALLS



SCALE: 1"=50'-0"



CITY OF
ABILENE
TEXAS

G.V. Daniels Recreation Center



BARKER
BRINKER
BEATTY
ARCHITECTS



Cesar Chavez Site & Design

Attachment 1 Project B



LEGEND

1. ENTRY/LOBBY/CIRCULATION	3,430 SF
2. ADMINISTRATION	1,100 SF
3. YOUTH/GAMES ROOM	1,400 SF
4. CLASSROOM/PARTY/DRY CHART ROOM	900 SF
5. 25 PERSON CLASSROOM	800 SF
6. SENIOR LOUNGE	1,500 SF
7. HEALTHY COOKING/PREP KITCHEN	415 SF
8. WALKER/RESTROOM/CHANGING	1,000 SF
9. WALKER/RESTROOM/CHANGING	1,000 SF
10. UNisex/FAMILY CHANGING	200 SF
11. HIGH SCHOOL GYMNASIUM	5,500 SF
12. WALK/JOG TRACK	1,800 SF
13. FITNESS & WEIGHTS	1,200 SF
14. INDOOR PLAY	725 SF
15. BUILDING SUPPORT	790 SF
TOTAL AREA +/-	22,721 SF

16. OUTDOOR PATIO
1,500 SF

86 PARKING STALLS

SCALE: 1" = 50'-0"



Cesar Chavez Recreation Center at Sears Park



2-0

04/24/2022





Recreation Centers Proposed Cost Attachment 1

		Cesar Chavez Rec. Center			GV Daniels Rec. Center		
RECREATION CENTER	Facility Area	\$	22,722		Facility Area	\$	22,722
	Facility Budget	\$	9,515,920		Facility Budget	\$	9,515,920
	Total Site Area	\$	49,063		Total Site Area	\$	49,063
	Acres	\$	1.13		Acres	\$	1.13
	Total Site Budget	\$	536,167		Total Site Budget	\$	603,057
SITE PROGRAM ELEMENTS	Total Soft Costs	\$	3,886,038		Total Soft Costs	\$	3,842,482
	Total Budget	\$	13,918,125		Total Budget	\$	13,961,438
	Facility Area	Budget		Facility Area	Budget		
SITE CONSTRUCTION AREA	22,722	\$9,515,920		22,722	\$9,515,920		
	Site Area	Budget		Site Area	Budget		
	44,594	\$502,811		44,594	\$502,811		
OFF-SITE CONSTRUCTION	Site Area	Budget		Site Area	Budget		
	4,459	\$33,366		4,459	\$100,246		
	Site Area	Budget		Site Area	Budget		
SOFT COSTS	Site Area	Budget		Site Area	Budget		
	0	\$0		0	\$0		
	FEE Space Area	Budget		FEE Space Area	Budget		



Attachment 2

		GV Daniels		Cesar Chavez					
Service	Quantity	Building 01	Building 02	Building 01	Building 02	Fee	Fee	VP Cost	Comments
TASK 01 PRE-DESIGN SERVICES									
Topo Survey	LS			\$ 19,000.00	\$ 16,000.00	\$	\$	35,000.00	Parkhill
Geotech	LS			\$ 9,075.00	\$ 9,075.00	\$	\$	18,150.00	EHT
Programming	LS			\$ 5,400.00	\$	\$	\$	5,400.00	Parkhill
Concepting	LS			\$ 25,000.00	\$	\$	\$	25,000.00	Parkhill
Subtotal				\$ 58,475.00	\$ 25,075.00	\$	\$	\$ 83,550.00	
TASK 02 DESIGN SERVICES									
Basic Services (AIA 11.1)									
Architecture	Construction Cost			\$ 11,500,000.00	\$ 11,500,000.00				
	% Construction	3.72%		\$ 427,800.00	\$ 69,000.00	0.60%		\$ 496,800.00	Parkhill
Interior Design	% Construction	0.30%		\$ 34,500.00	\$	0.00%		\$ 34,500.00	Parkhill
MEP Engineering	% Construction	0.60%		\$ 92,000.00	\$ 34,500.00	0.30%		\$ 126,500.00	Parkhill
Structural Engineering	% Construction	0.50%		\$ 57,500.00	\$ 23,000.00	0.20%		\$ 80,500.00	Parkhill
Basic Services Subtotal (AIA 11.1)		5.32%		\$ 611,800.00	\$ 126,500.00	1.10%		\$ 738,300.00	
SUPPLEMENTAL SERVICES (AIA 11.2)									
Civil Engineering	LS			\$ 55,264.00	\$ 55,264.00			\$ 110,528.00	Parkhill
Landscape Architecture	LS			\$ 27,129.00	\$ 27,129.00			\$ 54,258.00	Parkhill
Furniture, Fixtures and Equipment	LS			\$ 11,000.00	\$ 11,000.00			\$ 22,000.00	Parkhill
Supplemental Services Subtotal (AIA 11.2)				\$ 93,393.00	\$ 93,393.00			\$ 186,786.00	
Design Services Subtotal				\$ 705,193.00	\$ 219,893.00			\$ 925,086.00	
TASK 03 CONSTRUCTION SERVICES									
Contract Administration	Hourly Est.	1.60%		\$ 184,000.00	\$ 184,000.00	1.6%		\$ 368,000.00	Parkhill
REIMBURSABLE EXPENSES									
Printing/Reproductions/Copies	Estimate			\$ 5,000.00	\$ 2,500.00			\$ 7,500.00	
Travel/Incidentals	Estimate			\$ 3,000.00	\$ 2,000.00			\$ 5,000.00	
ADA Review & Inspection	Estimate			\$ 2,000.00	\$ 2,000.00			\$ 4,000.00	
Subtotal				\$ 10,000.00	\$ 6,500.00			\$ 16,500.00	
Total A/E Fee w/ Reimbursables		8.33%		\$ 957,688.40	\$ 435,468.00	3.79%		\$ 1,393,156.00	5.06% of Construction Cost

Attachment 2

Architectural Phase	Percent of Fee for Phase	Bldg 01 Fee %	Bldg 02 Effort	Bldg 02 Fee %
Schematic Design	15%	1.0%	6.0%	0.1%
Design Development	30%	2.1%	13.0%	0.3%
Construction Documents	25%	1.7%	18.8%	0.3%
Bidding/Contract Preparation	5%	0.3%	100.0%	0.3%
Construction Administration	25%	1.7%	100.0%	1.7%

Arch Fee %	Bldg 01	Bldg 02
	6.3%	2.7%

Assumptions

- 1) Floor plan on both buildings are identical.
- 2) Exterior fenestration is the same for each building. Exterior materials & colors will be the same.
- 3) Building systems, finishes, and materials are the same for both buildings.
- 4) Both buildings do not differ in cost by more than 5%.
- 5) One bid package will be prepared for each project and one Contractor will build both buildings.

Phase	Bldg 01 Initial Effort	Bldg 01 Second Effort	Task
Schematic Design			
	50.0%	0.0%	Floor Plan/Roof Plan
	35.0%	0.0%	Exterior Fenestration/Well Construction
	15.0%	6.0%	Engineering Support
Total	100.0%	6.0%	
Design Development			
	2.0%	0.0%	Design Analysis
	4.0%	2.0%	Bldg Code/Energy Code/Accessibility Studies
	15.0%	0.0%	Plan Development (floor, roof, RCP, large scale)
	10.0%	0.0%	Exterior Elevations
	16.0%	0.0%	Interior Amenities
	15.0%	0.0%	Wall Sections
	5.0%	0.0%	Schedules (door, finish, display bds, equip, HM, ALUM)
	10.0%	3.0%	Structural Engineering
	20.0%	8.0%	MEP Engineering
	3.0%	0.0%	Cost Analysis
Total	100.0%	13.0%	
Construction Documents			
	2.0%	1.0%	Bldg Code/Energy Code/Accessibility Studies
	13.0%	0.0%	Plan Development (floor, roof, RCP, large scale)
	2.0%	0.0%	Exterior Elevations
	12.0%	0.0%	Interior Amenities
	13.0%	0.0%	Wall Sections
	3.0%	0.3%	Schedules (door, finish, display bds, equip, HM, ALUM)
	13.0%	1.0%	Details
	10.0%	2.5%	Specifications
	10.0%	3.0%	Structural Engineering
	20.0%	9.0%	MEP Engineering
	2.0%	0.0%	Cost Analysis
Total	100.0%	16.8%	
Bid/Contract Negotiation			
	2.0%	2.0%	Print/Issue Contract Documents
	4.0%	4.0%	TDLR Plan Review
	40.0%	40.0%	Respond to Bidder Questions
	40.0%	40.0%	Issue Addenda
	5.0%	5.0%	Pre-Proposal Conference
	9.0%	9.0%	Evaluate Bids
Total	100.0%	100.0%	
Construction Admin			
	1.0%	1.0%	Pre-Construction Conference
	28.0%	28.0%	Submittal/Shop Drawing Review
	8.0%	8.0%	Site Meetings
	8.0%	8.0%	Pay Application Review
	4.0%	4.0%	Prepare Change Orders
	15.0%	15.0%	Respond to RFIs and Issue ASTs
	8.0%	8.0%	Site Observation/Field Reports
	2.0%	2.0%	CMT/TAB Coordination
	4.0%	4.0%	Pre-Punch
	5.0%	5.0%	Final Punch List/Certificate of Substantial Completion
	4.0%	4.0%	Final Acceptance
	1.0%	1.0%	TDLR Inspection
	5.0%	5.0%	Record Drawings
	3.0%	3.0%	Closeout Documents (affidavits, consent to surety, etc.)
	4.0%	4.0%	One Year Warranty Follow Up
Total	100.0%	100.0%	

**SUPPLEMENT TO AGREEMENT BETWEEN THE CITY OF ABILENE, TEXAS AND
Parkhill ("Company")**

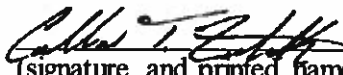
- (1) **Verification Against Boycott of Israel Provision.** In accordance with Chapter 2271 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. The term "company" does not include a sole proprietorship. Chapter 2271 of the Texas Government Code only applies to an agreement that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000.00 or more that is paid wholly or partly from public funds of the governmental entity.
- (2) **Verification Against Discrimination of Firearm or Ammunition Industries Provision.** Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the company employs at least 10 full-time employees, and this agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company verifies that: (1) the company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the company will not discriminate during the term of the Agreement against a firearm entity or firearm trade association. The term "company" does not include a sole proprietorship. This provision does not apply to a governmental entity that contracts with a sole-source provider, or does not receive any bids from a company that is able to provide the written verification required.
- (3) **Verification Against Boycott of Energy Companies Provision.** Pursuant to Texas Government Code Chapter 2276, unless otherwise exempt, if the company employs at least 10 full-time employees, and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company represents that: (1) the company does not boycott energy companies; and (2) the company will not boycott energy companies during the term of this Agreement. The term "company" does not include a sole proprietorship. This provision does not apply to a governmental entity that determines the requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.
- (4) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the company verifies that company is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

Unless the company is not subject to a provision above, the signatory executing this Agreement on behalf of the company verifies that the company: (1) does not boycott Israel and will not boycott Israel during the term of this Agreement; (2) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade

association, and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association; (3) does not boycott energy companies, and will not boycott energy companies during the term of this Agreement; and (4) is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

Parkhill

(printed name of company)

 Collin Zalesak, AIA
(signature and printed name of signatory)

02/16/2024

(date of signature)

Contract: Parkhill Design of Two New Recreation Centers

March 14, 2024





General Information:

- The citizens of Abilene voted to pass a 2023 bond for development of two recreation centers replacing existing Cesar Chavez and G.V. Daniels Recreation Center.
- Contract with Parkhill for design and development of (2) new recreation centers.
- Cost of work to be performed is based on an estimated construction cost of \$23M which is estimated to be \$1,393,136.00.
- Funds are from the approved 2023 bond.





**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Robert Hanna, City Manager

FROM: Lesli Andrews, Director

SUBJECT: 11. Resolution: Receive a Report, Hold a Discussion and Take Action on Entering Into a Contract with Extreme Exteriors for Repairs at Adventure Cove (*Lesli Andrews*)

GENERAL INFORMATION

The citizens of Abilene voted to pass a bond in 2015 for the development of an aquatics facility. Adventure Cove opened in August of 2017. The facility has been seasonally operated and is in need of repairs from years of use.

On February 8, 2024 the City of Abilene received a sealed bid for pool repairs at Adventure Cove. Extreme Exteriors was the only bid received. The repairs include resurfacing of the lazy river, pool coping repair and sand media replacement for (6) six filtration systems at Adventure Cove.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

The funding will come from the Minor Improvement Fund in the amount of \$101,125.46.

STAFF RECOMMENDATION

Staff recommends approval of the contract with Extreme Exteriors for repairs at Adventure Cove.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 3_14_2024 Resolution Contract Adv Cove Pool Repairs with Extreme Exteriors
2. 3_14_2024 Adventure Cove Pool Repair Contract - Only
3. Supplement to Agreement - boycott language 2023
4. 2024 Presentation Adventure Cove Pool Repairs

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH EXTREME
EXTERIORS FOR POOL REPAIRS AT ADVENTURE COVE**

WHEREAS, the citizens of Abilene in 2015 passed a bond for development of an aquatics facility; and

WHEREAS, Adventure Cove opened in 2017 and has been operational since; and

WHEREAS, the facility is in need of repairs from standard use; and

WHEREAS, one sealed bid was received on February 8, 2024; and

WHEREAS, Extreme Exteriors submitted a bid for repairs in the amount of \$101,125.46.

**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 Extreme Exteriors for repairs to the pool at Adventure Cove in the amount of \$101,125.46.

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

ADOPTED this 14th day of March 2024.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

CONSTRUCTION CONTRACT

BACKGROUND

THIS CONTRACT, made on the 14th day of March 2024 is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and Extreme Exteriors Garden Center, LLC of the City of Abilene, State of Texas. ("Contractor").

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

THE AGREEMENT

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

ADVENTURE COVE POOL REPAIR

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

In consideration of this Work, the City will pay the Contractor the sum of \$101,125.46

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

6. **Indemnity.**

A. Definitions

For the purpose of this section the following definitions apply:

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

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

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

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

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

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

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

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

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

B. Indemnity

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

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

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

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

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

Both City and Contractor expressly intend this Contract's indemnity provision to require Contractor to indemnify and protect the City from the consequences of the City's own negligence while City is participating in this Contract, where that negligence is a concurring cause of the damages. This Contract's indemnity provision does not apply to any claim where damage IS PROVEN TO result from the sole negligence of the City.

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

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

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

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

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

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

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

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

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

12. **Contract Execution.** The Contractor must sign the Contract first, with any necessary attestation and seal. The City Attorney or designee must review the Contract, and approve or disapprove it. If

approved, the City's authorized agent will then sign. The City Secretary must keep a signed original in the City Secretary's Office.

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

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

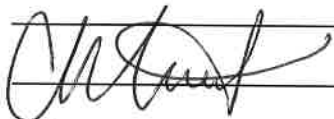
CONTRACTOR

Name of Contractor:

Business Address:

Extreme Exteriors, LLC _____

1800 Industrial Blvd, Abilene, TX 79602_



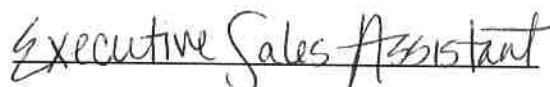
Signature



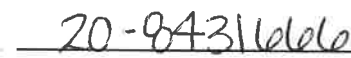
Name - Typed or Printed

(325) 698-2410 _____

Business Phone No.



Title - Typed or Printed



Federal Tax I.D.#

ATTEST: (If Corporation)

Corporate Secretary's Signature

Corporate Seal

(if none, write "None") |

CITY OF ABILENE

ATTEST:

Authorized Signature

City Secretary

Seal: |

APPROVED:

City Attorney

**SUPPLEMENT TO AGREEMENT BETWEEN THE CITY OF ABILENE, TEXAS AND
____ (“Company”)**

- (1) **Verification Against Boycott of Israel Provision.** In accordance with Chapter 2271 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. The term “company” does not include a sole proprietorship. Chapter 2271 of the Texas Government Code only applies to an agreement that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000.00 or more that is paid wholly or partly from public funds of the governmental entity.
- (2) **Verification Against Discrimination of Firearm or Ammunition Industries Provision.** Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the company employs at least 10 full-time employees, and this agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company verifies that: (1) the company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the company will not discriminate during the term of the Agreement against a firearm entity or firearm trade association. The term “company” does not include a sole proprietorship. This provision does not apply to a governmental entity that contracts with a sole-source provider, or does not receive any bids from a company that is able to provide the written verification required.
- (3) **Verification Against Boycott of Energy Companies Provision.** Pursuant to Texas Government Code Chapter 2276, unless otherwise exempt, if the company employs at least 10 full-time employees, and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company represents that: (1) the company does not boycott energy companies; and (2) the company will not boycott energy companies during the term of this Agreement. The term “company” does not include a sole proprietorship. This provision does not apply to a governmental entity that determines the requirements are inconsistent with the governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.
- (4) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the company verifies that company is not on a list maintained by the State Comptroller’s office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

Unless the company is not subject to a provision above, the signatory executing this Agreement on behalf of the company verifies that the company: (1) does not boycott Israel and will not boycott Israel during the term of this Agreement; (2) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade

association, and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association; (3) does not boycott energy companies, and will not boycott energy companies during the term of this Agreement; and (4) is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

Extreme Exteriors
(printed name of company)

CATLIN MARCHANT
(signature and printed name of signatory)

3-7-24
(date of signature)

Contract: Extreme Exteriors Repairs at Adventure Cove

March 14, 2024





General Information:

- The citizens of Abilene voted to pass a bond in 2015 for development of an aquatics facility.
- Facility has been seasonally operated and is in need of repairs from years of use.
- Repairs include: lazy river resurfacing, sand media replacement for six filtration systems and coping repair.
- One sealed bid received on February 8, 2024 from Extreme Exteriors.
- Cost of work to be performed is \$101,125.46.
- Funds from MIP.





**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Robert Hanna, City Manager

FROM: Rodney Taylor, Director

SUBJECT: **12. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving a Professional Services Contract with Enprotec/Hibbs & Todd, Inc. for the PK Raw Water Roughing Facility RO Concentrate Pipeline Construction - Phase 2 (Rodney Taylor)**

GENERAL INFORMATION

Water Utilities staff is requesting that the Abilene City Council approve a Professional Services Contract with Enprotec/Hibbs & Todd, Inc. (eHT) for the PK Raw Water Roughing Facility RO Concentrate Pipeline Construction - Phase 2 (Contract) for the amount not to exceed \$340,000.00. This contract will provide for construction phase services, Resident Project Representation, construction materials testing, record drawing development, and post-construction phase services.

SPECIAL CONSIDERATIONS

In August 2023 Wester Municipal Construction of Texas substantially completed the Possum Kingdom Drought Response Improvements RO Concentrate Pipeline, Phase I, which consisted of installing approximately 14,826 feet of 12 inch pipe, that had been pre-purchased by the City of Abilene, and a discharge diffuser into Possum Kingdom Lake.

On October 12, 2023 the Abilene City Council awarded the bid to Adventures Outback, dba AO Services, for the Possum Kingdom Drought Response Improvements RO Concentrate Pipeline-Phase II Project. Phase II consists of installing approximately 38,667 feet of new 12 inch diameter pipeline along FM 1148 to complete the RO Concentrate Pipeline for discharging RO concentrate into the lake. The project construction is in a remote area that is not readily accessible for regular inspections and observation of construction by the City of Abilene utility inspector or by the Engineering team. City staff believes that hiring a full time Resident Project Representative to provide regular project observation and inspection is a good value. The project is being installed primarily within the TxDOT right of way, and in consistently rocky

conditions.

FUNDING/FISCAL IMPACT

The Professional Services Contract will be paid utilizing Water Utilities funds designated for Capital Improvement Program projects.

STAFF RECOMMENDATION

Staff recommends that the Abilene City Council approve the Professional Services Contract with Enprotec/Hibbs & Todd, Inc. for the PK Raw Water Roughing Facility RO Concentrate Pipeline Construction - Phase 2 for an amount not to exceed \$340,000.00.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. WrittenResolution-WtrDpt-PS Raw Water Roughing Facility RO Concentrate Pipeline Construction Phase 2-3-14-2024
2. Contract-PS-EHT-PK Raw Water Roughing Facility RO Concentrate Pipeline Construction Phase 2-3-14-2024
3. Presentation-PS Contract-EHT-PKRWRF RO Concentrate Pipeline Construction P2-3-14-2024

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AUTHORIZING A PROFESSIONAL SERVICES CONTRACT WITH ENPROTEC/HIBBS & TODD, INC. FOR THE PK RAW WATER ROUGHING FACILITY RO CONCENTRATE PIPELINE CONSTRUCTION - PHASE 2.

WHEREAS, the City of Abilene (City) owns and operates a Public Water System that provides drinking water for the City and the region and includes the Possum Kingdom Raw Water Roughing Facility (PKRWRF) as a component of the raw water supply delivery systems; and

WHEREAS, on October 12, 2023 the Abilene City Council awarded the bid to Adventures Outback, LP dba AO Services (AO Services) for the Possum Kingdom Drought Response Improvements RO Concentrate Pipeline – Phase II project, and the contractor is now mobilizing for construction; and

WHEREAS, City staff recommends the services of a Resident Project Representative to provide regular on-site observation and inspection considering the remote location of the project, the project is being constructed within the TxDOT right-of-way of FM 1148, and the rocky conditions that exist throughout the length of project; and

WHEREAS, the Professional Services Contract with Enprotec/Hibbs & Todd, Inc. (eHT) for the PK Raw Water Roughing Facility RO Concentrate Pipeline Construction - Phase 2 project will provide for construction phase services, Resident Project Representation, construction materials testing, record drawing development, and post-construction phase services in an amount not to exceed \$340,000.00; and

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

That the City Manager is authorized to execute a professional services contract with Enprotec/Hibbs & Todd, Inc. for the PK Raw Water Roughing Facility RO Concentrate Pipeline Construction – Phase 2 for the amount not to exceed \$340,000.00.

ADOPTED this 14th day of March, 2024.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley E. Smith, City Attorney



PROFESSIONAL SERVICES CONTRACT

Engineers & Architects

This Contract, dated the 14th. day of March, 2024, is between the City of Abilene, a home rule municipal corporation of the State of Texas ("City"), and Enprotech / Hibbs & Todd, Inc, a Corporation. organized under the laws of the State of Texas. ("Professional").

The City is engaged in PK Raw Water Roughing Facility RO Concentrate Pipeline Construction Phase 2. and desires to engage the services of Professional, as an independent contractor and not as an employee, to assist in the project and to render his or her or its services on the terms and conditions provided in this Contract.

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

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

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

I. TERMS

In consideration of the compensation stated in paragraph II, the Professional must provide all services as described in Attachment A, which is incorporated by reference for all purposes. The Professional must complete all services by 1/01/2025.

II. FEE

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

III. FACILITIES

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

IV. ASSIGNMENT

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

V. STATUS OF PROFESSIONAL

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

VI. AMENDMENT OR MODIFICATION

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

VII. OWNERSHIP OF DOCUMENTS AND MATERIALS

Ownership of Documents and Materials is according to Attachment C.

VIII. NONDISCLOSURE

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

IX. INDEMNITY

A. Definitions

For the purpose of this section the following definitions apply:

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

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

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

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

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

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

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

B. Indemnity

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

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

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

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

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

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

X. INSURANCE

A. GENERAL REQUIREMENTS

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

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

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

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

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

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

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

B. ADDITIONAL REQUIREMENTS

The required liability insurances and their certificates must:

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

C. TYPES AND AMOUNTS OF INSURANCE

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

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

___6. No Insurance Required

XI. VENUE, CHOICE OF LAW, AND INTERPRETATION

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

XII. TERMINATION

This Contract may be terminated at any time upon thirty (30) days written notice by City to Professional. In the event of termination, Professional will be compensated for work satisfactorily performed before the termination date. For any funding beyond the current fiscal year, the City reserves the right to immediately terminate this Contract by giving written notice, without liability to the City, in the event that funding for this Contract is discontinued or is no longer available. The City's fiscal year runs from October 1st to September 30th.

If, through any cause, the Professional fails to fulfill its obligations under this Contract, or if the Professional violates any of the agreements of this Contract, the City has the right to terminate the Contract by giving five (5) days written notice to the Professional. The Professional will be compensated for work satisfactorily performed before the termination date.

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

XIII. PROJECT REPRESENTATION

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

XIV. NOTICE

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

City – ATTN:
Rodney Taylor, Director Water Utilities
PO Box 60
Abilene, TX 79601-0060

Professional – ATTN:
Jordan Hibbs, P.E. – V.P.
402 Cedar St.
Abilene, TX 79601

XV. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES

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

XVI. NO INDEBTEDNESS

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

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

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

XVII. EQUAL EMPLOYMENT OPPORTUNITY

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

XVIII. VERIFICATION OF EMPLOYMENT ELIGIBILITY

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

XIX. MINORITY AND WOMEN BUSINESS ENTERPRISES

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

Technical assistance is available to Minority and Women Business Enterprises through the Texas Tech University Small Business Development Center, 749 Gateway St., #301, Building C, Abilene, Texas, 79602, 325-670-0300.

XX. SALES TAX

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

XXI. LEGAL CONSTRUCTION

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

XXII. STATUTORY VERIFICATIONS

Verification Against Boycott of Israel Provision. In accordance with Chapter 2271 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. The term "company" does not include a sole proprietorship. Chapter 2271 of the Texas Government Code only applies to an agreement that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000.00 or more that is paid wholly or partly from public funds of the governmental entity.

Verification Against Discrimination of Firearm or Ammunition Industries Provision. Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the company employs at least 10 full-time employees, and this agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company verifies that: (1) the company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the company will not discriminate during the term of the Agreement against a firearm entity or firearm trade association. The term "company" does not include a sole proprietorship. This provision does not apply to a governmental entity that contracts

with a sole-source provider, or does not receive any bids from a company that is able to provide the written verification required.

Verification Against Boycott of Energy Companies Provision. Pursuant to Texas Government Code Chapter 2276, unless otherwise exempt, if the company employs at least 10 full-time employees, and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company represents that: (1) the company does not boycott energy companies; and (2) the company will not boycott energy companies during the term of this Agreement. The term “company” does not include a sole proprietorship. This provision does not apply to a governmental entity that determines the requirements are inconsistent with the governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

Prohibition on Contracts with Certain Companies Provision. In accordance with Section 2252.152 of the Texas Government Code, the company verifies that company is not on a list maintained by the State Comptroller’s office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

Unless the Professional is not subject to a provision above, the signatory executing this Agreement on behalf of the Professional verifies that the Professional: (1) does not boycott Israel and will not boycott Israel during the term of this Agreement; (2) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association; (3) does not boycott energy companies, and will not boycott energy companies during the term of this Agreement; and (4) is not on a list maintained by the State Comptroller’s office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

XXIII. SECTIONS AND OTHER HEADINGS

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

XIV. COUNTERPARTS

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

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

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

CITY OF ABILENE

PROFESSIONAL

By:

By: *Jordan S. Hibbs*

Name:

Name: Jordan S. Hibbs, P.E.

Title:

Title: President

Address: 402 Cedar St., Abilene, TX 79606

Phone Number: (325) 698-5560

Federal Tax ID#: 75-2258512

ATTEST:

ATTEST: (if corporation)

ROBERT BENHAM

City Secretary

Corporation's Secretary

APPROVED:

Corporate Seal (if available)

By: _____
City Attorney

Attachment A aka Exhibit A

SCOPE OF SERVICES

FOR

PK Raw Water Roughing Facility RO Concentrate Pipeline Construction Phase Services

January 31, 2024

This Exhibit A is part of the Agreement between Enprotec / Hibbs & Todd, Inc. (Engineer) and City of Abilene (City or Owner) for a project generally described as:

Construction Phase Professional Services associated with Phase 2 of the Possum Kingdom (PK) Raw Water Roughing Facility (RWRF) Reverse Osmosis (RO) Concentrate Pipeline.

SCOPE OF SERVICES

The Engineer agrees to support in furnishing the Owner with the following specific services:

BASIC ENGINEERING SERVICES

TASK 1 CONSTRUCTION PHASE

Upon execution of this agreement, Engineer shall:

- 1.1 *General Administration of Construction Contract.* Consult with Owner and act as Owner's representative as provided in the General Conditions of the Construction Documents. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of the Owner's instructions to the Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing.
 - 1.1.1 *Schedules.* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
 - 1.1.2 *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
 - 1.1.3 *Disagreements between Owner and Contractor.* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such

decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

1.1.4 Applications for Payment. Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
- b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

1.1.5 Contractor's Completion Documents. Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates

or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment.

1.1.6 *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company of Contractor and on behalf of Owner, conduct an inspection to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.

1.1.7 *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in written form that the Work is acceptable to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

1.2 *Visits to Site and Observation of Construction.*

1.2.1 In connection with observations of Contractor's Work while it is in progress:

- a. Make visits to the Site as necessary. Engineer shall also visit the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
- b. The purpose of Engineer's visits to the Site will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the

Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

- 1.2.2 *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
- 1.2.3 *Defective Work.* Engineer will have the authority to reject Contractor's Work while it is in progress if, on the basis of Engineer's observations, Engineer believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. However, neither Engineer's authority to reject Work nor Engineer's decision to exercise or not exercise such authority shall give rise to a duty or responsibility of the Engineer to Contractors, Subcontractors, material and equipment suppliers, their agents or employees, or any other person(s) or entities performing any of the Work, including but not limited to any duty or responsibility for Contractors' or Subcontractors' safety precautions and programs incident to the Work.
- 1.2.4 *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Engineer may issue Field Orders authorizing minor variations in the Work from the requirements of the Contract Documents.
- 1.2.5 *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.

- 1.3 *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to

submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

1.3.1 *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.

1.4 Project Management:

1.4.1 Conduct construction status meetings with the Owner, as necessary.

1.4.2 Provide project management activities to properly manage, coordinate, schedule, and monitor the scope tasks and completion of the tasks.

1.4.3 Conduct internal team coordination meetings as required to accomplish the work.

1.4.4 Coordinate, prepare, and review monthly invoices for payment.

1.4.5 Maintain and update on a monthly basis, an action item log, a decision log, and project change log.

TASK 2 SPECIAL SERVICES

2.1 Resident Project Representative:

2.1.1 Engineer shall furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Subtask will provide part-time representation during construction of the Work.

2.1.2 Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's Work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

2.1.3 The duties and responsibilities of the RPR are limited to those of Engineer in the Agreement with the Owner and in the Contract Documents, and are further limited and described as follows:

- a. **General:** RPR is Engineer's agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor, keeping Owner advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.
- b. **Schedules:** Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
- c. **Conferences and Meetings:** Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- d. **Liaison:**
 - 1) Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent.
 - 2) Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-site operations.
 - 3) Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
- e. **Interpretation of Contract Documents:** Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
- f. **Shop Drawings and Samples:**
 - 1) Record date of receipt of Samples and approved Shop Drawings.
 - 2) Receive Samples which are furnished at the Site by Contractor and notify Engineer of availability of Samples for examination.
 - 3) Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal

for which RPR believes that the submittal has not been reviewed by Engineer.

- g. **Modifications:** Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
- h. **Review of Work and Rejection of Defective Work:**
 - 1) Conduct on-site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - 2) Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- i. **Inspections, Tests, and System Startups:**
 - 1) Consult with Engineer in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
 - 2) Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that contractor maintains adequate records thereof.
 - 3) Observe, record, and report to Engineer appropriate details relative to the test procedures and systems startups.
 - 4) Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.
- j. **Records:**
 - 1) Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change

Directives, addenda, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project related documents.

- 2) Prepare a daily report or keep a diary or logbook, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- 3) Record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- 4) Maintain records for use in preparing Project documentation.
- 5) Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

k. *Reports:*

- 1) Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- 2) Draft and recommend to Engineer, proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- 3) Furnish to Engineer and Owner copies of all inspection, test, and system startup reports.
- 4) Report immediately to Engineer the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.

- I. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submissions and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

- m. **Certificates, Operation and Maintenance Manuals:** During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
- n. **Completion:**
 - 1) Before Engineer issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
 - 2) Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
 - 3) Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed or corrected.
 - 4) Observe whether all items on final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

2.1.4 Resident Project Representative shall not:

- a. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- b. Exceed limitations of Engineer's authority as set forth in this Agreement or the Contract Documents.
- c. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
- d. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
- e. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of Owner or Contractor.
- f. Participate in specialized field or laboratory tests or inspections conducted

off-site by others except as specifically authorized by Engineer.

- g. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- h. Authorize Owner to occupy the Project in whole or in part.
- i. Be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the work.

2.2 Construction Materials Testing:

- 2.2.1 Engineer shall furnish construction materials testing (CMT) services for the projects.
- 2.2.2 Testing shall be in conformance with the specifications, drawings, and any local authorities having jurisdiction.

2.3 Record Drawings:

- 2.3.1 Prepare Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

ATTACHMENT B

PAYMENT SCHEDULE PARTIES TO INITIAL OPTION(S) SELECTED

OPTION 1 X

Compensation is based on actual hours of work/time devoted to providing the described professional services and will be paid at a rate of \$See attached schedule of charges per hour, or per the attached schedule, not to exceed \$50,000.00.

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

OPTION 2 X

Payment is in a lump sum amount of \$290,000.00 upon completion of the work and written acceptance by the City.

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

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

OPTION 3

Payment is a fixed fee amount of \$Click or tap here to enter text.. payable per Click or tap here to enter text. upon completion of the work and written acceptance by the City.

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

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

COMPENSATION FOR SERVICES

Compensation for the services described in this Scope of Services will be as follows:

1. Within the initial Notice to Proceed for the Project, Prime Consultant shall pay Engineer for services set forth in Exhibit A, Task 1 (Construction Phase Services), Task 2.1 (RPR Services), Task 2.2 (Construction Materials Testing), and Task 2.3 (Record Drawing Development), and Task 5 (Post-Construction Phase Services) at a lump sum amount of \$290,000 as follows:
 - Task 1: \$ 100,000.00
 - Task 2.1: \$ 150,000.00 (12 months @ \$12,500/month)
 - Task 2.2: \$ 25,000.00
 - Task 2.3: \$ 15,000.00
 - a. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated into the Lump Sum to account for labor, overhead, profit and direct expenses.
 - b. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the monthly billing period to the Lump Sum.
2. Owner shall pay for services beyond those set forth in Exhibit A on a time and materials basis not to exceed \$50,000.00 as follows:
 - a. For labor on an hourly basis in accordance with the included Schedule of Charges. The hourly rate schedule will be adjusted each January 1st beginning January 1, 2025, to reflect cost of living adjustments, limited to a maximum increase of 5% per year.

Appendix B

Enprotec / Hibbs & Todd, Inc. HOURLY CHARGES FOR PROFESSIONAL SERVICES (2023)

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

Principal.....	\$ 250.00 per hour
Senior Project Manager	210.00 per hour
Project Manager	180.00 per hour
Senior Engineer / Geologist.....	165.00 per hour
Project Engineer / Geologist	145.00 per hour
Staff Engineer I / Geologist I.....	125.00 per hour
Staff Engineer II / Geologist II.....	120.00 per hour
RPLS I	170.00 per hour
RPLS II	140.00 per hour
Operations Specialist / Regulatory Compliance Specialist	160.00 per hour
Contract Operator (Certified Class A/B Operator).....	120.00 per hour
Contract Operator (Certified Class C/D Water Operator)	100.00 per
hour Engineering / Field Technician I	145.00 per
hour	
Engineering / Field Technician II	120.00 per hour
Engineering / Field Technician III.....	90.00 per hour
CAD I	140.00 per hour
CAD II	110.00 per hour
CAD III	75.00 per hour
Administrative	80.00 per hour
Survey Party	235.00 per hour - 3 man
.....	210.00 per hour - 2 man
.....	185.00 per hour - 1 man
Expense Items	
Consultants, Contractors & Supplies	Cost plus 10%
Travel (out of town only)	Current IRS rate per mile
Lodging and meals (out of town trips).....	Actual cost

ATTACHMENT C

OWNERSHIP OF DOCUMENTS AND MATERIALS

Parties to initial option chosen

(Option 1) X

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

(Option 2)

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

ATTACHMENT D

STATE MANDATED WORKERS' COMPENSATION INSURANCE LANGUAGE

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

a. Definitions

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

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

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

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

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

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

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

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

**Approve a Professional Services Contract with Enprotec/Hibbs & Todd, Inc.
for the
PK Raw Water Roughing Facility RO Concentrate Pipeline Construction – Phase 2**





RO CONCENTRATE PIPELINE PHASE 2

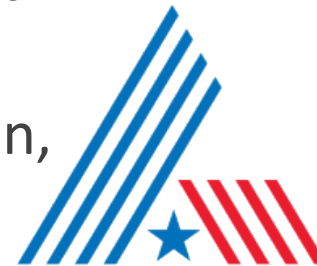
- Approve a professional services contract with Enprotec/Hibbs & Todd, Inc. for the PK Raw Water Roughing Facility RO Concentrate Pipeline Construction – Phase 2.
- Contract value not to exceed \$340,000.00.
- The Contract provides for construction phase services, Resident Project Representation, construction materials testing, record drawing development, and post-construction phase services.





RO CONCENTRATE PIPELINE PHASE 2

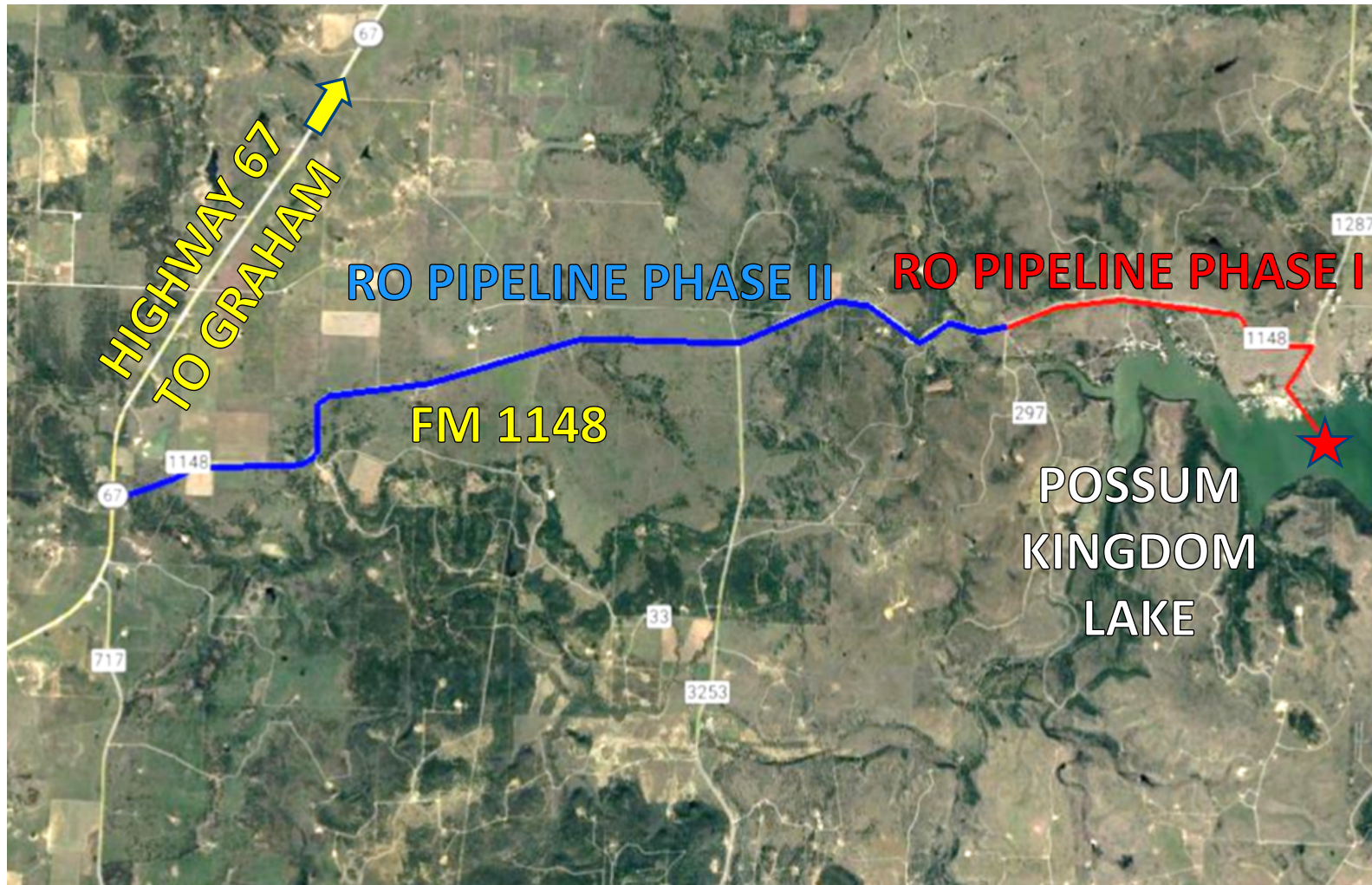
- Phase 1 of the Possum Kingdom Drought Response Improvements RO Concentrate Pipeline construction has been completed.
- On October 12, 2023 the Abilene City Council awarded the bid to Adventures Outback, dba AO Services, for the Possum Kingdom Drought Response Improvements RO Concentrate Pipeline-Phase 2 Project for the installation of approximately 38,667 feet of new 12 inch diameter pipeline along FM 1148, and the contractor is mobilizing for that work.
- City staff believes that hiring a full time Resident Project Representative to provide regular project observation and inspection is a good value given the remote location, rocky conditions, and construction within TxDOT ROW.



CITY OF
ABILENE
T E X A S



RO CONCENTRATE PIPELINE PHASE 1 & 2 ROUTE AND DISCHARGE POINT



THE RO PIPELINE PHASE 1 PROJECT INCLUDING THE DISCHARGE POINT INTO THE LAKE IS NOW COMPLETE.

THE RO PIPELINE PHASE 2 PROJECT WILL COMPLETE THE ORIGINALLY PLANNED OFFSITE CONSTRUCTION WORK ASSOCIATED WITH THE POSSUM KINGDOM DROUGHT RESPONSE IMPROVEMENTS.



**Approve a Professional Services Contract with Enprotec/Hibbs & Todd, Inc.
for the
PK Raw Water Roughing Facility RO Concentrate Pipeline Construction – Phase 2**

Questions?





City Council Agenda Memo

City Council Meeting Date: 3/14/2024

TO: Robert Hanna, City Manager

FROM: Rodney Taylor, Director

SUBJECT: **13. Resolution:** Receive a Report, Hold a Discussion and Take Action on Authorizing a Professional Services Contract with Jacob & Martin, LLC for the Elevated Storage Tank Improvements (*Rodney Taylor*)

GENERAL INFORMATION

Water Utilities staff is requesting that the Abilene City Council approve a Professional Services Contract with Jacob & Martin, LLC (JM) for the Elevated Storage Tank Improvements (Contract) for the amount not to exceed \$637,500.00. This contract will provide engineering services for planning, land acquisition, design, bidding, and construction review (not RPR) for two new elevated water storage tanks. The two elevated storage tanks are included in the 2020 Water Distribution Master Plan, and in the City of Abilene Five Year Capital Improvements Program Schedule of Projects for FY24-FY28.

SPECIAL CONSIDERATIONS

The 2020 Water Distribution System Master Plan (WDSMP) recommends the construction of a new 1.5 million gallon elevated storage tank within the western edge of the second pressure plane (2nd PP). Analysis of existing system storage capacities indicated a deficiency in elevated storage for the 2nd PP. In addition, existing system modeling indicated inadequate pressures for this part of the 2nd PP during peak hour demands. The proposed elevated tank will alleviate the existing system deficiencies. The new second pressure plane tank is further needed considering the planned relocation of the boundary between the first pressure plane (1st PP) and the 2nd PP in order to address inadequate water pressures along a ridgeline now located within the 1st PP. This boundary relocation will require additional elevated water storage capacity within the 2nd PP, which this project will provide. The estimated construction cost for the 2nd PP elevated storage tank is \$7,223,000.

The 2020 WDSMP recommends the construction of a new 1.5 million gallon elevated storage tank within the 1st PP to be located in the general vicinity of the now abandoned Kirby Pump

Station. The recommended new Kirby Elevated Storage Tank will replace the existing Highland Elevated Storage Tank, which must be decommissioned as a result of the relocation of the 1st PP/2nd PP boundary line. The new elevated storage tank will meet the current and projected capacity requirements for the 1st PP. The estimated construction cost for the 1st PP elevated storage tank is \$8,310,000.

FUNDING/FISCAL IMPACT

The contract will utilize Water Utilities Funds designated for Capital Improvement Program projects.

STAFF RECOMMENDATION

Staff recommends that the Abilene City Council approve the professional services contract with Jacob and Martin, LLC for the Elevated Storage Tank Improvements in the amount not to exceed \$637,500.00.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. WrittenResolution-WtrDpt-PS Contract-JM-Elevated Storage Tank Improvements-3-14-2024
2. Contract-PS-JM-Elevated Storage Tank Improvements-3-14-2024
3. Presentation-PS Contract-Jacob and Martin-Elevated Storage Tank Improvements-3-14-2024

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AUTHORIZING A PROFESSIONAL SERVICES CONTRACT WITH JACOB &
MARTIN, LLC FOR THE ELEVATED STORAGE TANK IMPROVEMENTS.**

WHEREAS, the City of Abilene (Abilene) owns and operates the Public Water Supply System which includes elevated water storage tanks to provide stabilized pressure within the water distribution system and to meet peak water demands; and

WHEREAS, the 2020 Water Distribution Master Plan (WDMP) recommends the construction of a new 1.5 million gallon elevated water storage tank be constructed in the western edge of the second pressure plane to correct deficiencies in elevated storage capacity; and

WHEREAS, the 2020 WDMP recommends the construction of a new 1.5 million gallon elevated water storage tank to be constructed in the central area of the first pressure plane to replace the capacity of the existing Highland elevated storage tank, which will then be demolished; and

WHEREAS, the professional services contract with Jacob & Martin, LLC for the Elevated Storage Tank Improvements will provide for engineering services for planning, land acquisition, design, bidding, and construction review (not RPR) for two new elevated water storage tanks in the amount not to exceed \$637,500.00; and

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

That the City Manager is authorized to execute the professional services contract with Jacob & Martin, LLC for the Elevated Storage Tank Improvements in the amount not to exceed \$637,500.00.

ADOPTED this 14th day of March, 2024.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley E. Smith, City Attorney



PROFESSIONAL SERVICES CONTRACT

Engineers & Architects

This Contract, dated the 14th. day of March, 2024, is between the City of Abilene, a home rule municipal corporation of the State of Texas ("City"), and Jacob & Martin, LLC, a Limited Liability Corporation. organized under the laws of the State of Texas. ("Professional").

The City is engaged in Elevated Storage Tank Improvements. and desires to engage the services of Professional, as an independent contractor and not as an employee, to assist in the project and to render his or her or its services on the terms and conditions provided in this Contract.

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

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

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

I. TERMS

In consideration of the compensation stated in paragraph II, the Professional must provide all services as described in Attachment A, which is incorporated by reference for all purposes. The Professional must complete all services by November 31, 2027.

II. FEE

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

III. FACILITIES

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

IV. ASSIGNMENT

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

V. STATUS OF PROFESSIONAL

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

VI. AMENDMENT OR MODIFICATION

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

VII. OWNERSHIP OF DOCUMENTS AND MATERIALS

Ownership of Documents and Materials is according to Attachment C.

VIII. NONDISCLOSURE

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

IX. INDEMNITY

A. Definitions

For the purpose of this section the following definitions apply:

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

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

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

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

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

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

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

B. Indemnity

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

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

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

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

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

X. INSURANCE

A. GENERAL REQUIREMENTS

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

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

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

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

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

- (A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
- (B) remodeling, extending, repairing, or demolishing a structure; or
- (C) otherwise improving real property or an appurtenance to real property through similar activities.

B. ADDITIONAL REQUIREMENTS

The required liability insurances and their certificates must:

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

C. TYPES AND AMOUNTS OF INSURANCE

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

<u>Type</u>	<u>Amount</u>
☒ _X_1. Workers' Compensation Employer's Liability	Statutory \$100,000 per occurrence
☒ _X_2. Commercial (Public) Liability including, but not limited to: • Premises/Operations • Independent Contractors • Products/Completed Operations • Contractual Liability (insuring above indemnity) and where the exposures exist • Explosion Collapse and Underground	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
☒ _X_3. Business Automobile Liability to include coverage for: • Owned/Leased Autos • Non-Owned Autos • Hired Cars	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
☒ _X_4. Professional Liability	\$500,000 combined single limit (per occurrence)
☐ _5. See Addendum for Special Coverages and/or revisions	
☐ _6. No Insurance Required	

XI. VENUE, CHOICE OF LAW, AND INTERPRETATION

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

XII. TERMINATION

This Contract may be terminated at any time upon thirty (30) days written notice by City to Professional. In the event of termination, Professional will be compensated for work satisfactorily performed before the termination date. For any funding beyond the current fiscal year, the City reserves the right to immediately terminate this Contract by giving written notice, without liability to the City, in the event that funding for this Contract is discontinued or is no longer available. The City's fiscal year runs from October 1st to September 30th.

If, through any cause, the Professional fails to fulfill its obligations under this Contract, or if the Professional violates any of the agreements of this Contract, the City has the right to terminate the Contract by giving five (5) days written notice to the Professional. The Professional will be compensated for work satisfactorily performed before the termination date.

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

XIII. PROJECT REPRESENTATION

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

XIV. NOTICE

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

City – ATTN:
Rodney Taylor, Director Water Utilities
P.O. Box 60
Abilene, TX 79601-0060

Professional – ATTN:
Kirt Harle, P.E. – J&M
3465 Curry Lane
Abilene, TX 79606

XV. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES

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

XVI. NO INDEBTEDNESS

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

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

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

XVII. EQUAL EMPLOYMENT OPPORTUNITY

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

XVIII. VERIFICATION OF EMPLOYMENT ELIGIBILITY

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

XIX. MINORITY AND WOMEN BUSINESS ENTERPRISES

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

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

XX. SALES TAX

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

XXI. LEGAL CONSTRUCTION

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

XXII. STATUTORY VERIFICATIONS

Verification Against Boycott of Israel Provision. In accordance with Chapter 2271 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. The term "company" does not include a sole proprietorship. Chapter 2271 of the Texas Government Code only applies to an agreement that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000.00 or more that is paid wholly or partly from public funds of the governmental entity.

Verification Against Discrimination of Firearm or Ammunition Industries Provision. Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the company employs at least 10 full-time employees, and this agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company verifies that: (1) the company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the company will not discriminate during the term of the Agreement against a firearm entity or firearm trade association. The term "company" does not include a sole proprietorship. This provision does not apply to a governmental entity that contracts

with a sole-source provider, or does not receive any bids from a company that is able to provide the written verification required.

Verification Against Boycott of Energy Companies Provision. Pursuant to Texas Government Code Chapter 2276, unless otherwise exempt, if the company employs at least 10 full-time employees, and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company represents that: (1) the company does not boycott energy companies; and (2) the company will not boycott energy companies during the term of this Agreement. The term “company” does not include a sole proprietorship. This provision does not apply to a governmental entity that determines the requirements are inconsistent with the governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

Prohibition on Contracts with Certain Companies Provision. In accordance with Section 2252.152 of the Texas Government Code, the company verifies that company is not on a list maintained by the State Comptroller’s office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

Unless the Professional is not subject to a provision above, the signatory executing this Agreement on behalf of the Professional verifies that the Professional: (1) does not boycott Israel and will not boycott Israel during the term of this Agreement; (2) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association; (3) does not boycott energy companies, and will not boycott energy companies during the term of this Agreement; and (4) is not on a list maintained by the State Comptroller’s office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

XXIII. SECTIONS AND OTHER HEADINGS

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

XIV. COUNTERPARTS

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

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

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

CITY OF ABILENE

PROFESSIONAL

By:

By: 

Name:

Name: Kirt Harle, P.E.

Title:

Title: Senior Principal

Address: 3465 Curry Ln, Abilene, TX 79606

Phone Number: 325-695-1070

Federal Tax ID#: 75-1285782

ATTEST:

ATTEST: (if corporation)

City Secretary

Corporation's Secretary

APPROVED:

Corporate Seal (if available)

By: _____
City Attorney

ATTACHMENT A

Scope of Services

The project scope includes engineering services for planning, land acquisition, design, bidding and construction review for proposed elevated storage improvements in the 1st and 2nd Pressure Planes. The elevated storage improvements are identified as CIP Projects 3 and 4 in the City's 2020 Water Master Plan. The proposed 1st Pressure Plane elevated storage tank will generally be located near the City's old Kirby Pump Station site located near the intersection of Treadaway Boulevard and Oak Street. The proposed 2nd Pressure Plane elevated storage tank will generally be located along Hwy 277 south of Dub Wright Boulevard (FM 3438). The 2nd Pressure Plane elevated storage tank project also includes the extension of a 24" water line from the intersection of Dub Wright Boulevard with HWY 277 to the proposed tank site.

A – Planning and Land Acquisition (to be completed within 6 months of contract execution)

1. Coordinate with water department staff and administration to identify potential sites for proposed elevated tanks.
2. Perform hydraulic modeling as required to verify that elevated tank sites are adequate for the hydraulics of the water system.
3. Perform research to determine ownership of parcels along Hwy 277 for potential 2nd Pressure Plane tank site.
4. Perform site visits for 2nd Pressure Plane tank sites either accompanied by landowner or with landowner's prior consent.
5. Compile enough data and complete analysis to determine initial offering price to acquire land for 2nd Pressure Plane tank site.
6. Perform required field and legal surveying to prepare legal exhibits for warranty deed. Warranty deed shall be prepared by the City's legal department.
7. Provide a technical memorandum to the water department with basis of design for the new tanks. Technical memorandum to include discussion pertaining to site selection, size selection, and updated opinion of cost.

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

1. Prepare detailed specifications, contract drawings and plans for bidding projects.
2. Assist City with TXDOT permitting (if necessary).
3. Prepare detailed cost estimates, which shall include summaries of bid items and quantities.
4. Furnish Bidding Documents to City for water department and legal review.
5. Finalize Contract Documents incorporating City's comments.
6. Perform required topographic surveying (not included in basic engineering fee and will be invoiced at time and expense).

7. Prepare geotechnical report for elevated tank sites and perform materials testing as required (not included in basic engineering fee and will be invoiced at time and expense).
8. Prepare required submittals and coordinate with the FAA on any required obstruction evaluations.

C – Bidding Phase (to be completed in two phases; 2nd Pressure Plane elevated tank bidding phase shall be completed within 12 months of contract execution and 1st Pressure Plane elevated tank bidding phase shall be completed within 24 months of contract execution)

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

D – Construction (to be completed in two phases; 2nd Pressure Plane elevated tank construction phase shall be completed within 36 months of contract execution and 1st Pressure Plane elevated tank construction phase shall be completed within 48 months of contract execution)

Coordinate Pre-Construction Conference.

1. Make periodic visits to the site to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents.
2. Consult and advise the City, issue all instructions to the Contractor requested by the City, and prepare routine field orders and/or change orders as required.
3. Review submittals, schedules, shop drawings, laboratory tests and other data which the Contractor is required to submit, only for conformance with the design concept of the project and compliance with the information given by the Contract Documents.
4. Review and recommend Contractor's payment requests.
5. Conduct in company with the City a site visit following substantial completion notice and prepare punch list.
6. Conduct in company with the City a final inspection of the projects for conformance with the design concept of the projects and compliance with the Contract Documents and approve in writing final payment to the Contractors.
7. Review contract drawings with the assistance of the City's Utility Engineer/Inspector and Contractor to show the work as actually constructed. Furnish two (2) sets of Record Drawings and a digital copy of the Record Drawings to the City.
8. Provide additional inspection services for critical construction components as deemed necessary by Engineer. Engineer shall provide third party inspector for weld and coating inspections (not included in basic engineering fee and will be invoiced at time and expense).
9. Provide construction materials testing (not included in basic engineering fee and will be invoiced at time and expense).
10. Perform construction staking (not included in basic engineering fee and will be invoiced at time and expense).

11. Prepare and submit correspondence to TCEQ for construction schedule and progress, start of construction notification, project completion notification, and any other correspondence requested by the City.

ATTACHMENT B

PAYMENT SCHEDULE PARTIES TO INITIAL OPTION(S) SELECTED

OPTION 1 _X_

Compensation is based on actual hours of work/time devoted to providing the described professional services and will be paid at a rate of \$Time and Expense per the attached Fees For Professional Services included as "Exhibit A" per hour, or per the attached schedule, not to exceed \$237,500.00.

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

OPTION 2 _X_

Payment is in a lump sum amount of \$400,000.00 to be paid per the Attached Basic Engineering Services Payment Schedule included under "Exhibit B" and upon completion of the work and written acceptance by the City.

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

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

OPTION 3 ____

Payment is a fixed fee amount of \$Click or tap here to enter text.. payable per Click or tap here to enter text. upon completion of the work and written acceptance by the City.

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

Before final acceptance of this project by the City, if requested by the City, the Professional shall execute and provide City with an Affidavit that all bills for labor, materials and incidentals



INTEGRITY
EXCELLENCE
TRUST

**EXHIBIT A
TO AGREEMENT FOR PROFESSIONAL SERVICES**

FEES FOR PROFESSIONAL SERVICES

ENGINEERING SERVICES

Senior Principal Engineer	\$ 230.00
Principal Engineer	210.00
Registered Professional Engineer - 1	200.00
Registered Professional Engineer - 2	165.00
Engineer-in-Training (E.I.T.)	125.00
Engineering Technician - 1	130.00
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	190.00
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	130.00
GIS Technician - 2	90.00
Senior Land Man	105.00
Clerical - 1	100.00
Clerical - 2	75.00

Effective 1/1/2024



3465 Curry Lane
Abilene, TX 79606
325.695.1070

908 S. Main Street, Suite 100
Boerne, TX 78006
325.695.1070

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

1925 Fort Worth Highway
Weatherford, TX 76086
817.594.9880



INTEGRITY
EXCELLENCE
TRUST

SURVEYING SERVICES

Principal Surveyor	\$ 175.00
Registered Professional Land Surveyor	175.00
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	80.00
Robotic Total Station	65.00
Vehicle Charge (per day) plus IRS rate per mile	50.00

FIELD SERVICES

Resident Project Representative - 1	\$ 105.00
General Overtime (Weekends, Holidays or before 8 am or after 5 pm)	125.00
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)	100.00
Licensed Water/Wastewater Operator (C/D)	85.00
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 1/1/2024



3465 Curry Lane
Abilene, TX 79606
325.695.1070

908 S. Main Street, Suite 100
Boerne, TX 78006
325.695.1070

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

1925 Fort Worth Highway
Weatherford, TX 76086
817.594.9880

EXHIBIT B

Compensation Payment Schedule

Compensation for Basic Engineering Services as described in the Scope of Services for Task A, B, C and D shall be at a lump sum fee of \$400,000.00. Basic Engineering Services fee shall be paid to consultant according to the following payment schedule and following completion of each task listed:

- Design Phase – Planning / Preliminary Design Development: 10% (\$40,000.00)
- Design Phase - 90% Construction Documents: 50% (\$200,000.00)
- Design Phase - 100% Construction Documents: 10% (\$40,000.00)
- Bidding and Award Phase 2nd PP EST: 2.5% (\$10,000.00)
- Bidding and Award Phase 1st PP EST: 2.5% (\$10,000.00)
- Construction Phase 2nd PP EST: 12.5% (\$50,000.00) *
- Construction Phase 1st PP EST: 12.5% (\$50,000.00) *

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

Compensation for Additional Engineering Services (Surveying, Construction Materials Testing, Geotechnical Report, Land Acquisition, Additional Inspection Services, and Miscellaneous Engineering Expenses) as described in the Scope of Work shall be at a time and expense basis per the attached rate schedule included as Exhibit A with not to exceed of \$237,500.00. The estimated fees for each of these tasks are as follows:

- Legal, Topographic and Construction Surveying: Estimated at \$50,000
- Construction Materials Testing: Estimated at \$100,000
- Geotechnical Report: Estimated at \$25,000
- Land Acquisition: Estimated at \$7,500
- Additional Inspection Services: Estimated at \$50,000
- Miscellaneous Engineering Expenses (i.e. shipping fees, potholing, etc.): Estimated at \$5,000

“EXHIBIT B”

ATTACHMENT C

OWNERSHIP OF DOCUMENTS AND MATERIALS

Parties to initial option chosen

(Option 1) X

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

(Option 2)

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

ATTACHMENT D

STATE MANDATED WORKERS' COMPENSATION INSURANCE LANGUAGE

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

a. Definitions

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

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

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

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

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

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

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

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

Approve a Professional Services Contract with Jacob and Martin, LLC
for the
Elevated Storage Tank Improvements





Elevated Storage Tank Improvements

- Authorize a Professional Services Contract with Jacob and Martin, LLC for the Elevated Storage Tank Improvements.
- Contract value is \$637,500.00.
- The contract will provide engineering services for planning, land acquisition, design, bidding, and construction review (not RPR) for two new elevated water storage tanks.

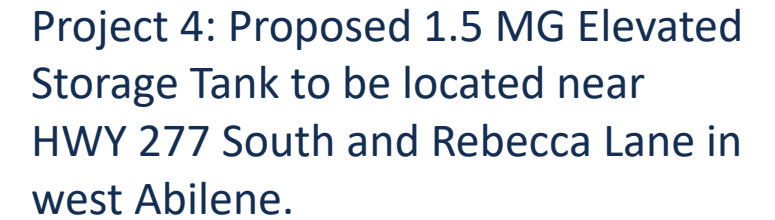




Elevated Storage Tank Improvements

- The contract provides for engineering services for design and construction of a new 1.5 million gallon elevated storage tank within the western edge of the second pressure plane (2nd PP) to provide additional elevated storage capacity in the second pressure plane to address capacity deficiencies.
- The contract provides for engineering services for design and construction of a new 1.5 million gallon elevated storage tank within the central area of the first pressure plane (1st PP), and it will replace the capacity of the existing Highland Elevated Storage Tank, which will subsequently be demolished.





Project 3: Proposed 1.5 MG Elevated Storage Tank to be located near S 21st St and Oak St. in central Abilene.



Approve a Professional Services Contract with Jacob and Martin, LLC for the Elevated Storage Tank Improvements

QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Robert Hanna, City Manager

FROM: Julee Hammer, Library Director

SUBJECT: **14. Resolution:** Receive a Report, Hold a Discussion and Take Action on Approving the Strategic Plan for the Abilene Public Library (*Julee Hammer*)

GENERAL INFORMATION

The Strategic Plan for the Abilene Public Library (APL) is intended to identify APL's strategic goals, objectives, and measures for the future. All of APL's five strategic departmental goals apply to specific City Council goals. Departmental goals, objectives, and measures will be revised or adjusted annually to ensure alignment with City Council goals and priorities.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

None.

STAFF RECOMMENDATION

Approval.

BOARD OR COMMISSION RECOMMENDATION

Approved by the Library Advisory Board on 2/22/2024.

ATTACHMENTS:

1. Resolution Library Strategic Plan Feb 2024
2. APL Strategic Plan Feb 2024
3. City Council Slides APL Strategic Plan Feb 2024

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
APPROVING THE STRATEGIC PLAN FOR THE ABILENE PUBLIC LIBRARY.**

WHEREAS, The Library Advisory Board serves in an advisory capacity to the City Council and the Abilene Public Library Administration; and

WHEREAS, On February 22, 2024, the Library Advisory Board approved the Strategic Plan for the Abilene Public Library; and

WHEREAS, The Abilene Public Library Advisory Board recommends that the City Council approve the Strategic Plan of the Abilene Public Library.

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

Part 1: That the Strategic Plan of the Abilene Public Library, which is attached hereto as Exhibit A, is hereby approved.

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

ADOPTED this 14th day of March 2024.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

City of Abilene ABILENE PUBLIC LIBRARY

STRATEGIC PLAN

2024



THE STRATEGIC PLANNING PROCESS

The Abilene Public Library (APL) management team and two members of the Library Advisory Board gathered on September 15, 2023, for strategic discussions facilitated by Eddy Smith of the Abilene Library Consortium.

The process included the team's Working Genius assessment to connect and constructively frame the strategic discussions. The team then reviewed the City of Abilene's purpose, mission, vision, core values, and strategic priorities of the City Council. The team reviewed library goals and objectives from FY2023, determining which were to continue and identifying new objectives.

The team reviewed the Library's mission statement and worked on potential language for revisions to the mission, finalizing it in subsequent drafts to: "**We inspire and connect our community today and into the future.**" This concise and impactful statement communicates the library's commitment to inspiring individuals and fostering connections within the community, both presently and for generations to come.

The day ended with vision conversations about the future of library services in Abilene as the library prepares for relocation into Abilene Heritage Square in several years.

In the intervening months since the session, the APL Management Team has added scope to the outlined goals, ensured alignment with City and Council priorities, and identified measurable objectives for tracking progress, detailed in the following pages.

Strategic Planning Session Participants:

Eddy Smith	Abilene Library Consortium (Facilitator)
Clint Buck	APL Advisory Board
Elizabeth Norman	APL Advisory Board
Janet Bailey	Abilene Public Library
Alyssa Crow	Abilene Public Library
Julee Hammer	Abilene Public Library
Tremain Jackson	Abilene Public Library
Marie Noe	Abilene Public Library

City of Abilene, Texas

COMMUNITY PROFILE

POPULATION



127,385
Population



32 years
Median Age

Population by Age

< 5	6.5%	40-49	11.0%
5-19	21.4%	50-59	9.0%
20-29	18.8%	60-64	6.0%
30-39	13.6%	65+	13.7%

EDUCATION



87.2%
Population Age 25+
with High School
Degree or Higher



26.0%
Population Age 25+
with Bachelors
Degree or Higher

Institution Enrollment

5,731	Abilene Christian University
1,765	Hardin-Simmons University
2,556	McMurry University
268	Texas Tech Health Science Center
3,016	Cisco College
1,250	Texas State Technical College
14,586	Students Enrolled

HOUSING & INCOME



\$196,314
Average Home Market Value



\$73,825
Average Household Income



\$54,493
Median Household Income



45,504
Total Households

Households by Income

< \$25k	20.1%
\$25k - \$49k	24.4%
\$50k - \$99k	31.6%
\$100k+	23.9%

WORK FORCE



4.0%
Abilene
Unemployment Rate



4.5%
Texas
Unemployment Rate

Top Employers

8,864	Dyess Air Force Base, <i>Air Force Base</i>
4,032	Hendrick Health System, <i>Hospital</i>
2,450	Abilene Independent School District, <i>Public School</i>
1,900	Abilene Christian University, <i>Private University</i>
1,299	City of Abilene, <i>City</i>
1,225	Abilene State Supported Living Center, <i>Mental Health</i>
1,187	Texas Department of Criminal Justice, <i>Prisons</i>
1,061	Blue Cross Blue Shield of Texas, <i>Call Center</i>
560	Taylor County, <i>County</i>
540	First Financial Bank, <i>Bank</i>

ABILENE FAST FACTS



**113 Square
Miles of Area**



**1,719 Feet
Elevation**



**29 Parks on
1,247 acres**



**Established in
1881**



**County Seat of
Taylor County**



8 Fire Stations

* From City of Abilene Budget Book Fiscal Year 2023-2024

City of Abilene, Texas

COMMUNITY PROFILE

TRANSPORTATION



Highways

I-20 Interstate Highway
US Hwy 80, 83, 84, 277
State Hwy 351, 36



Air Travel

Envoy Air via the
Abilene Regional Airport

Distance from Other Cities (in Miles)

184	Dallas, Texas
218	Austin, Texas
351	Houston, Texas
453	El Paso, Texas
707	Denver, Colorado
844	Nashville, Tennessee
855	Phoenix, Arizona
963	Atlanta, Georgia
1,080	Chicago, Illinois
1,255	Los Angeles, California

LOCATION



TAXES

Property Tax (Abilene ISD)

Taylor County	0.5397
City of Abilene	0.7328
Abilene ISD	1.0326
Total Tax Rate	2.3051

Sales Tax

State of Texas	6.25%
City of Abilene	1.50%
Economic Development	0.50%
Total Sales Tax Rate	8.25%

Property Tax (Wylie ISD)

Taylor County	0.5397
City of Abilene	0.7328
Wylie ISD	0.8900
Total Tax Rate	2.1625

Hotel Occupancy Tax

State of Texas	6%
City of Abilene	7%
Venue District	2%
Total Hotel Occupancy Tax Rate	15%



Tallest Building at 283 Feet

The Enterprise Building



2 Major School Districts

Abilene ISD & Wylie ISD



1 Military Base

Dyess Air Force Base

* From City of Abilene Budget Book Fiscal Year 2023-2024

COMMUNITY PROFILE

About the City

The City of Abilene, Texas is located approximately 180 miles west of the Dallas/Fort Worth Metroplex, near the geographic center of the state. Conveniently connected east-west by Interstate Highway 20, and north-south by U.S. highways 83, 84, and 277. Abilene is the center of a 22-county area commonly referred to as the Big Country.

Abilene: Past, Present & Future

In the 1800s, nomadic Native Americans, U.S. soldiers, buffalo hunters, and ranchers roamed what is now the Abilene landscape. By the time the 1870s arrived, the Native Americans had been driven out and their lands had been overrun by hungry cattle and ambitious cowboys. However, the introduction of the railroad system started a great industry progression, calling Abilene the Future Great City of West Texas. Abilene was established in March 1881 and shortly thereafter in January of 1883, local residents voted to incorporate. That fall, Abilene became the county seat of Taylor County, and after only seven years, the city grew to 3,194 people.

Today, more than 120,000 friendly people call Abilene home, and the city represents an eclectic mix of Old West heritage, contemporary culture, and traditional values. As a Top Texas Destination, there is something for everyone in Abilene. For instance, visitors can feed giraffes at the Abilene Zoo or relive rugged Western lore through cutting-edge technology at Frontier Texas! Art enthusiasts can find inspiration at various museums and cultural events held in Downtown Abilene such as ArtWalk, City Sidewalks, and the annual Children's Arts and Literacy Festival. Abilene is home to the largest collection of public storybook sculptures of its kind in America, and in 2016, the 84th Legislature of the State of Texas designated Abilene as the official Storybook Capital of Texas for its efforts to celebrate literary works for children. Since then, the Storybook Capital's draw has expanded across America. To recognize the growing appeal of the Storybook Capital, the Abilene Cultural Affair Council, in partnership with the Abilene Convention and Visitors Bureau, decided in 2018 to trademark the term "Storybook Capital of America" with the U.S. Patent and Trademark Office.

Abilene is a centerpiece for employment, retail, and medical services in West Texas. While the city continues to expand, both the manufacturing and wind energy industries have likewise increased to meet growing demand and opportunities. Interstate and state highways, Union Pacific Railroad cargo service, and air travel via Abilene Regional Airport provide citizens and industry easy access to transportation services. Charter air and ground travel services are available as well. For those pursuing higher education, students may choose between three universities, a college, a technical college, a pharmacy school, and schools of nursing. The city boasts attractive and affordable housing, excellent schools, a revitalized historic downtown, an assortment of tourist attractions, recreational possibilities, top-notch medical facilities, a regional industrial hub, Dyess Air Force Base, and a philanthropic community.

City Governance

The City of Abilene is a municipal corporation incorporated under Article XI, Section 5, of the Constitution of the State of Texas (Home Rule Amendment). The City operates under a Council-Manager form of government and provides such services as are authorized by its charter to advance the welfare, health, morals, comfort, safety, and convenience of the City and its citizens.

The City Council is the legislative and policy-making body of the City of Abilene. Six City Councilors represent each of the six places in the City (three north of South 1st Street and three south of South 1st) but are elected and serve at large representing all citizens of Abilene. Councilors serve staggered three-year terms with two members up for reelection each year. The Mayor is also elected at-large and also serves a three-year term.

The Council enacts legislation, adopts the budget, sets tax rates, determines policies, and approves the Mayor's appointment of the City Manager, City Secretary, City Attorney, Municipal Court Judge, and all Boards and Commission members.

** From City of Abilene Budget Book Fiscal Year 2023-2024*



City of Abilene, Texas

OUR MISSION & VALUES

The Abilene Public Library serves as the Department of Library Services of the City of Abilene. As City employees, Library employees are expected to follow the **RISE** Core Values at all times: **Respect, Integrity, Service Above Self, and Excellence in All We Do.**

Our Mission

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



RISE CORE VALUES

RESPECT

Demonstrating through our actions that we hold ourselves and our citizens in high enough regard to do what we say we will do, in the timeframe we commit to.

INTEGRITY

Possessing an unwavering commitment to doing the right things right, and keeping commitments to our citizens, co-workers and others.

SERVICE ABOVE SELF

Fostering a servant's heart in ourselves and each other by conscientiously doing what is best for the community in all cases.

EXCELLENCE IN ALL WE DO

Recognizing the importance of working together to meet everyone's needs, and treating everyone with dignity, courtesy, and respect.

ABOUT THE ABILENE PUBLIC LIBRARY

OUR MISSION

We inspire and connect our community today and into the future.



- Above is the new mission statement for the Abilene Public Library, crafted from discussions during the strategic planning session in September 2023.
- Abilene has operated a lending library since 1899.
- The Abilene Public Library Advisory Board is a City board with members appointed by the Mayor and approved by the Abilene City Council. The APL Advisory Board consists of seven members. APL Advisory Board terms are for three years, with the option to apply for renewal for a second term.
- APL has a staff of 38 FTE (31 full-time and 14 part-time employees).
- The Abilene Public Library operates three facilities in Abilene. The Main Library, located at 202 Cedar Street, will be relocated to the Abilene Heritage Square campus, with an anticipated opening date in late 2025. The Library will have approximately 23,000 square feet of additional space in the new building.
 - **Main Library:**
202 Cedar Street, Abilene, TX 79601
42,000 square feet
Opened Jan 18, 1960
 - **Mockingbird Branch Library:**
1326 N Mockingbird Lane, Abilene, TX 79603
11,880 square feet
Opened January 10, 2009
Leased space in the Edgewood Shopping Center
 - **South Branch Library:**
4310 Buffalo Gap Road #1246, Abilene, TX 79606
20,432 square feet
November 19, 2016.
Leased space in the Mall of Abilene
 - **Future Main Library located at Abilene Heritage Square:**
1699 S 1st St, Abilene, TX 79602
approximately 65,000 square feet

CITY COUNCIL STRATEGIC GOALS

STRATEGIC PLANNING

City Council re-established their governing principles for the City which are outlined within City Council's policy document, "Governing Principles, Rules of Procedures, and Council Policies", amended on January 14, 2021 where they also established their strategic goals, priorities, and organizational vision for the City. City Council's long-term organizational vision is for the City of Abilene to be known as a thriving, national leader that other communities strive to be like, and where people consciously decide to live and locate their businesses. It will be a beautiful City, with quality, well maintained housing for all income levels, and well maintained municipal infrastructure. It will serve as a regional employment center and provide a rich and varied shopping experience. It will be a community that offers regionally renowned parks and recreation facilities and it will be well known for enjoying an excellent quality of life.

CITY COUNCIL STRATEGIC GOALS	
	The City of Abilene practices effective governance.
	The City of Abilene exercises sound financial discipline.
	The City of Abilene enjoys a high quality of life.
	The City of Abilene is known for well-maintained and reliable infrastructure.
	The City of Abilene consistently provides excellent service.
	The City of Abilene encourages economic growth.
	The City of Abilene actively fosters and seeks an engaged community.

The City conducts an annual strategic planning session with City Council at the start of the budget process. During this session, Council considers current strategic goals, the adoption of additional goals, the current financial condition of the City, and the impact that current and future operating and capital needs will have on the financial condition of the City for the upcoming fiscal year and four subsequent years thereafter. Also included in this planning session, is the review of Council's priorities and accomplishments for the prior year and the establishment of Council's priorities for the upcoming year. This discussion provides the framework for departments to review and adjust their priorities and objectives to align with City Council and provides the foundation for building the budget.

Departments continuously monitor and report on their priorities, objectives, and measures throughout the year. This is done through shared dashboards as well as meetings with City administration. The following pages provides an alignment of City Council's strategic goals to department priorities. Please see the Department Summaries section of the Budget Book for the presentation of departmental priorities, objectives, and measures.

** From City of Abilene Budget Book Fiscal Year 2023-2024*

ABILENE PUBLIC LIBRARY STRATEGIC GOALS

The following table illustrates APLS's five strategic departmental goals and how they apply to specific City Council Goals.

Library Services	 Effective Governance	 Sound Financial Discipline	 High Quality of Life	 Maintained & Reliable Infrastructure	 Excellent Service	 Economic Growth	 Engaged Community
Enrich City's desire for personal growth and learning			✓				
Increase library usage					✓		
Strengthen the City of Abilene's neighborhoods and services							✓
Acts as agents of innovation for the community			✓				✓
Maximize accessibility to the Library and its services			✓				

* From City of Abilene Budget Book Fiscal Year 2023-2024

APL STRATEGIC GOALS & OBJECTIVES

The Strategic Planning team developed new objectives for the Abilene Public Library, which were added to the existing goals and objectives. These new objectives focus on priorities of literacy and accessibility, and partnerships with other City departments.

- Enrich City's desire for personal growth and learning
 - Build and maintain partnerships with workforce development agencies
 - Increase the availability of Internet services to the community
 - Increase educational programming opportunities for the community
- Increase Library usage
 - Increase the circulation of library materials
 - Increase Summer Reading Program participation
 - Increase patron visits to library facilities
- Act as agents of innovation for the community
 - Emphasize STEAM programming and services for all ages
 - **Emphasize literacy programming and services ***
 - Emphasize makerspace programming at the Main Library
- Maximize accessibility to the library and its services
 - Provide easy access to library cards
 - **Offer sensory programming ***
 - **Offer programming for homeschool families ***
 - Review ADA-accessible projects
- Strengthen the City of Abilene's neighborhoods and businesses
 - Increase library community room usage
 - Build and maintain partnerships with businesses and organizations
 - **Build and maintain partnerships with organizations that promote literacy ***
 - **Partner with other City departments on visits and events ***

NOTE: * Indicates new objective in fiscal year 2024.

APL STRATEGIC GOALS/OBJECTIVES/MEASURES



Enrich City's desire for personal growth and learning

Objectives / Measures	2022 Budget	2022 Actual	2023 Budget	2024 Budget
Build and maintain partnerships with workforce development agencies				
Number of workforce development programs held	New	New	4	4
Number of attendees at workforce development programs	New	New	50	200
Number of workforce development programs in designated areas	New	New	2	2
Increase availability of Internet services to the community				
Percentage of work station session hours out of total possible hours	New	New	15%	7%
Number of Internet workstation sessions	New	New	26,000	37,000
Increase educational programming opportunities for the community				
Total Number of Programs Offered	1,235	1,280	1,380	1,380
Number of Programs (early childhood)	300	417	450	450
Number of Programs (children)	500	205	250	250
Number of Programs (young adult)	160	140	150	150
Number of Programs (adult)	250	182	190	190
Number of Programs (general interest)	25	336	340	340
Total Number of Program Participants	51,750	31,131	31,270	35,200
Participants (early childhood programs)	10,000	7,610	7,620	10,100
Participants (children's programs)	35,000	7,795	7,800	12,000
Participants (young adult programs)	3,000	1,075	1,100	2,700
Participants (adult programs)	3,500	1,808	1,850	1,700
Participants (general interest programs)	250	12,843	12,900	8,700
Number of programs by designated area (infill development)	New	New	50	380
Number of participants by designated area (infill development)	New	New	New	6,100



Increase library usage

Objectives / Measures	2022 Budget	2022 Actual	2023 Budget	2024 Budget
Increase the circulation of library materials				
Number of items circulated	600,000	507,000	550,000	500,000
Increase Summer Reading Program participants				
Number of participants per capita	New	New	0.04	0.04
Increase patron visits to library facilities				
Number of visits per capita	New	New	2.60	2.09

* From City of Abilene Budget Book Fiscal Year 2023-2024

APL STRATEGIC GOALS/OBJECTIVES/MEASURES



Strengthen the City of Abilene's neighborhoods and services

Objectives / Measures	2022 Budget	2022 Actual	2023 Budget	2024 Budget
Increase library community room usage				
Percentage use of capacity (Usage hours/total possible)	New	New	20%	17%
Number of community room events	New	New	380	525
Number of community room event attendees	New	New	8,000	9,900
Build and maintain partnerships with businesses and organizations				
Number of meetings attended	New	New	15	30
Number of meetings and events attended in targeted area (Downtown)	New	New	10	20
Number of meetings and events attended in targeted area	New	New	7	10
Build and maintain partnerships with organizations that promote literacy				
Number of partnerships	New	New	New	4
Partner with other City departments on visits and events				
Number of City department visits and events	New	New	6	6
Number of participants at City department visits	New	New	New	200
Number of City visits/events in targeted area	New	New	New	4



Act as agents of innovation for the community

Objectives / Measures	2022 Budget	2022 Actual	2023 Budget	2024 Budget
Emphasize STEAM programming and services for all ages				
Number of STEAM programs	New	New	10	130
Number of participants	New	New	200	2,700
Emphasize literacy programming and services				
Number of literacy programs	New	New	New	10
Number of literacy program participants	New	New	New	200
Number of participants in early literacy initiatives	New	New	New	200
Emphasize makerspace programming at Main Library				
Number of programs	New	New	8	20
Number of participants	New	New	80	280

* From City of Abilene Budget Book Fiscal Year 2023-2024

APL STRATEGIC GOALS/OBJECTIVES/MEASURES



Maximize accessibility to the Library and its services

Objectives / Measures	2022 Budget	2022 Actual	2023 Budget	2024 Budget
Provide easy access to library cards				
Percentage of new library cards per capita	New	New	5%	5%
Number of library card signup events by area	New	New	4	4
New library cards issued by area (Downtown)	New	New	3,000	2,250
New library cards issued by area	New	New	500	600
Offer sensory programming				
Number of sensory programs	New	New	New	10
Number of participants	New	New	New	50
Offer programming for homeschool families				
Number of programs	New	New	New	5
number of participants	New	New	New	30
Review ADA accessible projects				
Compliant	New	Yes	Yes	Yes

* From City of Abilene Budget Book Fiscal Year 2023-2024

Recommendations for Implementation, Communication, and Assessment

Monthly

- Review Strategic Plan progress as a regular agenda item at management team meetings.
- Review Strategic Plan progress as a part of library staff meetings.

Annually

- Communicate and assess the progress of implementing the strategic plan.
- Review and revise goals, objectives, and measures as needed to support the City Council's Goals and Priorities.

Resolution: Strategic Plan for the Abilene Public Library





Strategic Planning Process

- The Abilene Public Library (APL) management team and two members of the Library Advisory Board gathered on September 15, 2023, for strategic discussions facilitated by Eddy Smith of the Abilene Library Consortium
- The team then reviewed the City of Abilene's purpose, mission, vision, core values, and strategic priorities of the City Council. The team reviewed library goals and objectives from FY2023, determining which were to continue and identifying new objectives.

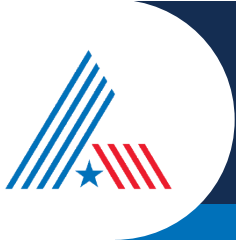




Strategic Planning Process

- The team reviewed the Library's existing mission statement and worked on potential language for revisions to the mission, finalizing it in subsequent drafts.





Strategic Planning Process

NEW MISSION STATEMENT

We inspire and connect our community today and into the future.





City Council Strategic Goals

CITY COUNCIL STRATEGIC GOALS	
	The City of Abilene practices effective governance.
	The City of Abilene exercises sound financial discipline.
	The City of Abilene enjoys a high quality of life.
	The City of Abilene is known for well-maintained and reliable infrastructure.
	The City of Abilene consistently provides excellent service.
	The City of Abilene encourages economic growth.
	The City of Abilene actively fosters and seeks an engaged community.





Library Strategic Goals

Library Services	 Effective Governance	 Sound Financial Discipline	 High Quality of Life	 Maintained & Reliable Infrastructure	 Excellent Service	 Economic Growth	 Engaged Community
Enrich City's desire for personal growth and learning			✓				
Increase library usage					✓		
Strengthen the City of Abilene's neighborhoods and services							✓
Acts as agents of innovation for the community			✓				✓
Maximize accessibility to the Library and its services			✓				



CITY OF
ABILENE
TEXAS



APL Strategic Goals & Objectives

Enrich City's desire for personal growth and learning

- Build and maintain partnerships with workforce development agencies
- Increase the availability of Internet services to the community
- Increase educational programming opportunities for the community





APL STRATEGIC GOALS & OBJECTIVES

Increase Library usage

- Increase the circulation of library materials
- Increase Summer Reading Program participation
- Increase patron visits to library facilities





APL Strategic Goals & Objectives

Act as agents of innovation for the community

- Emphasize STEAM programming and services for all ages
- Emphasize literacy programming and services *
- Emphasize makerspace programming at the Main Library





APL STRATEGIC GOALS & OBJECTIVES

Maximize accessibility to the library and its services

- Provide easy access to library cards
- Offer sensory programming *
- Offer programming for homeschool families *
- Review ADA-accessible projects





APL Strategic Goals & Objectives

Strengthen the City of Abilene's neighborhoods and businesses

- Increase library community room usage
- Build and maintain partnerships with businesses and organizations
- Build and maintain partnerships with organizations that promote literacy *
- Partner with other City departments on visits and events *

Note: * indicates a new objective





APL Strategic Plan

Recommendations for Implementation, Communication, and Assessment

- Review Strategic Plan progress as a regular agenda item at management team meetings.
- Review Strategic Plan progress as a part of library staff meetings.
- Communicate and assess the progress of implementing the strategic plan.
- Review and revise goals, objectives, and measures as needed to support the City Council's Goals and Priorities.





APL Strategic Plan

Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: **15. Resolution: Receive a Report, Hold a Discussion and Take Action on Entering into a Chapter 380 Agreement with Chowning Realty for a Major Remodel Located at 5337 Encino Road (*Tim Littlejohn*)**

GENERAL INFORMATION

Chowning Realty is proposing to perform a major renovation located at 5337 Encino Road. This is part of the adopted RebuildAbi program in order to provide affordable housing within the target areas as adopted by council.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

Calculated as adopted by ordinance 192-2023

STAFF RECOMMENDATION

Approval

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 5337 Encino RESOLUTION
2. City Council Presentation 5337 Encino
3. 5337 Encino 380 agrmt

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, APPROVING
A CHAPTER 380 AGREEMENT BETWEEN THE CITY OF ABILENE AND CHOWNING
REALTY**

This Economic Development Agreement (“Agreement”) is effective as of the 14th day of March, 2024 (“Effective Date”), by and between Chowning Realty, ("Developer"), and the CITY OF ABILENE, TEXAS, a home rule city and municipal corporation ("City"), for the purposes and considerations stated below.

WHEREAS, the City of Abilene adopted Resolution 192-2023 creating an Economic Development Program authorized by Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City has adopted Resolution No. 192-2023 which created the Rebuild ABI program; and

WHEREAS, the Developer intends to acquire, or has acquired, fee simple ownership of 5337 Encino Road, in Abilene, Taylor County, Texas (the “Project Area”); and

WHEREAS, the governing body of the City of Abilene adopted Resolution 49-2016 and Resolution 129-2023 creating an Economic Development Program authorized by Chapter 380 of the Texas Local Government Code; and

WHEREAS, the governing body of the City of Abilene adopted Resolution 192-2023 and has created Rebuild ABI as an infill development incentive for new residential construction in certain target areas throughout the City; and

WHEREAS, the City desires to enter into this Agreement with the Developer in order to implement the Rebuild ABI economic development program developed by the City to enhance and expand the City’s commercial, economic and employment base to the long-term interest and benefit of the City and the State of Texas; and

WHEREAS, it is anticipated that the development of the Project Area will have a direct and positive economic benefit to the City; and

WHEREAS, the City hereby finds that this Agreement embodies an eligible “project” and clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and is in the best interests of the City.

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

PART 1: That the City of Abilene approves the Rebuild ABI economic development agreement upon the terms and conditions as set forth in Exhibit A attached hereto.

PART 2: That this Resolution becomes effective immediately upon adoption.

ADOPTED on the 14th day of March, 2024.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

City Council Meeting

Economic Development Agreement

5337 Encino Road





- Chowning Realty is proposing to perform a Major Renovation on an existing home located at 5337 Encino Road
- Home is approximately +or- 1200 sq.ft.
- 3 bedroom, 2 bathroom, and 1 car garage
- Estimated sales price shall not be above \$203,000





QUESTIONS



**MAJOR RENOVATION ECONOMIC DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF ABILENE AND**

This Economic Development Agreement ("Agreement") is effective as of the 14th day of March, 2024 ("Effective Date"), by and between Chourning Realty LLC, ("Developer"), and the CITY OF ABILENE, TEXAS, a home rule city and municipal corporation ("City"), for the purposes and considerations stated below.

RECITALS

WHEREAS, the Developer intends to acquire, or has acquired, fee simple ownership of 5337 Encino, Abilene TX 79605, in Abilene, Taylor County, Texas (the "Project Area"); and

WHEREAS, the governing body of the City of Abilene adopted Resolution 49-2016 and Resolution 129-2023 creating an Economic Development Program authorized by Chapter 380 of the Texas Local Government Code; and

WHEREAS, the governing body of the City of Abilene adopted Resolution 192-2023 and has created Rebuild ABI as an infill development incentive for major renovation to an existing home in certain target areas throughout the City; and

WHEREAS, the City desires to enter into this Agreement with the Developer in order to implement the Rebuild ABI economic development program developed by the City to enhance and expand the City's commercial, economic and employment base to the long-term interest and benefit of the City and the State of Texas; and

WHEREAS, it is anticipated that the redevelopment of the Project Area will have a direct and positive economic benefit to the City; and

WHEREAS, the City hereby finds that this Agreement embodies an eligible "project" and clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and is in the best interests of the City; and

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

I. AUTHORITY

- 1.01 The Agreement is authorized by state law, including but not limited Chapter 380 of the Texas Local Government Code, and is within the authority of the City and constitutes a legal and binding obligation of the City.
- 1.02 The Developer's execution and performance of this Agreement constitutes a valid and binding obligation of the Developer.
- 1.03 The factual recitals and findings set forth above are found to be true and correct for all purposes, and are incorporated into this Agreement.

II. DEFINITIONS

- 2.01. **Program** means the economic development program identified in Article IV herein and established by the City pursuant to this Agreement.
- 2.02. **Developer** means Channing Realty LLC, its successors or assigns.

III. TERM

- 3.01 This Agreement shall be effective as of the date of execution of both parties. This Agreement shall remain in full force and effect until the earlier of: (A) each party hereto has completed their respective obligations hereunder; or (B) twelve months from the Effective Date ("Term").

IV. ECONOMIC DEVELOPMENT PROGRAM

- 4.01 Upon Developer's completion of its obligations and duties set forth in this Agreement, the City shall pay the Developer the following incentives:
 - a. Payable at the time of closing of the final buyer, a ten (10%) percent completion grant will be paid to the Developer and based on the sales price of the home, such grant being equal to ten (10%) percent of the amount of the sales price of the home, and the home sales shall price not exceed a maximum price of \$203,000.00.
 - b. In addition to the completion grant authorized above, the City shall provide without cost to the Developer, at the sole discretion of the City, one or more of the following:

- (1) waiver of construction related City permits and fees, (2) utility taps, (3) sidewalks, (4) roll-off containers and two tips, and (4) demolition of existing structures.

V. DEVELOPER'S OBLIGATIONS AND DUTIES

The Developer shall perform, or cause to be performed the construction of the improvements set forth in **Exhibit A – "Public and Private Improvements"** on or before the expiration of this agreement. Additionally:

- 5.01 The Developer shall be a member of the Big Country Home Builder's Association as of the effective date of this Agreement, and during the term of this Agreement.
- 5.02 The Developer shall reconstruct, at its expense, the improvements identified on **Exhibit A – "Public and Private Improvements"** in accordance with all applicable laws and regulations, including but not limited to the City's current residential building code and residential energy code. At a minimum, the **Public and Private Improvements** shall meet or exceed the following eligibility criteria: (1) replacement of all major mechanical, electrical, and plumbing systems two years or older, or as may otherwise be approved or required by the City, (2) removal and replacement of existing roofing system with a medium grad/architectural asphaltic roofing system, or as otherwise approved by the City, (3) replacement of all windows, or as otherwise approved by the City, (4) brick veneer or fiber cement siding, (5) a four foot wooden privacy fence with metal posts along property line and as approved by the City, or a four foot chain-link fence with metal posts along property line and as approved by the City, (6) front and rear lawn sodded with drought tolerant grass species (alternative landscaping designs may be approved by the City on a case by case basis), (7) concrete driveway suitable for two car parking, and (8) meet or exceed adopted residential building and energy codes at the time of permit issuance.
- 5.03 The Developer shall purchase all building materials from a business located within the corporate boundaries of the City of Abilene, and pay all applicable local sales and use taxes to the City of Abilene. Upon request of the City, Developer shall promptly provide written documentation of compliance with this requirement, such written documentation being receipts or other documentation as agreed to by the City.
- 5.04 The Developer shall require the final buyer of the residence to sign an affidavit at closing that the buyer intends to occupy the residence as their legal homestead in the State of Texas and that it shall serve as their primary residence for a period of 2 years following closing.

- 5.05 The Developer shall reconstruct the home within the existing Neighborhood Empowerment Zones of the City, or shall receive written approval from the City Manager, or his or her designee to reconstruct the home on a specific lot north of South 27th Street.

VI. CITY OBLIGATIONS AND DUTIES

- 6.01 Pay the Economic Incentives to Developer pursuant to the terms and conditions of this Agreement.

VII. DEFAULT

- 7.01 If any party should default upon any terms or obligations with respect to this Agreement (“**Defaulting Party**”), the other party (“**Complaining Party**”) shall provide written notice of the default and shall reasonably include the actions required to cure such default. If the Defaulting Party cures the default within thirty (30) days after notice of default is received (“**Cure Period**”), or commences to cure default within said thirty (30) days and diligently pursues the cure to its conclusion, then this Agreement shall continue as if no default occurred.
- 7.02 In the event that the Defaulting Party fails to cure the default as required by Section 7.01 above, the Complaining Party may, by action or proceeding at law or in equity, be awarded damages and/or specific performance for such default, including reasonable attorney’s fees and costs.

VIII. GENERAL PROVISIONS

- 8.01 **DEVELOPER COVENANTS AND AGREES TO AND DOES HEREBY FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM ALL CLAIMS, SUITS OR CAUSES OF ACTION OF ANY NATURE WHATSOEVER WHETHER REAL OR ASSERTED, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES TO PERSONS OR PROPERTY, INCLUDING DEATH, RESULTING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE CONSTRUCTION OF THE PUBLIC IMPROVEMENTS. IN ADDITION, DEVELOPER COVENANTS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS OR CAUSES OF ACTION OF ANY NATURE WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF INJURIES OR DAMAGES TO PERSONS OR PROPERTY, INCLUDING DEATH, RESULTING FROM THE FAILURE OF DEVELOPER OR**

ITS CONTRACTORS AND SUBCONTRACTORS TO PROPERLY SAFEGUARD THE WORK, ON ACCOUNT OF ANY ACTS, INTENTIONAL OR OTHERWISE, NEGLIGENCE OR MISCONDUCT OF DEVELOPER, ITS CONTRACTORS, SUBCONTRACTORS, AGENTS, SERVANTS OR EMPLOYEES.

- 8.02 If any provision of this Agreement, or a portion thereof, or the application thereof to any person or circumstances shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby. It shall not be deemed that any such invalid provision affects the consideration for this Agreement, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 8.03 This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought under this Agreement shall be in Taylor County, Texas.
- 8.04 Developer shall not assign this Agreement without the express written consent of the City.
- 8.05 Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers or render any of said parties liable for the debts or obligations of any other of said parties.
- 8.06 Except as otherwise expressly provided herein, this Agreement may only be amended, modified or terminated by a declaration in writing, executed and acknowledged by all the parties to this Agreement.
- 8.07 This Agreement constitutes the entire agreement of the parties with respect to the matters set forth herein, and supersedes all prior discussions and agreements between the parties.
- 8.08 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.
- 8.09 In the event any legal proceeding is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE
FOLLOWS.]

AGREED:

DEVELOPER

Aaron Chowning - Chowning Realty, LLC
3066 Legends Tr.
Abitene, TX 79601
325-310-4099

By: Aaron Chowning

Name: Aaron Chowning

Its: Sole Proprietor

CITY OF ABILENE

ATTEST:

City Manager

City Secretary

APPROVED AS TO FORM:

City Attorney

STATE OF TEXAS)

) ACKNOWLEDGEMENT

COUNTY OF Taylor)

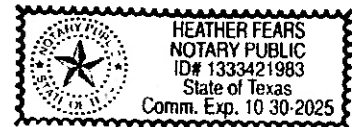
This instrument was acknowledged before me on the 29th day of February, 2024, by
Timothy H. Littlejohn, in his or her capacity as Director of
Planning and Development Services

Heather Fears
Notary Public in and for
the State of Texas

Exhibit "A" – Public and Private Improvements

Project:

See attachment – building plans and building permit submittal requirements.





**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: **16. Resolution: Receive a Report, Hold a Discussion and Take Action on Entering into a Chapter 380 Agreement with Mayhem Solutions for a New Single Family Residence Construction Project Located at 934 Graham St. (Tim Littlejohn)**

GENERAL INFORMATION

Mayhem Solutiouons is building a new single family home located at 934 Graham St.. This will be part of the adopted RebuildAbi program in order to provide affordable housing within the target areas as adopted by council.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

Calculated rate as adopted by ordinance 192-2023

STAFF RECOMMENDATION

Approval

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 934 Graham StRESOLUTION
2. City Council Presentation 934 Graham
3. Ch 380 934 Graham

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, APPROVING
A CHAPTER 380 AGREEMENT BETWEEN THE CITY OF ABILENE AND MAYHEM
SOLUTIONS**

This Economic Development Agreement (“Agreement”) is effective as of the 14th day of March, 2024 (“Effective Date”), by and between Mayhem Solutions, ("Developer"), and the CITY OF ABILENE, TEXAS, a home rule city and municipal corporation ("City"), for the purposes and considerations stated below.

WHEREAS, the City of Abilene adopted Resolution 192-2023 creating an Economic Development Program authorized by Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City has adopted Resolution No. 192-2023 which created the Rebuild ABI program; and

WHEREAS, the Developer intends to acquire, or has acquired, fee simple ownership of 934 Graham St., in Abilene, Taylor County, Texas (the “Project Area”); and

WHEREAS, the governing body of the City of Abilene adopted Resolution 49-2016 and Resolution 129-2023 creating an Economic Development Program authorized by Chapter 380 of the Texas Local Government Code; and

WHEREAS, the governing body of the City of Abilene adopted Resolution 192-2023 and has created Rebuild ABI as an infill development incentive for new residential construction in certain target areas throughout the City; and

WHEREAS, the City desires to enter into this Agreement with the Developer in order to implement the Rebuild ABI economic development program developed by the City to enhance and expand the City’s commercial, economic and employment base to the long-term interest and benefit of the City and the State of Texas; and

WHEREAS, it is anticipated that the development of the Project Area will have a direct and positive economic benefit to the City; and

WHEREAS, the City hereby finds that this Agreement embodies an eligible “project” and clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and is in the best interests of the City.

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

PART 1: That the City of Abilene approves the Rebuild ABI economic development agreement upon the terms and conditions as set forth in Exhibit A attached hereto.

PART 2: That this Resolution becomes effective immediately upon adoption.

ADOPTED on the 14th day of March, 2024.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

City Council Meeting

Economic Development Agreement

934 Graham Street.





- Mayhem Solutions is proposing to build a newly constructed affordable home located at 934 Graham Street.
- Home is approximately +or- 1500 sq.ft.
- 3 bedroom, 2 bathroom, and 1 car garage
- Estimated sales price shall not be above \$203,000





QUESTIONS



**NEW CONSTRUCTION ECONOMIC DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF ABILENE AND**

This Economic Development Agreement ("Agreement") is effective as of the 14th day of March, 2024 ("Effective Date"), by and between MAYHEM SOLUTIONS LLC ("Developer"), and the CITY OF ABILENE, TEXAS, a home rule city and municipal corporation ("City"), for the purposes and considerations stated below.

RECITALS

WHEREAS, the Developer intends to acquire, or has acquired, fee simple ownership of 934 GAMMA ST, in Abilene, Taylor County, Texas (the "Project Area"); and

WHEREAS, the governing body of the City of Abilene adopted Resolution 49-2016 and Resolution 129-2023 creating an Economic Development Program authorized by Chapter 380 of the Texas Local Government Code; and

WHEREAS, the governing body of the City of Abilene adopted Resolution 197-2023 and has created Rebuild ABI as an infill development incentive for new residential construction in certain target areas throughout the City; and

WHEREAS, the City desires to enter into this Agreement with the Developer in order to implement the Rebuild ABI economic development program developed by the City to enhance and expand the City's commercial, economic and employment base to the long-term interest and benefit of the City and the State of Texas; and

WHEREAS, it is anticipated that the development of the Project Area will have a direct and positive economic benefit to the City; and

WHEREAS, the City hereby finds that this Agreement embodies an eligible "project" and clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and is in the best interests of the City; and

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

I. AUTHORITY

- 1.01 The Agreement is authorized by state law, including but not limited Chapter 380 of the Texas Local Government Code, and is within the authority of the City and constitutes a legal and binding obligation of the City.
- 1.02 The Developer's execution and performance of this Agreement constitutes a valid and binding obligation of the Developer.
- 1.03 The factual recitals and findings set forth above are found to be true and correct for all purposes, and are incorporated into this Agreement.

II. DEFINITIONS

- 2.01. **Program** means the economic development program identified in Article IV herein and established by the City pursuant to this Agreement.
- 2.02. **Developer** means MAYHEM SOLUTIONS LLC, its successors or assigns.

III. TERM

- 3.01 This Agreement shall be effective as of the date of execution of both parties. This Agreement shall remain in full force and effect until the earlier of: (A) each party hereto has completed their respective obligations hereunder; or (B) twelve months from the Effective Date ("**Term**").

IV. ECONOMIC DEVELOPMENT PROGRAM

- 4.01 Upon Developer's completion of its obligations and duties set forth in this Agreement, the City shall pay the Developer the following incentives:
 - a. Payable at the time of closing of the interim construction financing to the participating eligible lender, on behalf of the Developer, a ten (10%) percent equity contribution of the total interim financing needed for the single-family construction. Lender eligibility is based solely on City accepting the lender into the Rebuild ABI program.
 - b. Payable at the time of closing of the final buyer, a five (5%) percent completion grant will be paid to the Developer, such grant being equal to five(5%) percent of the amount

of the sales price of the home, and the home sales price shall not exceed a maximum price of \$203,000.00.

- c. In addition to the equity contribution and completion grant authorized above, the City shall provide without cost to the Developer, at the sole discretion of the City, one or more the following: (1) waiver of construction related City permits and fees, (2) utility taps, (3) sidewalks, (4) roll-off containers and two tips, and (4) demolition of existing structures.

- 4.02 In the event the Developer chooses not to use a participating eligible lender, the Developer is eligible to receive a fifteen (15%) percent incentive, payable at the time of closing of the final buyer. Additionally, the Developer is eligible to receive the incentives listed in 4.01(c).

V. DEVELOPER'S OBLIGATIONS AND DUTIES

The Developer shall perform, or cause to be performed, the construction of the improvements set forth in **Exhibit A – “Public and Private Improvements”** on or before the expiration of this agreement. Additionally::

- 5.01 The Developer shall be a member of the Big Country Home Builder's Association as of the effective date of this Agreement, and during the term of this Agreement.
- 5.02 The Developer shall construct, at its expense, the improvements identified on **Exhibit A – “Public and Private Improvements”** in accordance with all applicable laws and regulations, including but not limited to the City's current residential building code and residential energy code.
- 5.03 The Developer shall purchase all building materials from a business located within the corporate boundaries of the City of Abilene, and pay all applicable local sales and use taxes to the City of Abilene. Upon request of the City, Developer shall promptly provide written documentation of compliance with this requirement, such written documentation being receipts or other documentation as agreed to by the City.
- 5.04 The Developer shall require the final buyer of the residence to sign an affidavit at closing that the buyer intends to occupy the residence as their legal homestead in the State of Texas and that it shall serve as their primary residence for a period of 2 years following closing.

- 5.05 The Developer shall construct the new construction within the existing Neighborhood Empowerment Zones of the City, or shall receive written approval from the City Manager, or his or her designee to build the home on a specific lot north of South 27th Street.

VI. CITY OBLIGATIONS AND DUTIES

- 6.01 Pay the Economic Incentives to Developer pursuant to the terms and conditions of this Agreement.

VII. DEFAULT

- 7.01 If any party should default upon any terms or obligations with respect to this Agreement (“**Defaulting Party**”), the other party (“**Complaining Party**”) shall provide written notice of the default and shall reasonably include the actions required to cure such default. If the Defaulting Party cures the default within thirty (30) days after notice of default is received (“**Cure Period**”), or commences to cure default within said thirty (30) days and diligently pursues the cure to its conclusion, then this Agreement shall continue as if no default occurred.
- 7.02 In the event that the Defaulting Party fails to cure the default as required by Section 7.01 above, the Complaining Party may, by action or proceeding at law or in equity, be awarded damages and/or specific performance for such default, including reasonable attorney’s fees and costs.

VIII. GENERAL PROVISIONS

- 8.01 **DEVELOPER COVENANTS AND AGREES TO AND DOES HEREBY FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM ALL CLAIMS, SUITS OR CAUSES OF ACTION OF ANY NATURE WHATSOEVER WHETHER REAL OR ASSERTED, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES TO PERSONS OR PROPERTY, INCLUDING DEATH, RESULTING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE CONSTRUCTION OF THE PUBLIC IMPROVEMENTS. IN ADDITION, DEVELOPER COVENANTS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS OR CAUSES OF ACTION OF ANY NATURE WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF INJURIES OR DAMAGES TO PERSONS OR PROPERTY,**

INCLUDING DEATH, RESULTING FROM THE FAILURE OF DEVELOPER OR ITS CONTRACTORS AND SUBCONTRACTORS TO PROPERLY SAFEGUARD THE WORK, ON ACCOUNT OF ANY ACTS, INTENTIONAL OR OTHERWISE, NEGLIGENCE OR MISCONDUCT OF DEVELOPER, ITS CONTRACTORS, SUBCONTRACTORS, AGENTS, SERVANTS OR EMPLOYEES.

- 8.02 If any provision of this Agreement, or a portion thereof, or the application thereof to any person or circumstances shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby. It shall not be deemed that any such invalid provision affects the consideration for this Agreement, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 8.03 This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought under this Agreement shall be in Taylor County, Texas.
- 8.04 Developer shall not assign this Agreement without the express written consent of the City.
- 8.05 Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers or render any of said parties liable for the debts or obligations of any other of said parties.
- 8.06 Except as otherwise expressly provided herein, this Agreement may only be amended, modified or terminated by a declaration in writing, executed and acknowledged by all the parties to this Agreement.
- 8.07 This Agreement constitutes the entire agreement of the parties with respect to the matters set forth herein, and supersedes all prior discussions and agreements between the parties.
- 8.08 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.
- 8.09 In the event any legal proceeding is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE
FOLLOWS.]

AGREED:

DEVELOPER

MAYHEM SOLUTIONS LLC
1034 S. LEGGETT DR.
ABILENE, TX 79601
325-320-8585

By: JENNIFER M WRIGHT

Name: J M Wright

Its: Sole member

CITY OF ABILENE

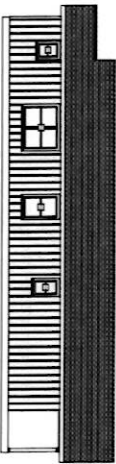
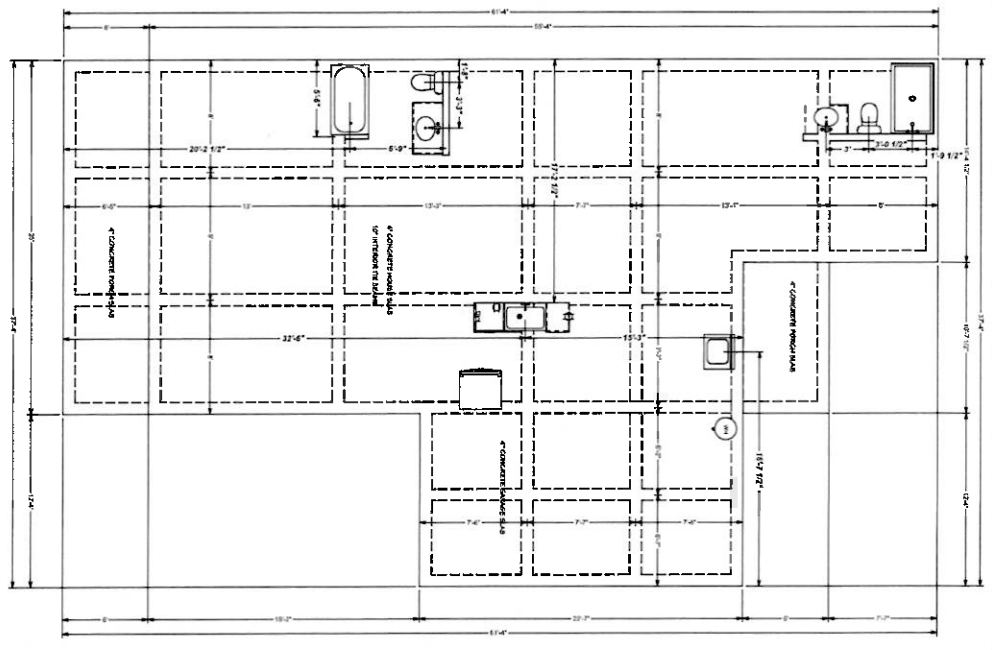
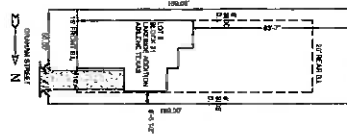
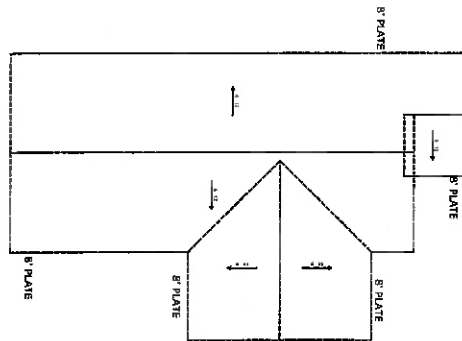
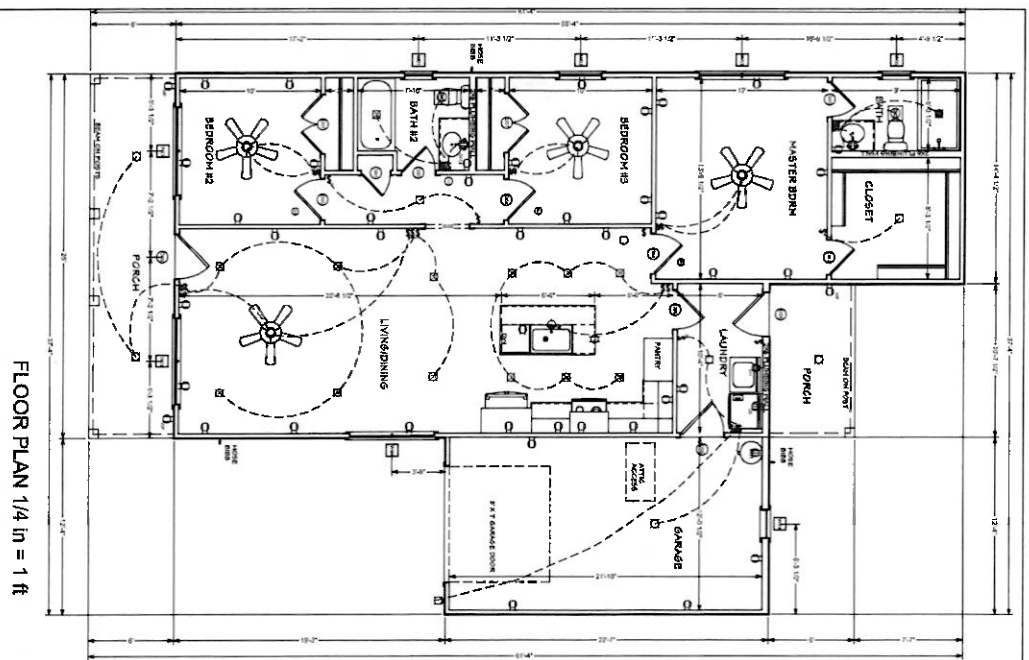
ATTEST:

City Manager

City Secretary

APPROVED AS TO FORM:

City Attorney



DATE		TIME		ROOM NO.		DAY	
01	01/01/18	08:00	11:30	101	101	1	1
02	02/01/18	08:00	11:30	101	101	2	2
03	03/01/18	08:00	11:30	101	101	3	3
04	04/01/18	08:00	11:30	101	101	4	4
05	05/01/18	08:00	11:30	101	101	5	5
06	06/01/18	08:00	11:30	101	101	6	6
07	07/01/18	08:00	11:30	101	101	7	7
08	08/01/18	08:00	11:30	101	101	8	8
09	09/01/18	08:00	11:30	101	101	9	9
10	10/01/18	08:00	11:30	101	101	10	10
11	11/01/18	08:00	11:30	101	101	11	11
12	12/01/18	08:00	11:30	101	101	12	12

Case	Year	Age	Sex	Location	Time
1	1991	24	F	St. Louis	11:00 AM
2	1992	24	F	St. Louis	11:00 AM
3	1993	24	F	St. Louis	11:00 AM
4	1994	24	F	St. Louis	11:00 AM
5	1995	24	F	St. Louis	11:00 AM
6	1996	24	F	St. Louis	11:00 AM
7	1997	24	F	St. Louis	11:00 AM
8	1998	24	F	St. Louis	11:00 AM
9	1999	24	F	St. Louis	11:00 AM
10	2000	24	F	St. Louis	11:00 AM
11	2001	24	F	St. Louis	11:00 AM
12	2002	24	F	St. Louis	11:00 AM
13	2003	24	F	St. Louis	11:00 AM
14	2004	24	F	St. Louis	11:00 AM
15	2005	24	F	St. Louis	11:00 AM
16	2006	24	F	St. Louis	11:00 AM
17	2007	24	F	St. Louis	11:00 AM
18	2008	24	F	St. Louis	11:00 AM
19	2009	24	F	St. Louis	11:00 AM
20	2010	24	F	St. Louis	11:00 AM
21	2011	24	F	St. Louis	11:00 AM
22	2012	24	F	St. Louis	11:00 AM
23	2013	24	F	St. Louis	11:00 AM
24	2014	24	F	St. Louis	11:00 AM
25	2015	24	F	St. Louis	11:00 AM
26	2016	24	F	St. Louis	11:00 AM
27	2017	24	F	St. Louis	11:00 AM
28	2018	24	F	St. Louis	11:00 AM
29	2019	24	F	St. Louis	11:00 AM
30	2020	24	F	St. Louis	11:00 AM

- NOTES
1. ALL 8' PLATES EXCEPT WHERE OTHERWISE NOTED.
 2. EX WALLS DIMENSIONED AT 5'-1/2". EXN WALLS DIMENSIONED AT 3'-1/2".
 3. VERIFY ALL DIMENSIONS, NOTATIONS, AND DETAILS FOR ACCURACY BEFORE BEGINNING CONSTRUCTION.
- TOTAL SQUARE FOOTAGE 1182
- PORCHES 214
- GARAGE 115
- TOTAL GROUND SQ. FT. 1751

934 GRAHAM STREET			
MATHEW ROUGH DRAFT #2			
Date FEB 2024	Scale: 1/4" = 1'	1102 Sd. Fl.	gpr
FLOOR, FOUNDATION, ROOF PLAN & ELEVATIONS			
Page #: 1 OF 1	Drawing #: PWRHGT-24-1102		



**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: 17. **Resolution:** Receive a Report, Hold and Discussion and Take Action on Entering into a Chapter 380 Agreement with Mayhem Solutions for a New Single Family Residence Construction Project at 1406 Anson Avenue *(Tim Littlejohn)*

GENERAL INFORMATION

Mayhem Solutions is building a new single family home located at 1406 Anson Avenue. This is part of the adopted RebuildAbi program in order to provide affordable housing within the target areas as adopted by council.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

Calculated rate as adopted by ordinance 192-2023

STAFF RECOMMENDATION

Approval

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 1406 Anson Ave RESOLUTION
2. City Council Presentation 1406 Anson Ave.
3. Ch 380 1406 Anson

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, APPROVING
A CHAPTER 380 AGREEMENT BETWEEN THE CITY OF ABILENE AND MAYHEM
SOLUTIONS**

This Economic Development Agreement (“Agreement”) is effective as of the 14th day of March, 2024 (“Effective Date”), by and between Mayhem Solutions, ("Developer"), and the CITY OF ABILENE, TEXAS, a home rule city and municipal corporation ("City"), for the purposes and considerations stated below.

WHEREAS, the City of Abilene adopted Resolution 192-2023 creating an Economic Development Program authorized by Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City has adopted Resolution No. 192-2023 which created the Rebuild ABI program; and

WHEREAS, the Developer intends to acquire, or has acquired, fee simple ownership of 1406 Anson Ave., in Abilene, Taylor County, Texas (the “Project Area”); and

WHEREAS, the governing body of the City of Abilene adopted Resolution 49-2016 and Resolution 129-2023 creating an Economic Development Program authorized by Chapter 380 of the Texas Local Government Code; and

WHEREAS, the governing body of the City of Abilene adopted Resolution 192-2023 and has created Rebuild ABI as an infill development incentive for new residential construction in certain target areas throughout the City; and

WHEREAS, the City desires to enter into this Agreement with the Developer in order to implement the Rebuild ABI economic development program developed by the City to enhance and expand the City’s commercial, economic and employment base to the long-term interest and benefit of the City and the State of Texas; and

WHEREAS, it is anticipated that the development of the Project Area will have a direct and positive economic benefit to the City; and

WHEREAS, the City hereby finds that this Agreement embodies an eligible “project” and clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and is in the best interests of the City.

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

PART 1: That the City of Abilene approves the Rebuild ABI economic development agreement upon the terms and conditions as set forth in Exhibit A attached hereto.

PART 2: That this Resolution becomes effective immediately upon adoption.

ADOPTED on the 14th day of March, 2024.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

City Council Meeting

Economic Development Agreement

1406 Anson Ave.





- Mayhem Solutions is proposing to build a newly constructed affordable home located at 1406 Anson Ave.
- Home is approximately +or- 1500 sq.ft.
- 3 bedroom, 2 bathroom, and 1 car garage
- Estimated sales price shall not be above \$203,000





QUESTIONS



**NEW CONSTRUCTION ECONOMIC DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF ABILENE AND**

This Economic Development Agreement ("Agreement") is effective as of the 14th day of March, 2024 ("Effective Date"), by and between MAYHEM SOLUTIONS LLC, ("Developer"), and the CITY OF ABILENE, TEXAS, a home rule city and municipal corporation ("City"), for the purposes and considerations stated below.

RECITALS

WHEREAS, the Developer intends to acquire, or has acquired, fee simple ownership of 1406 ANDERSON AVE, in Abilene, Taylor County, Texas (the "Project Area"); and

WHEREAS, the governing body of the City of Abilene adopted Resolution 49-2016 and Resolution 129-2023 creating an Economic Development Program authorized by Chapter 380 of the Texas Local Government Code; and

WHEREAS, the governing body of the City of Abilene adopted Resolution 192 - 2023 and has created Rebuild ABI as an infill development incentive for new residential construction in certain target areas throughout the City; and

WHEREAS, the City desires to enter into this Agreement with the Developer in order to implement the Rebuild ABI economic development program developed by the City to enhance and expand the City's commercial, economic and employment base to the long-term interest and benefit of the City and the State of Texas; and

WHEREAS, it is anticipated that the development of the Project Area will have a direct and positive economic benefit to the City; and

WHEREAS, the City hereby finds that this Agreement embodies an eligible "project" and clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and is in the best interests of the City; and

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

I. AUTHORITY

- 1.01 The Agreement is authorized by state law, including but not limited Chapter 380 of the Texas Local Government Code, and is within the authority of the City and constitutes a legal and binding obligation of the City.
- 1.02 The Developer's execution and performance of this Agreement constitutes a valid and binding obligation of the Developer.
- 1.03 The factual recitals and findings set forth above are found to be true and correct for all purposes, and are incorporated into this Agreement.

II. DEFINITIONS

- 2.01. **Program** means the economic development program identified in Article IV herein and established by the City pursuant to this Agreement.
- 2.02. **Developer** means MAYHEM SOLUTIONS LLC, its successors or assigns.

III. TERM

- 3.01 This Agreement shall be effective as of the date of execution of both parties. This Agreement shall remain in full force and effect until the earlier of: (A) each party hereto has completed their respective obligations hereunder; or (B) twelve months from the Effective Date ("**Term**").

IV. ECONOMIC DEVELOPMENT PROGRAM

- 4.01 Upon Developer's completion of its obligations and duties set forth in this Agreement, the City shall pay the Developer the following incentives:
 - a. Payable at the time of closing of the interim construction financing to the participating eligible lender, on behalf of the Developer, a ten (10%) percent equity contribution of the total interim financing needed for the single-family construction. Lender eligibility is based solely on City accepting the lender into the Rebuild ABI program.
 - b. Payable at the time of closing of the final buyer, a five (5%) percent completion grant will be paid to the Developer, such grant being equal to five(5%) percent of the amount

of the sales price of the home, and the home sales price shall not exceed a maximum price of \$203,000.00.

- c. In addition to the equity contribution and completion grant authorized above, the City shall provide without cost to the Developer, at the sole discretion of the City, one or more the following: (1) waiver of construction related City permits and fees, (2) utility taps, (3) sidewalks, (4) roll-off containers and two tips, and (4) demolition of existing structures.
- 4.02 In the event the Developer chooses not to use a participating eligible lender, the Developer is eligible to receive a fifteen (15%) percent incentive, payable at the time of closing of the final buyer. Additionally, the Developer is eligible to receive the incentives listed in 4.01(c).

V. DEVELOPER'S OBLIGATIONS AND DUTIES

The Developer shall perform, or cause to be performed, the construction of the improvements set forth in **Exhibit A – "Public and Private Improvements"** on or before the expiration of this agreement. Additionally::

- 5.01 The Developer shall be a member of the Big Country Home Builder's Association as of the effective date of this Agreement, and during the term of this Agreement.
- 5.02 The Developer shall construct, at its expense, the improvements identified on **Exhibit A – "Public and Private Improvements"** in accordance with all applicable laws and regulations, including but not limited to the City's current residential building code and residential energy code.
- 5.03 The Developer shall purchase all building materials from a business located within the corporate boundaries of the City of Abilene, and pay all applicable local sales and use taxes to the City of Abilene. Upon request of the City, Developer shall promptly provide written documentation of compliance with this requirement, such written documentation being receipts or other documentation as agreed to by the City.
- 5.04 The Developer shall require the final buyer of the residence to sign an affidavit at closing that the buyer intends to occupy the residence as their legal homestead in the State of Texas and that it shall serve as their primary residence for a period of 2 years following closing.

- 5.05 The Developer shall construct the new construction within the existing Neighborhood Empowerment Zones of the City, or shall receive written approval from the City Manager, or his or her designee to build the home on a specific lot north of South 27th Street.

VI. CITY OBLIGATIONS AND DUTIES

- 6.01 Pay the Economic Incentives to Developer pursuant to the terms and conditions of this Agreement.

VII. DEFAULT

- 7.01 If any party should default upon any terms or obligations with respect to this Agreement (“**Defaulting Party**”), the other party (“**Complaining Party**”) shall provide written notice of the default and shall reasonably include the actions required to cure such default. If the Defaulting Party cures the default within thirty (30) days after notice of default is received (“**Cure Period**”), or commences to cure default within said thirty (30) days and diligently pursues the cure to its conclusion, then this Agreement shall continue as if no default occurred.
- 7.02 In the event that the Defaulting Party fails to cure the default as required by Section 7.01 above, the Complaining Party may, by action or proceeding at law or in equity, be awarded damages and/or specific performance for such default, including reasonable attorney’s fees and costs.

VIII. GENERAL PROVISIONS

- 8.01 **DEVELOPER COVENANTS AND AGREES TO AND DOES HEREBY FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM ALL CLAIMS, SUITS OR CAUSES OF ACTION OF ANY NATURE WHATSOEVER WHETHER REAL OR ASSERTED, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES TO PERSONS OR PROPERTY, INCLUDING DEATH, RESULTING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE CONSTRUCTION OF THE PUBLIC IMPROVEMENTS. IN ADDITION, DEVELOPER COVENANTS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS OR CAUSES OF ACTION OF ANY NATURE WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF INJURIES OR DAMAGES TO PERSONS OR PROPERTY,**

INCLUDING DEATH, RESULTING FROM THE FAILURE OF DEVELOPER OR ITS CONTRACTORS AND SUBCONTRACTORS TO PROPERLY SAFEGUARD THE WORK, ON ACCOUNT OF ANY ACTS, INTENTIONAL OR OTHERWISE, NEGLIGENCE OR MISCONDUCT OF DEVELOPER, ITS CONTRACTORS, SUBCONTRACTORS, AGENTS, SERVANTS OR EMPLOYEES.

- 8.02 If any provision of this Agreement, or a portion thereof, or the application thereof to any person or circumstances shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby. It shall not be deemed that any such invalid provision affects the consideration for this Agreement, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 8.03 This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought under this Agreement shall be in Taylor County, Texas.
- 8.04 Developer shall not assign this Agreement without the express written consent of the City.
- 8.05 Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers or render any of said parties liable for the debts or obligations of any other of said parties.
- 8.06 Except as otherwise expressly provided herein, this Agreement may only be amended, modified or terminated by a declaration in writing, executed and acknowledged by all the parties to this Agreement.
- 8.07 This Agreement constitutes the entire agreement of the parties with respect to the matters set forth herein, and supersedes all prior discussions and agreements between the parties.
- 8.08 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.
- 8.09 In the event any legal proceeding is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE
FOLLOWS.]

AGREED:

DEVELOPER

MAYHEM SOLUTIONS LLC
1034 S. LEGGETT DR.
ABILENE, TX 79605
325-320-8585

By: JEREMY M WRIGHT

Name: [Signature]

Its: SOLE MEMBER

CITY OF ABILENE

ATTEST:

City Manager

City Secretary

APPROVED AS TO FORM:

City Attorney



**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Robert Hanna, City Manager

FROM: Mike Rains, Finance Director

SUBJECT: 18. Resolution: Receive a Report, Hold a Discussion and Take Action on Suspending the April 4, 2024, Effective Date of AEP Texas Inc.'s Requested Rate Change (Mike Rains)

GENERAL INFORMATION

AEP Texas Inc (“AEP Texas” or “Company”) filed an application on February 29, 2024 with cities retaining original jurisdiction seeking to increase system-wide distribution rates by \$110.4 million per year (an increase of 13.1%) and increase system-wide transmission rates by \$63.1 million (an increase of 9.29%). According to AEP Texas, the impact of this approval on an average residential customer would be an increase of about \$4.59 per month.

The resolution suspends the April 4, 2024 effective date of the Company’s rate change for the maximum period permitted by law to allow the City, working in conjunction with other Cities served by AEP Texas to intervene in the Public Utility Commission Docket No. 56165 to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue.

The law provides that a rate request made by an electric utility cannot become effective until at least 35 days following the filing of the application to change rates. The law permits the City to suspend the rate change for 90 days after the date the rate change would otherwise be effective.

If the City fails to take some action regarding the filing before the effective date, AEP Texas’s rate request is deemed approved.

The Resolution authorizes the City to participate in a coalition of Cities served by AEP Texas (“Cities”) in order to more efficiently represent the interests of the City and their citizens and 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.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

The Company will reimburse the cities for their reasonable rate case expenses. Legal counsel and consultants approved by Cities will submit monthly invoices that will be forwarded to AEP Texas for reimbursement. No individual city incurs liability for payment of rate case expenses by adopting a suspension resolution.

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution - AEP Texas 2024 Rate Case
2. OJ Cities - Model Staff Report - AEP Texas Rate Case 2024
3. AEP - Application for Authority to Change Rates
4. Presentation - Resolution Suspending Effective Date of AEP's Rate Increase

RESOLUTION NO. _____

RESOLUTION OF THE CITY OF ABILENE SUSPENDING THE APRIL 4 2024 EFFECTIVE DATE OF AEP TEXAS INC.'S REQUESTED RATE CHANGE TO PERMIT THE CITY TIME TO STUDY THE REQUEST AND TO ESTABLISH REASONABLE RATES; APPROVING COOPERATION WITH THE CITIES SERVED BY AEP TEXAS AND AUTHORIZING INTERVENTION IN AEP TEXAS INC.'S REQUESTED RATE CHANGE PROCEEDINGS BEFORE THE COMMISSION; HIRING LLOYD GOSSELINK ATTORNEYS AND CONSULTING SERVICES TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION AND APPEALS; REQUIRING REIMBURSEMENT OF CITIES' RATE CASE EXPENSES; 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, on or about February 29, 2024, AEP Texas Inc. ("AEP Texas" or "Company"), pursuant to Public Utility Regulatory Act ("PURA") §§ 33.001 and 36.001 filed with the City of Abilene ("City") a Statement of Intent to change electric delivery rates in all municipalities exercising original jurisdiction within its service area, effective April 4, 2024 and

WHEREAS, the City is an electric utility customer of AEP Texas and a regulatory authority with an interest in the rates and charges of AEP Texas; and

WHEREAS, the City is a member of the Cities Served by AEP Texas ("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 Texas' service area; and

WHEREAS, PURA § 36.108 grants local regulatory authorities the right to suspend the effective date of proposed rate changes for ninety (90) days after the date the rate change would otherwise be effective; and

WHEREAS, the City retains its rights as a city with original jurisdiction including the right to suspend the application; and

WHEREAS, PURA § 33.023 provides that costs incurred by Cities in ratemaking activities are to be reimbursed by the regulated utility; and

WHEREAS, the City’s consultants and attorneys recommend that the City suspend the application for further review.

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

SECTION 1. That the April 4, 2024, effective date of the rate request submitted by AEP Texas on or about February 29, 2024, be suspended for the maximum period allowed by law to permit adequate time to review the proposed changes and to establish reasonable rates.

SECTION 2. That the City joins other Cities Served by AEP Texas in this proceeding and, subject to the right to terminate employment at any time, hereby authorizes the hiring of Thomas Brocato of Lloyd Gosselink Rochelle and Townsend, P.C, and consultants to review the Company’s filing, negotiate with the Company, make recommendations regarding reasonable rates and to direct any necessary administrative proceedings or court litigation associated with an appeal of city action.

SECTION 3. That the City shall work with Cities Served by AEP Texas in the review and evaluation of whether the proposed rates are appropriate, fair, just, and reasonable; and, intervene as a necessary party in the Public Utility Commission of Texas’ consideration of AEP Texas’ rate filing in Docket No. 56165 as it affects the customers in the unincorporated areas of AEP Texas’ service territory.

SECTION 4. That the City’s reasonable rate case expenses shall be reimbursed by AEP Texas.

SECTION 5. 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 6. A copy of this Resolution shall be sent to AEP Texas, care of Jennifer Frederick, American Electric Power Company, 400 West 15th Street, Suite 1520, Austin, Texas 78701 (aepaustintx@aep.com), and to Thomas Brocato at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701 (tbrocato@lglawfirm.com).

PASSED AND APPROVED this 14th day of March, 2024.

MAYOR

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Attorney

MODEL STAFF REPORT

*****ACTION MUST BE TAKEN TO SUSPEND THE EFFECTIVE DATE
BEFORE APRIL 4, 2024*****

PURPOSE:

AEP Texas Inc (“AEP Texas” or “Company”) filed an application on February 29, 2024 with cities retaining original jurisdiction seeking to increase system-wide distribution rates by \$110.4 million per year (an increase of 13.1%) and increase system-wide transmission rates by \$63.1 million (an increase of 9.29%). According to AEP Texas, the impact of this approval on an average residential customer would be an increase of about \$4.59 per month.

The resolution suspends the April 4, 2024 effective date of the Company’s rate change for the maximum period permitted by law to allow the City, working in conjunction with other Cities served by AEP Texas to intervene in the Public Utility Commission Docket No. 56165 to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue.

The law provides that a rate request made by an electric utility cannot become effective until at least 35 days following the filing of the application to change rates. The law permits the City to suspend the rate change for 90 days after the date the rate change would otherwise be effective. **If the City fails to take some action regarding the filing before the effective date, AEP Texas’s rate request is deemed approved.**

Purpose of this Resolution:

The purpose of this Resolution is to suspend the Statement of Intent to Change Rates proposed by AEP Texas and authorize the City to intervene in the Company’s rate case proceeding before the Public Utility Commission in Docket No. 56165.

Explanation of “Be It Resolved” Paragraphs:

Section 1. The City is authorized to suspend the rate change for 90 days after the date that the rate change would otherwise be effective for any legitimate purpose. Time to study and investigate the application is always a legitimate purpose. Please note that the resolution refers to the suspension period as “the maximum period allowed by law” rather than ending by a specific date. This is because the Company controls the effective date and can extend the deadline for final city action to increase the time that the City retains jurisdiction if necessary to reach settlement on the case. If the suspension period is not otherwise extended by the Company, the City must take final action on AEP Texas’ request to change rates by July 3, 2024.

Section 2. This provision authorizes the City to participate in a coalition of Cities served by AEP Texas (“Cities”) in order to more efficiently represent the interests of the City and their citizens and 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.

Section 3. This section authorizes the City to intervene in and participate with Cities Served by AEP Texas as a party in the Company's filing, PUC Docket No. 56165.

Section 4. The Company will reimburse the cities for their reasonable rate case expenses. Legal counsel and consultants approved by Cities will submit monthly invoices that will be forwarded to AEP Texas for reimbursement. No individual city incurs liability for payment of rate case expenses by adopting a suspension resolution.

Section 4. This section merely 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.

Section 5. This section provides that both AEP Texas' counsel and counsel for the Cities will be notified of the City's action by sending a copy of the approved and signed resolution to certain designated individuals.



AEP Texas
539 N. Carancahua St
Corpus Christi, TX 78401
www.aeptexas.com

Judith E. Talavera
President & Chief Operating Officer

February 29, 2024

The Honorable Weldon Hurt
Mayor, City of Abilene
555 Walnut
Abilene, TX 79601

Re: *Application of AEP Texas Inc. for Authority to Change Rates*

Dear Mayor Hurt:

As indicated in previous correspondence, AEP Texas is filing with the Public Utility Commission of Texas (PUC) and cities that have retained original jurisdiction over AEP Texas a request to change the rates it charges for the use of its transmission and distribution lines and related services. AEP Texas filed this request with the PUC today (February 29, 2024) and, by this letter, with cities that have retained original jurisdiction over AEP Texas. This letter provides you information about the filing, as well as the filing itself. Attached to this letter are the following:

Attachment 1 discusses the action your city needs to take by April 4, 2024 and provides a sample city ordinance for your convenience. If your City has previously ceded its original rate-setting jurisdiction to the PUC, this information is being provided to you as a courtesy and no action is required by you.

Attachment 2 is the AEP Texas Petition and Statement of Intent, which is the request to change rates for those cities that have retained original jurisdiction. Appendix A of the Petition and Statement of Intent provides a list of cities in the AEP Texas service territory and indicates which cities have retained original jurisdiction over the company's rates and those which have ceded original jurisdiction to the PUC.

Attachment 3 is a copy of my testimony as AEP Texas President & COO, which provides you an overview of the filing and the subjects covered by each AEP Texas witness.

The entirety of AEP Texas' rate request testimony and rate filing package can be located on the PUC Interchange at the following link:

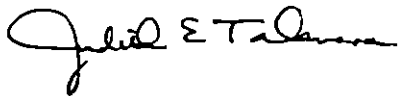
<https://interchange.puc.texas.gov/search/filings/?UtilityType=A&ControlNumber=56165&ItemMatch=Equal&DocumentType=ALL&SortOrder=Ascending>

AEP Texas is proposing revisions to its tariffs and schedules. A copy of the proposed tariffs is contained in Exhibit JLJ-2 to the testimony of AEP Texas witness Jennifer Jackson, which can be found on the PUC Interchange as well.

As has always been the case, AEP Texas is committed to working with local and state regulators to ensure the timely construction and maintenance of a reliable and resilient transmission and distribution system. We believe a strong system will enhance overall service reliability and the economic potential for the state and the communities we serve.

If you have any questions about the AEP Texas request to change its transmission and distribution rates, please contact Greg Blair at 325-674-7422.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith E. Talavera". The signature is fluid and cursive, with the first name "Judith" being more prominent.

Judith E. Talavera
AEP Texas Inc.
President and Chief Operating Officer

Attachments

ACTION REQUIRED BY APRIL 4, 2024

Action is required by your City as a regulatory authority which has retained original jurisdiction to review and act on AEP Texas' requested change in base rates. Your City's exercise of its regulatory authority is governed by the Public Utility Regulatory Act, commonly referred to as "PURA." PURA requires that a municipal regulatory authority must take action on AEP Texas' rate request within 35 days after the case is filed. If your City has ceded original jurisdiction, then no action is required. If your City has retained original jurisdiction then you can take one of four basic actions by April 4, 2024:

- 1) deny AEP Texas' request;
- 2) grant AEP Texas' request in whole or part; or
- 3) "suspend" AEP Texas' requested change in rates for an additional 90 days (a total of 125 days) before taking final action.
- 4) cede original jurisdiction to the Public Utility Commission of Texas (PUC);

Once your City acts, PURA authorizes AEP Texas to appeal that action to the PUC, which has the authority to make the final decision on the rate change request. AEP Texas is filing the same rate change request with all other cities in its Texas service area that have the same regulatory authority as your City. Similar actions by these other cities would also be appealed by AEP Texas, and ultimately the Commission would exercise its statutory authority to set uniform system wide rates throughout AEP Texas' service area.

If you would like more information on permanently ceding original jurisdiction to the Commission, please contact your External Affairs Manager.

If no action is taken by your city by April 4, 2024, AEP Texas rate change request is deemed approved. In order to avoid this result, and to provide the simplest means of processing the Company's request, **AEP Texas recommends that your City Council take action by April 4, 2024.** If you deny the request, AEP Texas will then appeal the matter to the PUC, together with all the other appeals of municipal actions within AEP Texas' service area, and the cases will be consolidated at the PUC. Draft ordinances are provided with this attachment for your consideration and convenience.

Once your City Council has taken one of the above actions, please scan and email a copy of the approved ordinance to: jjfrederick@aep.com

If you have questions on this request or the draft ordinance, please do not hesitate to contact your AEP Texas External Affairs Manager. Thank you for your attention to this matter.

AN ORDINANCE / RESOLUTION OF THE CITY OF _____, TEXAS
FINDING, AFTER REASONABLE NOTICE AND HEARING, THAT AEP TEXAS
INC EXISTING ELECTRIC RATES AND CHARGES WITHIN THE CITY SHOULD
REMAIN IN EFFECT

WHEREAS, pursuant to §33.001 of the Public Utility Regulatory Act, the City of _____ has exclusive, original jurisdiction over the electric rates, operations, and services provided within city limits by AEP Texas Inc. (AEP Texas or the Company).

WHEREAS, on February 29, 2024, AEP Texas filed with the City of _____ a Petition and Statement of Intent seeking a net increase of 13.1% over net present distribution revenues. Related to its transmission cost of service, the Company requests a rate increase of \$63.1 million above its adjusted test year revenues, an increase of 9.29%.

WHEREAS, the Company has requested its proposed rate change become effective 35 days after the filing its Petition.

NOW, THEREFORE, BE IT ORDAINED/RESOLVED BY THE CITY COUNCIL OF THE CITY OF _____, TEXAS:

SECTION 1. It is hereby found and determined that said meeting at which this Ordinance/Resolution was passed was open to the public, as required by Texas law, and that advance public notice of the time, place and purpose of said meeting was given.

SECTION 2. AEP Texas' request for approval of its base rates increase is denied. The existing rates and charges of AEP Texas are hereby found to be just and reasonable rates and the City adopts such existing rates to continue to be observed and to be in force within the City hereafter.

SECTION 3. The base rates set forth in this Ordinance / Resolution may be changed and amended by either the City or the Company only as provided by law.

SECTION 4. This Ordinance / Resolution shall be served on AEP Texas by email to the Company's authorized representative, Jennifer J. Frederick at jjfrederick@aep.com.

SECTION 5. Nothing contained in this Ordinance shall be construed now or hereafter in limiting or modifying, in any manner, the right and power of the City under law to regulate the base rates and charges of AEP Texas.

CONSIDERED, PASSED, APPROVED AND SIGNED this the ____ day of _____, 20____, at a regular called meeting of the City Council of the city of _____, Texas, at which a quorum was present and which was held in accordance with the provisions of Chapter 551, Texas Government Code.

SIGNED this ____ day of _____, 20__.

CITY OF _____

By: _____

_____, Mayor

Attest:

_____, City Secretary

APPROVED AS TO FORM:

_____, City Attorney

DOCKET NO. 56165

APPLICATION OF AEP TEXAS INC.	§	BEFORE THE
FOR AUTHORITY TO CHANGE	§	PUBLIC UTILITY COMMISSION
RATES	§	OF TEXAS

PETITION AND STATEMENT OF INTENT TO CHANGE RATES

AEP Texas Inc. (AEP Texas or the Company) files this Petition and Statement of Intent to Change Rates (Petition) in accordance with Subchapter C of Chapter 36 of the Public Utility Regulatory Act (PURA),¹ 16 Tex. Admin. Code § 22.243(b) (TAC), and 16 TAC § 25.247. AEP Texas is filing with this Petition a rate filing package (RFP) that complies in all material respects with the Commission's *Transmission & Distribution (TDU) Investor-Owned Utilities Rate Filing Package for Cost-of-Service Determination*.²

I. INTRODUCTION

AEP Texas delivers electricity to approximately 1.1 million homes, businesses, and industries across its nearly 100,000 square mile service territory in south and west Texas, roughly 36% of the state. As a “wires” company, AEP Texas builds, operates, maintains, and repairs its transmission and distribution (T&D) system—composed of nearly 45,000 miles of distribution lines and 8,500 miles of transmission lines—reads electric meters, and handles connections and disconnections as directed by the Retail Electric Providers (REPs) selling electricity to end-use customers.

Much has happened since AEP Texas last filed a base-rate case in 2019. The world was beginning to respond to a global pandemic just as the Commission was issuing its final order in

¹ PURA is codified at Tex. Util. Code Ann. §§ 11.001–66.016.

² Approved July 20, 2020.

that case.³ During that same year and since, the state experienced several extreme weather events, most notably Winter Storm Uri in February 2021. The business environment in which AEP Texas operates has also changed dramatically. AEP Texas has faced inflationary, supply chain, and labor market challenges that have placed upward pressures on AEP Texas' cost of service. At the same time, AEP Texas has experienced unprecedented load growth in its service territory. Despite these challenges, AEP Texas' mission to provide safe and reliable electricity service remains unchanged.

Generally, AEP Texas' approach for improving system performance focuses on two areas: preventing and minimizing duration of outages. While reliability of service is important, having a system in place that is resilient, particularly in light of the increase in extreme weather events, is also a priority of AEP Texas. As the T&D utility with the largest coastal exposure in the state, 240 miles, AEP Texas must prepare for catastrophic weather events. For example, in south Texas, AEP Texas teams worked to quickly and safely restore service despite the challenging circumstances of Hurricane Hanna making landfall during the COVID-19 pandemic in 2020. Winter Storm Uri presented its own unique challenges, but again, the Company's employees were ready to respond when needed. Importantly, the AEP Texas T&D system held up remarkably well during Winter Storm Uri and the AEP Texas T&D teams were focused on restoring service to customers as soon as possible after the load shed directive ended. More recently in 2023, in response to a tornado that devastated the town of Matador, Texas, the AEP Texas T&D teams responded safely and quickly to restore service to those impacted in less than 24 hours despite losing an entire substation as a result of the tornado.

As noted above, AEP Texas' service territory has experienced unprecedented growth as more businesses have expanded or selected the State of Texas for their business. This load growth

³ *Application of AEP Texas Inc. for Authority to Change Rates*, Docket No. 49494, Order (Apr. 6, 2020).

is not just happening with the annual peak hour, but also with energy (GWh) delivered over all 8,760 hours of the year. In 2021, AEP Texas load increased by 8.3%, and through the end of the test year in 2023,⁴ AEP Texas load is up another 9.0% on top of the 2022 levels. In contrast, energy delivered in the AEP Texas service territory grew on average only by 1.1% per year from 2000 to 2020. In other words, the growth AEP Texas is experiencing today is nearly 9 times greater than what it has historically experienced. The commercial and industrial classes have been the primary drivers of this growth. Moreover, the pipeline of future economic development projects has never been bigger. This growth has required AEP Texas to make significant investments in its T&D system to support the expanding economy and meet its customers' needs.

Between January 1, 2019 and September 30, 2023, AEP Texas placed in service more than \$2 billion in distribution capital additions and \$3 billion in transmission capital additions. This capital investment was necessary to address load changes of new and existing customers and to allow AEP Texas to fulfill its obligations under PURA, the Commission's Substantive Rules, and its Commission-approved tariffs. In the face of this growth and investment, it is important for AEP Texas to maintain and improve its financial profile. To achieve this objective, the Company's rates must be set at a level that provides it with the opportunity to recover its reasonable costs of doing business and a competitive return on its investments in Texas. Maintaining and improving AEP Texas' financial profile is discussed at more length by AEP Texas witnesses Chad Burnett and Noah Hollis.

While unprecedented load growth and the resulting \$5 billion in T&D investment play a significant role in the timing of this rate case, rising inflation has contributed to an increase in the cost of service. Notably, year-over-year inflation during the test year in the Company's last base-

⁴ The test year is the twelve-month period ending September 30, 2023.

rate case (Docket No. 49494), as measured by the Consumer Price Index (CPI) was 2.4%. Year-over-year inflation for the test year in this case is more than double that at 5.1%.

In sum, since its most recent rate case, AEP Texas has provided safe and reliable service in the face of significant challenges and opportunities. The Company has and continues to respond to the changing environment. And, as customers' expectations continue to evolve, AEP Texas remains committed to providing them with safe and reliable wires services.

Finally, while the timing of this filing is consistent with AEP Texas' commitment made in the settlement agreement adopted by the Commission in Docket No. 49494, much has changed for AEP Texas and customers since that time and a rate case is needed to better align rates with the current cost of providing safe and reliable service to customers.

II. BUSINESS ADDRESS & AUTHORIZED REPRESENTATIVES

AEP Texas' business address is 539 North Carancahua Street, Corpus Christi, Texas 78401. AEP Texas' authorized business representative for this proceeding is:

Jennifer J. Frederick
Regulatory Case Manager
American Electric Power Service Corporation
400 West 15th Street, Suite 1520
Austin, Texas 78701
Telephone: (512) 481-4573
Facsimile: (512) 481-4591
aepaustintx@aep.com (service)

AEP Texas' legal representatives are:

Melissa A. Gage
Leila M. Melhem
American Electric Power Service Corporation
400 West 15th Street, Suite 1520
Austin, Texas 78701
Telephone: (512) 481-3320
Facsimile: (512) 481-4591
Email: magage@aep.com
lmelhem@aep.com
aepaustintx@aep.com (Service)

William Coe
Kerry McGrath
Patrick Pearsall
Duggins Wren Mann & Romero, LLP
P.O. Box 1149
Austin, Texas 78767
Telephone: (512) 744-9300
Facsimile: (512) 744-9399
Email: wcoe@dwmrlaw.com
kmcgrath@dwmrlaw.com
ppersall@dwmrlaw.com

AEP Texas requests that all information, pleadings, and other documents in this matter be served on each of the persons above and be emailed to aepaustintx@aep.com.

III. APPLICANT AND JURISDICTION

AEP Texas is a public utility as that term is defined in PURA § 11.004(1), an electric utility as that term is defined in PURA § 31.002(6), and a transmission and distribution utility as that term is defined in PURA § 31.002(19). AEP Texas is a wholly owned subsidiary of American Electric Power Company, Inc. (AEP), which is a holding company within the meaning of the Public Utility Holding Company Act of 2005.

The Commission has jurisdiction over this application under PURA §§ 14.001, 32.001, and 36.001. Specifically, the Commission has jurisdiction to change AEP Texas' distribution rates within unincorporated areas of the Company's service area, within all municipalities served by the Company that have surrendered their original jurisdiction to the Commission, and upon appeal by the Company of actions taken by municipalities exercising original jurisdiction. Each municipality in AEP Texas' service area that has not ceded jurisdiction to the Commission has jurisdiction over this petition to the extent it seeks to change rates for distribution service within those municipalities. AEP Texas anticipates that it will appeal the actions of its original jurisdiction municipalities, and that it will seek consolidation of those appeals with this docket. A list of the municipalities that have ceded original jurisdiction, and of those that have retained original jurisdiction, is provided as Appendix A. AEP Texas will file this petition with the Commission, as well as with all of its original jurisdiction municipalities.

IV. TEST YEAR

This petition is based on a test year ending September 30, 2023, adjusted for known and measurable changes.

V. INCREASE IN REVENUE REQUIREMENT

Related to its distribution cost of service, the Company requests a rate increase of approximately \$100.4 million over its adjusted test year revenues. This net change is a 13.1% increase over net present distribution revenues. When expected annualized Transmission Cost Recovery Factor (TCRF) Rider revenues are included in the comparison to present revenues, the \$100.4 million net change is an 8.4% increase.

Related to its transmission cost of service, the Company requests a rate increase of \$63.1 million over its adjusted test year revenues, an increase of 9.29%. Present and proposed revenues by rate class and number of customers are provided in the following table:

Distribution Rate Class	AEP TX Number of Customers	AEP TX Present Revenues*	AEP TX Proposed Revenues	AEP TX Proposed Change	AEP TX Percent Change
Residential	935,238	\$429,886,639	\$493,369,221	\$63,482,582	14.77%
Secondary <= 10 kW	99,366	\$25,972,549	\$23,633,174	-\$2,339,375	-9.01%
Secondary > 10 kW	72,409	\$223,867,117	\$255,299,905	\$31,432,788	14.04%
Primary	1,086	\$46,979,025	\$57,184,286	\$10,205,260	21.72%
Transmission	123	\$9,566,457	\$6,901,575	-\$2,664,883	-27.86%
Lighting	2,627	\$30,653,559	\$29,020,337	-\$1,633,222	-5.33%
Total Texas Retail	1,110,849	\$766,925,347	\$865,408,497	\$98,483,151	12.84%
WDS BESS	19	\$0	\$1,904,269	\$1,904,269	
Total Distribution	1,110,868	\$766,925,347	\$867,312,766	\$100,387,419	13.09%
March 2024 TCRF**		\$428,545,775	\$428,545,775		
Distribution + TCRF		\$1,195,471,122	\$1,295,858,541	\$100,387,419	8.40%
Wholesale Transmission Revenue		\$679,461,540	\$742,555,253	\$63,093,713	9.29%

*Includes approved DCRF revenue requirement recovered in proposed revenues

**March 2024 Rider TCRF revenue requirement annualized without prior period true-up

The proposed increase constitutes a “major change” as that term is defined in PURA § 36.101.

VI. AFFECTED PERSONS

AEP Texas’ petition affects all REPs serving end-use retail electric customers in the Company’s certificated service territory. Each of these end-use retail electric customers may be affected by this petition, depending upon the actions taken by the REPs that provide electricity to such customers.

This petition also affects all customers taking service under the Company’s wholesale transmission service tariff.

VII. FILING OVERVIEW

Through this petition, the supporting testimony, and the schedules and workpapers submitted with the required RFP, AEP Texas requests that the Commission:

- approve AEP Texas’ proposed revenue requirement;
- find AEP Texas’ capital additions placed in service since the end of the test year in its previous base-rate case prudent;
- approve the requested capital structure and return on equity (ROE);
- approve the proposed cost allocation methodology and rate design;
- reset baselines for distribution and transmission;
- approve AEP Texas’ proposed transmission, distribution, and general plant depreciation rates;
- approve AEP Texas’ proposed Wholesale Distribution Service Battery Energy Storage (WDS BESS) rate schedule;
- approve AEP Texas’ requests to continue the provision of facilities rental services and for a good-cause exception to the application of 16 TAC § 25.343(d)(1)(c)(ii) to allow the Company to provide facilities rental services under rates approved in this case through the effective date of new rates approved in its next base-rate case;
- approve AEP Texas’ update to its annual self-insurance reserve accrual;
- approve AEP Texas’ proposed revisions to its Tariff for Retail Delivery Service (Retail Tariff); and

- find AEP Texas' requested rate-case expenses incurred for this case and certain prior dockets reasonable and authorize recovery through the proposed rider.

A. Capital Structure & Rate of Return

The Company is requesting a modest adjustment to its capital financing structure approved in Docket No. 49494—42.5% equity and 57.5% debt—to address the concerns that rating agencies have identified as a risk that could negatively impact AEP Texas' customers with higher borrowing costs going forward. Specifically, the Company is requesting the Commission approve a 45% equity and 55% debt financing structure.

The slightly thicker equity layer is necessary to maintain the Company's current bond rating and to allow it to continue to borrow at reasonable interest rates to fund the unprecedented growth the Company is currently experiencing. The current capitalization structure established in Docket No. 49494 combined with the rapid growth across the AEP Texas service territory have resulted in credit ratings at the lower end of investment grade utilities. If the Company's credit rating were to deteriorate any further, it would likely result in more funds being allocated to interest payments and less on the necessary infrastructure investments needed to provide safe and reliable electric service to the Company's growing customer base.

Notably, the Company did thicken the equity layer of AEP Texas in 2023, above what was authorized in Docket No. 49494—from 42.5% equity to 45% equity—to prevent a downgrade in the Company's credit rating from the various rating agencies. As explained by Company witnesses Todd Shipman and Noah Hollis, credit agencies likely would have downgraded AEP Texas' credit rating had the Company not adjusted the equity layer in 2023.

The Company is asking the Commission to authorize a 10.6% ROE when setting rates in this proceeding. This is an increase above the 9.4% ROE authorized in Docket No. 49494. Company witness Ann Bulkley provides additional detail supporting the derivation of the proposed

ROE in this proceeding. The biggest driver is the overall increase in interest rates for all securities since the end of the test year in the Company's previous rate case. The Federal Funds rate, which is largely held as the risk-free rate for securities, has increased by approximately 3 percent since the end of the test year in Docket No. 49494. When the interest rate on risk-free, government-backed securities increases, it causes interest rates for every other market security to increase as well. The Company's requested increase in ROE is necessary so that rates going forward will reflect the actual cost of capital the Company experienced in the test year.

Granting the Company's request for a higher authorized ROE will allow the Company to continue to attract capital dollars that are needed to invest in the necessary infrastructure to safely and reliably serve its customers and growing communities moving forward.

B. Wholesale Distribution Tariff for Energy Storage Resources (Batteries)

The Company is proposing to implement a new wholesale distribution tariff for energy storage resources. This is needed because, under its current tariffs, the Company has no ability to charge these battery resources for their use of the distribution system. As a result, the costs to serve these battery resources at the distribution level are being subsidized by other customers. This fact has been recently recognized by the Commission. In the most recent base-rate case for Oncor Electric Delivery Company (Docket No. 53601), the Order on Rehearing at Finding of Fact No. 292 states:

Providing delivery service to [Distribution Energy Storage Resources] DESRs imposes costs on Oncor's distribution system and failing to charge DESRs for their use of the system would shift those cost obligations onto other customers who would then be subsidizing the DESRs.

The Company's proposed tariff is consistent with that approved in the recent Oncor rate case. Company witnesses Earlyne Reynolds and Jennifer Jackson provide more detail for the costs

incurred and the proposed rate design for the wholesale distribution tariff for energy storage resources.

C. Self-Insurance Reserve

In Docket No. 49494, the Commission approved a self-insurance reserve plan for AEP Texas with an annual accrual of \$4.27 million and a target reserve amount of \$13.3 million in accordance with PURA § 36.064 and 16 TAC § 25.231(b)(1)(G). The purpose of AEP Texas' self-insurance reserve is to provide for occurrences resulting in storm-related operations and maintenance (O&M) losses to AEP Texas' T&D assets of at least \$500,000. Capital-related storm costs are capitalized and recovered through Transmission Cost of Service (TCOS), Distribution Cost Recovery Factor (DCRF), or base-rate proceedings. Because of increasing storm related costs, in this case, AEP Texas is requesting approval of a self-insurance reserve target in the amount of \$19.6 million and annual accrual of \$19.12 million. AEP Texas witness Greg Wilson provides a complete explanation of the requested self-insurance reserve and the components comprising the proposed annual accrual.

D. Rate-Case Expenses

AEP Texas seeks recovery of the reasonable rate-case expenses, including expenses paid to reimburse intervening municipalities, that it incurs in this case and those rate-case expenses incurred in the following prior dockets:

- Docket No. 51984, AEP Texas' 2021 proceeding to amend its distribution cost recovery factor (DCRF);⁵
- Docket No. 53451, AEP Texas' 2022 proceeding to amend its DCRF;⁶

⁵ *Application of AEP Texas Inc. to Amend its Distribution Cost Recovery Factor*, Docket No. 51984, Order at Finding of Fact No. 49 and Ordering Paragraph No. 6 (Nov. 19, 2021).

⁶ *Application of AEP Texas Inc. to Amend its Distribution Cost Recovery Factor*, Docket No. 53451, Order at Finding of Fact No. 53 and Ordering Paragraph No. 6 (Aug. 4, 2022).

- Docket Nos. 54824 and 55187, AEP Texas' 2023 proceedings to amend its DCRF and implement a new rider to recover the costs associated with the leasing and operation of mobile temporary emergency electric energy (TEEE) facilities in accordance with PURA § 39.918;⁷
- Docket No. 55820, AEP Texas' second proceeding in 2023 to amend its DCRF;⁸ and
- Docket No. 53267, AEP Texas' 2022 application for approval of a wholesale distribution distributed generation energy storage tariff.⁹

AEP Texas' proposal is consistent with the approach followed in recent rate cases, including Docket Nos. 53719 (ETI), 53601 (Oncor), and 51415 (SWEPCO). Furthermore, AEP Texas' proposal eliminates the need for a separate and likely costly rate-case expense review proceeding.¹⁰

AEP Texas has submitted, as exhibits to Mr. Chad Burnett's direct testimony, detailed information regarding and documentation supporting the reasonableness of AEP Texas' actual, unrecovered rate-case expenses that: (1) have been incurred during the preparation of this case and recorded to AEP Texas' books and records as of January 31, 2024; and (2) were incurred to prosecute the prior dockets identified above. AEP Texas will supplement these exhibits to reflect its actual expenses for this case as such expenses are incurred. AEP Texas witness Mark Santos further addresses the reasonableness of the Company's requested rate-case expenses.

⁷ *Application of AEP Texas Inc. to Amend its Distribution Cost Recovery Factor and Implement Rider Mobile Temporary Emergency Electric Energy Facilities*, Order at Finding of Fact No. 46 and Ordering Paragraph No. 7 (Sept. 14, 2023). Ultimately, issues related to AEP Texas's requested mobile TEEE facilities rider were severed in Docket No. 55187. For efficiency, AEP Texas's unrecovered rate-case expenses for Docket No. 54824 include expenses associated with Docket No. 55187. *See Review of AEP Texas, Inc. Request to Implement Rider Mobile Temporary Emergency Electric Energy (TEEE) Facilities*, Docket No. 55187, Order at Finding of Fact No. 34 and Ordering Paragraph No. 5 (Oct. 12, 2023).

⁸ *Application of AEP Texas Inc. to Amend its Distribution Cost Recovery Factor*, Docket No. 55820, Order at Finding of Fact No. 47 and Ordering Paragraph No. 6 (Feb. 1, 2024).

⁹ *Application of AEP Texas Inc. for Approval of Wholesale Distribution Service Distributed Generation Energy Storage Tariff*, Docket No. 53267 (Feb. 24, 2022) (pending).

¹⁰ The Commission has noted that severing rate-case expenses to be reviewed in a separate proceeding often takes years to finalize, causing inter-generational cost-causation and recovery issues for customers and uncertainty for utilities. *See Review of Rate Case Expenses Incurred by Southwestern Electric Power Company and Municipalities in PUC Docket No. 46449*, PUC Docket No. 47141, Open Meeting Tr. At 38 (Jul. 18, 2019).

AEP Texas proposes that the Commission: (1) review and determine the reasonableness of its actual rate-case expenses incurred in this proceeding before an agreed cut-off date; and (2) authorize recovery of any expenses found to have been reasonably incurred through AEP Texas' Rate-Case Expense Rider (RCE Rider). With regard to the reasonableness and recovery of rate-case expenses associated with this proceeding that are incurred after the date covered by final update prior to the cut-off date, AEP Texas proposes that these trailing expenses be recorded as a regulatory asset and deferred for consideration in a future rate proceeding.

VIII. IMPACT OF PROPOSED RATE CHANGE ON VARIOUS CLASSES

A. Retail Base Rates

The impact of AEP Texas' proposed rate change by customer class is shown in the following table:

RATE CHARGES				
CLASS	CHARGES*	PRESENT RATES	PROPOSED RATES	BILLING UNIT
RESIDENTIAL	CUSTOMER CHARGE	\$1.40	\$1.33	per customer
	METERING CHARGE	\$3.39	\$2.10	per customer
	DISTRIBUTION SERVICE CHARGE	\$0.021791	\$0.036129	per kWh
SECONDARY =<10 kW	CUSTOMER CHARGE	\$1.40	\$1.52	per customer
	METERING CHARGE	\$4.39	\$3.84	per customer
	DISTRIBUTION SERVICE CHARGE	\$0.021093	\$0.027085	per kWh
SECONDARY >10kW 4CP	CUSTOMER CHARGE	\$2.02	\$2.26	per customer
	METERING CHARGE	\$12.67	\$20.42	per customer
	DISTRIBUTION SERVICE CHARGE	\$4.869	\$7.455	per kW
SECONDARY >10kW NCP	CUSTOMER CHARGE	\$2.02	\$2.26	per customer
	METERING CHARGE	\$12.67	\$20.42	per customer
	DISTRIBUTION SERVICE CHARGE	\$4.869	\$7.455	per kW
PRIMARY 4CP	CUSTOMER CHARGE	\$7.35	\$2.30	per customer
	METERING CHARGE	\$126.87	\$183.15	per customer
	DISTRIBUTION SERVICE CHARGE	\$3.112	\$4.978	per kW
PRIMARY NCP	CUSTOMER CHARGE	\$7.35	\$2.30	per customer
	METERING CHARGE	\$126.87	\$183.15	per customer
	DISTRIBUTION SERVICE CHARGE	\$3.112	\$4.978	per kW
TRANSMISSION	CUSTOMER CHARGE	\$7.48	\$2.27	per customer
	METERING CHARGE	\$761.50	\$1,363.07	per customer
	DISTRIBUTION SERVICE CHARGE	\$0.2490	\$0.1523	per kW
LIGHTING	CUSTOMER CHARGE	\$1.40	\$1.52	per customer

	FIXTURES REVENUES	\$16,659,304	\$21,658,229	All Fixtures
	DISTRIBUTION SERVICE CHARGE	\$0.021093	\$0.027085	per kWh
WDS BESS	CUSTOMER CHARGE	\$0.00	\$21.27	per customer
	METERING CHARGE	\$0.00	\$183.15	per customer
	DISTRIBUTION SERVICE CHARGE	\$0.00	\$2.40	per kW

*Transmission Service Charges are recovered through Rider TCRF

If approved and implemented through the Company's proposed rates for Retail Delivery Service, the impact on a residential customer using 1,000 kilowatt-hours (kWh) per month would be an increase of approximately \$4.89 or 14.1% per month. As explained by AEP Texas witness Linda M. Schlessman, AEP Texas is requesting to institute an Income Tax Refund (ITR) rider to return tax benefits associated with the Tax Basis Balance Sheet (TBBS). The approval of the proposed refund would reduce the impact of the proposed rates on the above-described residential customer to an increase of \$4.59 or 13.24% per month. After the TCRF and other rider revenues are considered, this \$4.59 increase represents a 9.16% increase in distribution rates for a residential customer in AEP Texas' North Division using 1,000 kWh/month. Finally, as noted by Company witness Talavera, customers in AEP Texas' Central Division customers are currently charged "Transition Charges" associated with stranded costs. The one remaining Transition Charge billed to Central Division customers, Rider Transition Charge-3 (TC-3), expires in December 2024. Considering the expiration of TC-3, as well as the TCRF and other rider revenues, the impact of the proposed rate change on a residential customer using 1,000 kWh/month in AEP Texas' Central Division would be an increase of just \$2.11 or 3.9%.

B. Wholesale Transmission Service Rates

This application seeks an increase to AEP Texas' transmission cost of service of approximately \$63.1 million. The result of AEP Texas' proposal is to change the wholesale transmission service rate from \$8.857090/kW to \$8.873192/kW using the 4CP filed by Staff on

February 21, 2024 in Docket No. 56050, *Commission Staff's Petition to Set 2024 Wholesale Transmission Service Charges for the Electric Reliability Council of Texas*.

IX. SUPPORTING DOCUMENTATION

AEP Texas has made its filing consistent with the Commission's required RFP and the requirements of 16 TAC § 22.243. AEP Texas has also pre-filed supporting direct testimony, consistent with 16 TAC § 22.225(a)(6), from the following witnesses:

	Subject	Witness	Description of Testimony
1.	Policy and Overview	Judith E. Talavera	Ms. Talavera presents the AEP Texas rate case application and discusses some of the challenges and opportunities experienced since the previous rate case, including an unprecedented amount of load growth that has come with support of the growing Texas economy. Further, she discusses the rate relief requested and impact on customers.
2.	Policy, Affiliate Expenses and Rate Case Expenses	Chad Burnett	Mr. Burnett introduces proposals for regulatory approval supported by various witnesses. Mr. Burnett also discusses AEP Texas affiliate expenses related to legal, regulatory, and environmental services and supports AEP Texas' rate-case expenses.
3.	Cost of Service and Rate Base	Tiffany Day	Ms. Day presents AEP Texas' requested total company cost of service and associated RFP schedules.
4.	Pro Forma Accounting Adjustments	Aaron Thomas	Mr. Thomas describes various pro forma accounting adjustments.
5.	Catastrophe Reserve	Greg Wilson	Mr. Wilson discusses AEP Texas' approach to the use of a Catastrophe Reserve.
6.	Lead-Lag Study	Jay Joyce	Mr. Joyce sponsors the results of the lead-lag study for measuring the cash working capital allowance required for AEP Texas' operations.
7.	Cost of Common Equity	Ann Bulkley	Ms. Bulkley presents her recommended return on equity.

	Subject	Witness	Description of Testimony
8.	Capital Structure and Overall Cost of Capital	Noah Hollis	Mr. Hollis supports the calculations of AEP Texas' cost of debt as well as AEP Texas' overall capital structure. He further discusses AEP Texas' financial condition and the implementation of ring-fencing measures from the AEP Texas' prior rate case.
9.	Credit Rating	Todd Shipman	Mr. Shipman discusses AEP Texas' requested capital structure from the perspective of credit rating agencies and investors.
10.	Service Reliability, Affiliate Distribution Costs, Distribution Capital Additions	Jeff Stracener	Mr. Stracener discusses AEP Texas' performance with respect to various reliability and quality of service measures. He also supports the reasonableness and necessity of AEP Texas' overall and affiliate O&M costs for distribution services, as well as distribution capital additions.
11.	Overall and Affiliate Transmission O&M Costs	K. Shawn Robinson	Mr. Robinson discusses AEP's transmission organization and operations. He supports AEP Texas' overall and affiliate O&M costs for transmission services.
12.	Transmission Capital Additions – Need	Jeffrey L. Ellis	Mr. Ellis supports the need for and cost of AEP Texas' transmission capital additions.
13.	Transmission Capital Additions – Cost	Thomas W. Reynolds, III	Mr. Reynolds supports the reasonableness of the cost of AEP Texas' transmission capital investments included in Schedule M of the rate filing package.

	Subject	Witness	Description of Testimony
14.	AEP Texas External Affairs and Corporate Communications, Affiliate External Affairs, Grid Solutions and Government Affairs, Corporate Communications, and Customer Operations O&M Costs, and Advertising, Contributions and Memberships	Gilbert Hughes	Mr. Hughes discusses AEP Texas' External Affairs and Corporate Communications organizations and the services they provide. He also discusses AEPSC's External Affairs, Grid Solutions and Government Affairs, Corporate Communications, and Customers Operations organizations and demonstrates the reasonableness and necessity of the affiliate charges billed to AEP. He supports the advertising costs, contributions, and membership dues requested in this case.
15.	Depreciation	Jason Cash	Mr. Cash discusses the depreciation study overview, the study methods and procedures, and the study results.
16.	Federal and State Income Taxes and Tax-Related Adjustments	Linda Schlessman	Ms. Schlessman discusses AEP Texas' Federal Income Taxes included in its cost of service and describes the RFP's tax schedules. She also addresses accumulated deferred income tax (ADFIT), the corporate alternative minimum tax (CAMT) created by the Inflation Reduction Act, and certain inputs to the proposed ITR Rider.
17.	AEPSC and Affiliate Transactions	Brian Frantz	Mr. Frantz discusses AEPSC and the corporate support services it provides. He describes AEPSC's internal controls, billing and cost allocation methods, and how they assure that AEP Texas is charged reasonable and necessary costs for affiliate services. He also provides supporting testimony regarding the reasonableness and necessity of the Chief Financial Officer, Chief Executive Officer, Internal Support, and AEPSC Incentives classes of AEPSC affiliate costs. He explains the allocation factors used to bill the various affiliate classes of cost to support the conclusion that AEP Texas is charged affiliate costs by AEPSC that are no higher than those billed to other AEP affiliates.

	Subject	Witness	Description of Testimony
18.	Necessity of AEPSC Services and Charges, AEPSC Budgeting Processes, and Cost Allocation	Patrick Baryenbruch	Mr. Baryenbruch presents an independent assessment of the reasonableness and necessity of the services provided to AEP Texas by AEPSC, and the associated costs. This assessment includes review of the necessity and benefit of AEPSC services, the appropriateness of AEPSC allocation factors, and the reasonableness of AEPSC and AEP Texas costs.
19.	Human Resources Organization and Affiliate Charges	Mary Catherine Grayem	Ms. Grayem describes AEPSC Human Resources and discusses the services provided by the AEPSC Human Resources Department. She supports the reasonableness and necessity of the Human Resource Department affiliate charges to AEP Texas.
20.	Employee Compensation & Benefit Plans	Andrew Carlin	Mr. Carlin describes the reasonableness and market competitiveness of the AEP compensation plan and the salary and incentive compensation levels for AEP Texas and AEPSC, and supports a pro forma adjustment made by Mr. Thomas for base pay increases effective in 2024. Mr. Carlin also describes and supports the reasonableness of the benefit plans for AEP Texas and AEPSC employees.
21.	Supply Chain, Fleet, Property Management Affiliate Charges	Brian Steinke	Mr. Steinke describes the services provided by the AEP Supply Chain, Fleet, Property Management Department. He supports the reasonableness and necessity of AEP Texas' costs for these services.
22.	Real Estate and Workplace Services Affiliate Charges	Kweku Ofei-Amoh	Mr. Ofei-Amoh describes the services provided by AEPSC Real Estate and Workplace Services. He supports the reasonableness and necessity of AEP Texas' affiliate costs for these services.

	Subject	Witness	Description of Testimony
23.	Technology and Security Organization and Affiliate Charges	Joe Brenner	Mr. Brenner describes the AEP Technology and Security organization and the services provided. He supports the reasonableness and necessity of AEP Texas' Technology and Security affiliate costs. He also provides testimony describing Technology and Security-related capital additions since AEP Texas' last base rate case and supporting the reasonableness of those capital costs.
24.	Energy Forecast and Weather Normalization; Load Research Schedule Sponsorship	Trenton Feasel	Mr. Feasel presents the weather normalization processes used in forecasting and supports several associated schedules. Mr. Feasel also sponsors various schedules related to load and demand.
25.	Cost of Service Study	Earlyne Reynolds	Ms. Reynolds presents and supports AEP Texas' class cost-of-service study. She also supports the pro forma adjustments made to the test year customer, revenue, and sales volume data.
26.	Rate Design and Tariff Riders	Jennifer Jackson	Ms. Jackson presents AEP Texas' retail class rate design.
27.	Tariff Issues/Rate Design	Gricelda Calzada	Ms. Calzada discusses and supports various changes to the Company's Retail Tariff.
28.	Rate-Case Expenses	Mark Santos	Mr. Santos addresses the reasonableness of the rate-case expenses that have been and will be incurred by AEP Texas to litigate this rate case and in certain prior rate proceedings.

X. EFFECTIVE DATE

AEP Texas proposes the requested rate change become effective 35 days after the filing of this petition as allowed under PURA § 36.102 and 16 TAC § 22.243(a).

XI. REQUEST FOR APPROVAL TO CONTINUE COMPETITIVE ENERGY SERVICE OFFERING

AEP Texas is requesting two things regarding facilities rental services. First, AEP Texas is requesting to continue the provision of facilities rental services to existing Distribution Voltage Facilities Rental customers leasing facilities under tariff schedules 6.1.2.3.4, 6.1.3.3.4 and 6.1.4.3.4, as updated in this proceeding, pursuant to 16 TAC § 25.343(d)(1). Second, AEP Texas is requesting a good-cause exception to the application of 16 TAC § 25.343(d)(1)(c)(ii) to allow the Company to provide facilities rental services under rates approved in this case through the effective date of new rates approved in its next base-rate case.

The Company's provision of facilities rental services to retail customers is considered a competitive energy service (CES) under the Commission's rules.¹¹ Under the Commission's rules, an electric utility ordinarily may not offer a CES. But under 16 TAC § 25.343(d)(1), an electric utility may petition the Commission for authority to provide to its Texas customers or some subset of its customers any service otherwise identified as a CES. This is exactly what AEP Texas has done and the Commission has approved with regard to the Company's facilities rental services tariff schedules. The current Distribution Voltage Facilities Rental tariff schedules (6.1.2.3.4, 6.1.3.3.4 and 6.1.4.3.4), were most recently extended in Docket No. 54196, in accordance with 16 TAC § 25.343(d)(1). In that case, the Commission approved an extension of the facilities rental services under these tariff schedules through April 3, 2026.

¹¹ Under 16 TAC § 25.341(3), "competitive energy services" are defined as: "Customer energy services business activities that are capable of being provided on a competitive basis in the retail market." Examples of competitive energy services include, but are not limited to the marketing, sale, design, construction, installation, or retrofit, financing, operation and maintenance, warranty and repair of, or consulting with respect to: transformation equipment, power-generation equipment, protection equipment, or other electric apparatus and infrastructure located on the customer's side of the point of delivery that is owned by the customer or by a third-party entity that is not an electric utility, except as provided by 16 TAC § 25.343(f) and (g). 16 TAC § 25.341(3)(F).

Under 16 TAC § 25.343(d)(1)(c)(ii), a utility's petition to offer a CES terminates three years from the date the petition is granted by the Commission. Consequently, AEP Texas has filed stand-alone cases to renew the tariffs in between base-rate filings.¹² To avoid this inefficient use of resources, AEP Texas is requesting a good-cause exception to the application of 16 TAC § 25.343(d)(1)(c)(ii). Effectively, if approved, the requested good-cause exception will allow the Company to extend the effective date of its existing tariff schedules through the effective date of the tariffs approved in its next comprehensive rate case.

XII. PROPOSED REVISIONS OF TARIFFS AND SCHEDULES

AEP Texas is proposing revisions to its Tariff for Retail Delivery Service (Retail Tariff). A copy of the proposed revised Retail Tariff is included as Exhibit JLJ-2 to AEP Texas witness Jackson's testimony. The Company's rate design proposal also includes support for existing AEP Texas Service Riders. Finally, in addition to the tariff proposals described above, AEP Texas is proposing the following changes to its Retail Tariff:

- continuation of the Distribution Voltage Facilities Rental Service tariff schedules (Sections 6.1.2.3.4, 6.1.3.3.4, and 6.1.4.3.4), including the Company's request for a good-cause exception to the Commission's rule requiring AEP Texas to obtain the Commission's approval to provide these services every three years;¹³
- addition of a Miscellaneous Fee (Sections 6.1.2.3.14, 6.1.3.3.14, and 6.1.4.3.14).
- inclusion of a Retail Customer-Owned Substation Agreement in the Company Specific Agreements and Forms section of the Retail Tariff (Section 6.3.4.6).
- addition of clarifying language to the pulse metering equipment installation agreement (Section 6.3.4.3).
- removal the following expired riders from the Retail Tariff: Transition Charge-2 (TC-2), Sharyland Transition Credit (STC), Texas North Transmission Credit (TNTC), Capital Reconciliation Rider (CRR), Rider Advanced Metering System

¹² Typically, a utility only files a rate case once every four years. See 16 TAC § 25.247(b)(1).

¹³ 16 TAC § 25.343(d)(1)(C)(ii).

Cost Recovery Fee (AMSCRF), and Electricity Relief Program Fund (ERP-COVID 19) riders (Section 6.1.1.1);

- removal of Company rate codes from the Lighting Service Tariff and addition of language closing the installation of High Pressure/Low Pressure sodium lighting fixtures to new installations for the Lighting Service Tariff (Sections 6.1.1.1.6.1, 6.1.1.1.6.2, and 6.1.1.1.6.3).
- addition of clarifying language to the distribution line extension provisions of the Retail Tariff (Sections 6.1.2.2.1, 6.1.3.2.1 and 6.1.4.2.1);
- revisions to the Transmission Voltage Service section of the Retail Tariff to address load shed related issues (Section 6.1.1.1.5); and
- addition of the WDS BESS rate schedule.

XIII. REQUESTED PROTECTIVE ORDER

AEP Texas requests that the Presiding Officer assigned to this case issue a protective order in the form provided as Appendix B to this Petition and Section VII to the RFP to govern review and use of confidential, proprietary, and market-sensitive information. The proposed protective order provided as Appendix B is identical to the Commission's Standard Protective Order.

AEP Texas requests that the Presiding Officer consider this request for issuance of a protective order on an expedited basis. Pending approval of the protective order, AEP Texas will offer access to confidential and highly sensitive information to eligible requesting parties who execute the protective order certification. The confidential and highly sensitive information will also be made available at the Austin offices of AEP Texas to those eligible parties who execute the protective order certification, which is included as Attachment A to the proposed protective order. Also attached to the proposed protective order is AEP Texas' initial Statement Under Section 4 of the Protective Order and List of Confidential/Highly Sensitive Information, which provides a list of documents accompanying the RFP that AEP Texas considers confidential or highly sensitive information entitled to protection under the proposed protective order.

XIV. NOTICE

On January 24, 2024, pursuant to PURA § 33.024, AEP Texas provided notice of its intent to file a Statement of Intent to all municipalities with original jurisdiction over the Company's rates and services.

In accordance with 16 TAC § 22.51(a)(1), AEP Texas will publish notice of this application once a week for four consecutive weeks prior to the effective date of the proposed rate change, in newspapers that have general circulation in each county containing territory in AEP Texas' service area that will be affected by the proposed rate change. A copy of the notice is included as Appendix C to this petition.

In accordance with 16 TAC § 22.51(a)(2), AEP Texas will mail notice of its intent to change rates to all of its affected customers in substantially the same form as that included in Appendix C. Because AEP Texas does not have any end-use customers, this notice will be directed to each REP registered to provide service in Texas, and all entities listed in the Commission's transmission matrix in Docket No. 56050, *Commission Staff's Petition to Set 2024 Wholesale Transmission Service Charges for the Electric Reliability Council of Texas*.

AEP Texas will deliver a copy of this petition to the appropriate officer of each affected municipality in its service territory in compliance with 16 TAC § 22.51(a)(3).

Finally, AEP Texas will provide notice of this filing, in substantially the same form as that included in Appendix C, to each party in AEP Texas' last rate case, Docket No. 49494.

XV. EXPEDITED REFERRAL TO STATE OFFICE OF ADMINISTRATIVE HEARINGS

AEP Texas Inc. requests that this proceeding promptly be referred to the State Office of Administrative Hearings (SOAH) for establishment of a procedural schedule. Under PURA § 36.154, the Commission is required to render a final determination not later than the 185th day

after the date AEP Texas files its rate-filing package, which was filed concurrent with this petition. In order to meet that deadline, AEP Texas requests that this proceeding be transferred to SOAH for establishment of a procedural schedule.

XVI. PRAYER FOR RELIEF

AEP Texas requests that the Commission approve the rates requested in this petition and grant AEP Texas such other relief to which it has shown itself entitled.

Respectfully submitted,

Melissa Gage
State Bar No. 24063949
Email: magage@aep.com
aepaustintx@aep.com (Service)

Leila Melhem
State Bar No. 24083492
Email: lmelhem@aep.com
aepaustintx@aep.com (Service)

400 West 15th Street, Suite 1520

Austin, Texas 78701

Telephone: (512) 481-3320

Facsimile: (512) 481-4591

**AMERICAN ELECTRIC POWER SERVICE
CORPORATION**

William Coe
State Bar No. 00790477
Email: wcoe@dwmlaw.com
Kerry McGrath
State Bar No. 13652200
Email: kmcgrath@dwmlaw.com

Patrick Pearsall
State Bar No. 24047492
Email: ppearsall@dwmlaw.com

P.O. Box 1149

Austin, Texas 78767

Telephone: (512) 744-9300

Facsimile: (512) 744-9399 (fax)

DUGGINS WREN MANN & ROMERO, LLP

By: 

William Coe

ATTORNEYS FOR AEP TEXAS INC.

DOCKET NO. 56165

APPLICATION OF AEP TEXAS INC.	§	BEFORE THE
FOR AUTHORITY TO CHANGE	§	PUBLIC UTILITY COMMISSION
RATES	§	OF TEXAS

MUNICIPALITIES IN AEP TEXAS' SERVICE TERRITORY

A. AEP Texas Central Division

Abram-Perezville	Crystal City	Hillje
Adams Garden	Dacosta	Indian Lake
Agua Dulce	Del Rio	Inez
Alamo	Derby	Ingleside
Alice	Devine	Ingleside on the Bay
Alleyton	Dilley *	Jourdanton *
Alton	Donna	Karnes City
Aransas Pass	Driscoll	Kenedy
Asherton	Eagle Lake	Kingsville
Austwell *	Eagle Pass	Knippa
Banquete	Edcouch	La Blanca
Barksdale	Edinburg	La Casita-Garciasville
Bay City	Edna	La Feria
Bayside	Edroy	La Grulla *
Bayview	El Campo	La Joya
Beeville	El Cenizo *	La Pryor
Belmont	El Indio	La Villa
Benavides	El Maton	Laguna Heights
Berclair	Elsa	Laguna Vista
Big Wells	Encinal *	Lake City *
Bishop	Encino	Lakeside *
Blessing	Escobares	Lamar
Blewett	Falfurrias *	Laredo
Bloomington	Freer	Laureles
Bluetown	Fronton	Leakey
Brackettville	Fulton	Leesville
Brownsville	Ganado	Leming
Bruni	Garwood	Long Mott
Camp Wood	George West	Los Ebanos
Carrizo Springs	Gillett	Los Fresnos
Catarina	Glidden	Los Indios
Chapman Ranch	Goliad	Louise
Charlotte	Granjeno	Lozano
Christine *	Gregory	Luling
Columbus	Guadalupe	Lyford
Combes	Hargill	Lytle

Comstock	Harlingen	Madero
Concepcion	Havana	Markham
Corpus Christi	Hebbbronville	Matagorda
Cotulla *	Hidalgo	Mathis
Matthews	Port Aransas	San Perlita *
McAllen	Port Isabel	San Ygnacio
Mercedes	Port Lavaca	Sandia
Midfield	Port Mansfield	Santa Maria
Millett	Portland	Santa Monica
Mirando City	Poteet	Santa Rosa
Mission	Premont *	Seadrift *
Monte Alto	Primera	Sebastian
Moore	Progreso	Seco Mines
Nada	Progreso Lakes	Sejita
Natalia *	Quemado	Seven Sisters
Nixon	Rabb	Sinton
Nordheim	Ramireno	Skidmore
Normandy	Ramirez	Smiley
Normanna	Rancho Viejo	South Padre Island
Oakville	Raymondville	Spofford *
Odem	Realitos	Sullivan City
Oilton	Refugio	Taft
Olmito	Ricardo	Three Rivers
Orange Grove	Rio Bravo *	Tivoli
Palacios	Rio Grande City	Tuleta
Palm Valley	Rio Hondo	Tulsita
Palmhurst *	Rios	Tynan
Palmview	Rivera	Uvalde
Pawnee	Rockport	Victoria
Pearsall	Rocksprings	Violet
Penitas	Roma-Los Saenz	Wadsworth
Pernitas Point *	Runge	Weesatche
Petronila	Sabinal	Weslaco
Pettus	San Benito	Westhoff
Pharr	San Carlos	Winter Haven
Placedo	San Diego	Woodsboro
Pleasanton	San Juan	Yorktown
Point Comfort *	San Patricio *	Zapata

All communities are in the State of Texas

* Original jurisdiction ceded to the Public Utility Commission of Texas by the city.

B. AEP Texas North Division

Abilene	Flomot *	Menard *	Sagerton *
Acme *	Fort Chadbourne *	Mereta *	San Angelo
Afton *	Fort Davis *	Merkel *	Santa Anna *
Albany *	Gasoline *	Mertzon *	Saragosa *
Alpine *	Girard *	Miles *	Scranton *
Anson *	Girvin *	Moran *	Sedwick *
Aspermont *	Glenn *	Munday	Shafter *
Avoca *	Goodlett *	Nimrod *	Sheffield *
Baird *	Goree *	Noodle *	Sherwood *
Bakersfield *	Grayback *	Norton *	Sonora
Ballinger *	Hamlin *	O'Brien *	Spur *
Balmorhea *	Harrold *	Odell *	Stamford
Barnhart *	Haskell *	Oklunion *	Sterling City *
Benjamin	Hatchell *	Old Glory *	Swenson *
Best *	Hawley	Ovalo *	Sylvester *
Big Lake	Hefner *	Ozona *	Talpa *
Blackwell *	Impact *	Paducah	Tankersley *
Bradshaw *	Imperial *	Paint Rock *	Thalia *
Bronte *	Iraan *	Peacock *	Throckmorton *
Buffalo Gap *	Jayton *	Pioneer *	Toyahvale *
Burkett *	Junction *	Potosi *	Trent *
Caps *	Kirkland *	Presidio *	Truscott *
Carlsbad *	Knickerbocker *	Putnam	Turkey *
Childress	Knox City	Quanah	Tuscola *
Chillicothe *	Lawn *	Quitaque *	Tye *
Christoval *	Lockett *	Rankin *	Valentine *
Cisco	Longworth *	Rayland *	Valera *
Clyde *	Lueders *	Redford *	Veribest *
Cross Cut *	Marathon *	Rising Star *	Vernon
Cross Plains *	Marfa *	Roaring Springs *	View *
Crowell *	Margaret *	Robert Lee *	Wall *
Dickens *	Matador *	Roby *	Water Valley *
Eden	May *	Rochelle *	Weinert *
Eldorado *	McAdoo *	Rochester	Whiteland *
Elliot *	McCamey *	Rotan *	Wilmeth *
Elton *	McCaulley *	Rowena *	Wingate *
Eola *	Medicine Mound *	Royston *	Winters
Eula *	Melvin *	Rule *	Woodson *
Farmers Valley *			

* Original jurisdiction ceded to the Public Utility Commission of Texas by the city.

DOCKET NO. 56165

APPLICATION OF AEP TEXAS INC.	§	BEFORE THE
FOR AUTHORITY TO CHANGE	§	PUBLIC UTILITY COMMISSION
RATES	§	OF TEXAS

PROTECTIVE ORDER

This Protective Order shall govern the use of all information deemed confidential (Protected Materials) or highly confidential (Highly Sensitive Protected Materials), including information whose confidentiality is currently under dispute, by a party providing information to the Public Utility Commission of Texas (Commission) or to any other party to this proceeding.

It is ORDERED that:

1. **Designation of Protected Materials.** Upon producing or filing a document, including, but not limited to, records on a computer disk or other similar electronic storage medium in this proceeding, the producing party may designate that document, or any portion of it, as confidential pursuant to this Protective Order by typing or stamping on its face "PROTECTED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. 56165" (or words to this effect) and consecutively Bates Stamping each page. Protected Materials and Highly Sensitive Protected Materials include the documents so designated, as well as the substance of the information contained in the documents and any description, report, summary, or statement about the substance of the information contained in the documents.
2. **Materials Excluded from Protected Materials Designation.** Protected Materials shall not include any information or document contained in the public files of the Commission or any other federal or state agency, court, or local governmental authority subject to the Public Information Act.¹⁴ Protected Materials also shall not include documents or information which at the time of, or prior to disclosure in, a proceeding is or was public knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order.

¹⁴ TEX. GOV'T CODE ANN. §§ 552.001-552.353 (Vernon 2004 & Supp. 2008).

Docket No. 56165

Proposed Protective Order

Page 2 of 16

3. **Reviewing Party.** For the purposes of this Protective Order, a “Reviewing Party” is any party to this docket.
4. **Procedures for Designation of Protected Materials.** On or before the date the Protected Materials or Highly Sensitive Protected Materials are provided to the Commission, the producing party shall file with the Commission and deliver to each party to the proceeding a written statement, which may be in the form of an objection, indicating: (a) any exemptions to the Public Information Act claimed to apply to the alleged Protected Materials; (b) the reasons supporting the producing party’s claim that the responsive information is exempt from public disclosure under the Public Information Act and subject to treatment as protected materials; and (c) that counsel for the producing party has reviewed the information sufficiently to state in good faith that the information is exempt from public disclosure under the Public Information Act and merits the Protected Materials designation.
5. **Persons Permitted Access to Protected Materials.** Except as otherwise provided in this Protective Order, a Reviewing Party may access Protected Materials only through its “Reviewing Representatives” who have signed the Protective Order Certification Form (see Attachment A). Reviewing Representatives of a Reviewing Party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in this proceeding. At the request of the PUC Commissioners, copies of Protected Materials may be produced by Commission Staff. The Commissioners and their staff shall be informed of the existence and coverage of this Protective Order and shall observe the restrictions of the Protective Order.
6. **Highly Sensitive Protected Material Described.** The term “Highly Sensitive Protected Materials” is a subset of Protected Materials and refers to documents or information that a producing party claims is of such a highly sensitive nature that making copies of such documents or information or providing access to such documents to employees of the Reviewing Party (except as specified herein) would expose a producing party to unreasonable risk of harm. Highly Sensitive Protected Materials include but are not limited

to: (a) customer-specific information protected by § 32.101(c) of the Public Utility Regulatory Act;¹⁵ (b) contractual information pertaining to contracts that specify that their terms are confidential or that are confidential pursuant to an order entered in litigation to which the producing party is a party; (c) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; and (d) business operations or financial information that is commercially sensitive. Documents or information so classified by a producing party shall bear the designation "HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. 56165" (or words to this effect) and shall be consecutively Bates Stamped. The provisions of this Protective Order pertaining to Protected Materials also apply to Highly Sensitive Protected Materials, except where this Protective Order provides for additional protections for Highly Sensitive Protected Materials. In particular, the procedures herein for challenging the producing party's designation of information as Protected Materials also apply to information that a producing party designates as Highly Sensitive Protected Materials.

7. **Restrictions on Copying and Inspection of Highly Sensitive Protected Material.**

Except as expressly provided herein, only one copy may be made of any Highly Sensitive Protected Materials except that additional copies may be made to have sufficient copies for introduction of the material into the evidentiary record if the material is to be offered for admission into the record. The Reviewing Party shall maintain a record of all copies made of Highly Sensitive Protected Material and shall send a duplicate of the record to the producing party when the copy or copies are made. The record shall specify the location and the person possessing the copy. Highly Sensitive Protected Material shall be made available for inspection only at the location or locations provided by the producing party, except as specified by Paragraph 9. Limited notes may be made of Highly Sensitive Protected Materials, and such notes shall themselves be treated as Highly Sensitive Protected Materials unless such notes are limited to a description of the document and a

¹⁵ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2008) (PURA).

general characterization of its subject matter in a manner that does not state any substantive information contained in the document.

8. **Restricting Persons Who May Have Access to Highly Sensitive Protected Material.**

With the exception of Commission Staff, the Office of the Attorney General (OAG), and the Office of Public Utility Counsel (OPC), and except as provided herein, the Reviewing Representatives for the purpose of access to Highly Sensitive Protected Materials may be persons who are (a) outside counsel for the Reviewing Party, (b) outside consultants for the Reviewing Party working under the direction of Reviewing Party's counsel or, (c) employees of the Reviewing Party working with and under the direction of Reviewing Party's counsel who have been authorized by the presiding officer to review Highly Sensitive Protected Materials. The Reviewing Party shall limit the number of Reviewing Representatives that review Highly Sensitive Protected Materials to the minimum number of persons necessary. The Reviewing Party is under a good faith obligation to limit access to each portion of any Highly Sensitive Protected Materials to two Reviewing Representatives whenever possible. Reviewing Representatives for Commission Staff, OAG, and OPC, for the purpose of access to Highly Sensitive Protected Materials, shall consist of their respective counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by them and directly engaged in these proceedings.

9. **Copies Provided of Highly Sensitive Protected Material.** A producing party shall provide one copy of Highly Sensitive Protected Materials specifically requested by the Reviewing Party to the person designated by the Reviewing Party who must be a person authorized to review Highly Sensitive Protected Material under Paragraph 8. Representatives of the Reviewing Party who are authorized to view Highly Sensitive Protected Material may review the copy of Highly Sensitive Protected Materials at the office of the Reviewing Party's representative designated to receive the information. Any Highly Sensitive Protected Materials provided to a Reviewing Party may not be copied except as provided in Paragraph 7. The restrictions contained herein do not apply to

Docket No. 56165

Proposed Protective Order

Page 5 of 16

Commission Staff, OPC, and the OAG when the OAG is a representing a party to the proceeding.

10. **Procedures in Paragraphs 10-14 Apply to Commission Staff, OPC, and the OAG and Control in the Event of Conflict.** The procedures in Paragraphs 10 through 14 apply to responses to requests for documents or information that the producing party designates as Highly Sensitive Protected Materials and provides to Commission Staff, OPC, and the OAG in recognition of their purely public functions. To the extent the requirements of Paragraphs 10 through 14 conflict with any requirements contained in other paragraphs of this Protective Order, the requirements of these Paragraphs shall control.
11. **Copy of Highly Sensitive Protected Material to be Provided to Commission Staff, OPC and the OAG.** When, in response to a request for information by a Reviewing Party, the producing party makes available for review documents or information claimed to be Highly Sensitive Protected Materials, the producing party shall also deliver one copy of the Highly Sensitive Protected Materials to the Commission Staff, OPC, and the OAG (if the OAG is representing a party) in Austin, Texas. Provided however, that in the event such Highly Sensitive Protected Materials are voluminous, the materials will be made available for review by Commission Staff, OPC, and the OAG (if the OAG is representing a party) at the designated office in Austin, Texas. The Commission Staff, OPC and the OAG (if the OAG is representing a party) may request such copies as are necessary of such voluminous material under the copying procedures specified herein.
12. **Delivery of the Copy of Highly Sensitive Protected Material to Commission Staff and Outside Consultants.** The Commission Staff, OPC, and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by them to the appropriate members of their staff for review, provided such staff members first sign the certification specified by Paragraph 15. After obtaining the agreement of the producing party, Commission Staff, OPC, and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by it to the agreed, appropriate members of their outside consultants for review, provided such outside consultants first sign the certification in Attachment A.

Docket No. 56165

Proposed Protective Order

Page 6 of 16

13. **Restriction on Copying by Commission Staff, OPC and the OAG.** Except as allowed by Paragraph 7, Commission Staff, OPC and the OAG may not make additional copies of the Highly Sensitive Protected Materials furnished to them unless the producing party agrees in writing otherwise, or, upon a showing of good cause, the presiding officer directs otherwise. Commission Staff, OPC, and the OAG may make limited notes of Highly Sensitive Protected Materials furnished to them, and all such handwritten notes will be treated as Highly Sensitive Protected Materials as are the materials from which the notes are taken.
14. **Public Information Requests.** In the event of a request for any of the Highly Sensitive Protected Materials under the Public Information Act, an authorized representative of the Commission, OPC, or the OAG may furnish a copy of the requested Highly Sensitive Protected Materials to the Open Records Division at the OAG together with a copy of this Protective Order after notifying the producing party that such documents are being furnished to the OAG. Such notification may be provided simultaneously with the delivery of the Highly Sensitive Protected Materials to the OAG.
15. **Required Certification.** Each person who inspects the Protected Materials shall, before such inspection, agree in writing to the following certification found in Attachment A to this Protective Order:

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in Docket No. 56165. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

Docket No. 56165

Proposed Protective Order

Page 7 of 16

In addition, Reviewing Representatives who are permitted access to Highly Sensitive Protected Material under the terms of this Protective Order shall, before inspection of such material, agree in writing to the following certification found in Attachment A to this Protective Order:

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

The Reviewing Party shall provide a copy of each signed certification to Counsel for the producing party and serve a copy upon all parties of record.

16. **Disclosures between Reviewing Representatives and Continuation of Disclosure Restrictions after a Person is no Longer Engaged in the Proceeding.** Any Reviewing Representative may disclose Protected Materials, other than Highly Sensitive Protected Materials, to any other person who is a Reviewing Representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to the party asserting confidentiality, that certification shall be executed prior to any disclosure. A Reviewing Representative may disclose Highly Sensitive Protected Material to other Reviewing Representatives who are permitted access to such material and have executed the additional certification required for persons who receive access to Highly Sensitive Protected Material. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated and all notes, memoranda, or other information derived from the protected material shall either be destroyed or given to another Reviewing Representative of that party who is authorized pursuant to this Protective Order to receive the protected materials. Any person who has agreed to the foregoing certification shall continue to be bound by the provisions of this Protective Order so long as it is in effect, even if no longer engaged in these proceedings.
17. **Producing Party to Provide One Copy of Certain Protected Material and Procedures for Making Additional Copies of Such Materials.** Except for Highly Sensitive Protected Materials, which shall be provided to the Reviewing Parties pursuant to Paragraphs 9, and

voluminous Protected Materials, the producing party shall provide a Reviewing Party one copy of the Protected Materials upon receipt of the signed certification described in Paragraph 15. Except for Highly Sensitive Protected Materials, a Reviewing Party may make further copies of Protected Materials for use in this proceeding pursuant to this Protective Order, but a record shall be maintained as to the documents reproduced and the number of copies made, and upon request the Reviewing Party shall provide the party asserting confidentiality with a copy of that record.

18. **Procedures Regarding Voluminous Protected Materials.** 16 Tex. Admin. Code § 22.144(h) will govern production of voluminous Protected Materials. Voluminous Protected Materials will be made available in the producing party's voluminous room, in Austin, Texas, or at a mutually agreed upon location, Monday through Friday, 9:00 a.m. to 5:00 p.m. (except on state or Federal holidays), and at other mutually convenient times upon reasonable request.
19. **Reviewing Period Defined.** The Protected Materials may be reviewed only during the Reviewing Period, which shall commence upon entry of this Protective Order and continue until the expiration of the Commission's plenary jurisdiction. The Reviewing Period shall reopen if the Commission regains jurisdiction due to a remand as provided by law. Protected materials that are admitted into the evidentiary record or accompanying the evidentiary record as offers of proof may be reviewed throughout the pendency of this proceeding and any appeals.
20. **Procedures for Making Copies of Voluminous Protected Materials.** Other than Highly Sensitive Protected Materials, Reviewing Parties may take notes regarding the information contained in voluminous Protected Materials made available for inspection or they may make photographic, mechanical or electronic copies of the Protected Materials, subject to the conditions in this Protective Order; provided, however, that before photographic, mechanical or electronic copies may be made, the Reviewing Party seeking photographic, mechanical or electronic copies must provide written confirmation of the receipt of copies listed on Attachment B of this Protective Order identifying each piece of Protected Materials or portions thereof the Reviewing Party will need.

21. **Protected Materials to be Used Solely for the Purposes of These Proceedings.** All Protected Materials shall be made available to the Reviewing Parties and their Reviewing Representatives solely for the purposes of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation: (a) any other pending or potential proceeding involving any claim, complaint, or other grievance of whatever nature, except appellate review proceedings that may arise from or be subject to these proceedings; or (b) any business or competitive endeavor of whatever nature. Because of their statutory regulatory obligations, these restrictions do not apply to Commission Staff or OPC.
22. **Procedures for Confidential Treatment of Protected Materials and Information Derived from Those Materials.** Protected Materials, as well as a Reviewing Party's notes, memoranda, or other information regarding or derived from the Protected Materials are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order. Information derived from or describing the Protected Materials shall be maintained in a secure place and shall not be placed in the public or general files of the Reviewing Party except in accordance with the provisions of this Protective Order. A Reviewing Party must take all reasonable precautions to insure that the Protected Materials including notes and analyses made from Protected Materials that disclose Protected Materials are not viewed or taken by any person other than a Reviewing Representative of a Reviewing Party.
23. **Procedures for Submission of Protected Materials.** If a Reviewing Party tenders for filing any Protected Materials, including Highly Sensitive Protected Materials, or any written testimony, exhibit, brief, motion or other type of pleading or other submission at the Commission or before any other judicial body that quotes from Protected Materials or discloses the content of Protected Materials, the confidential portion of such submission shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they contain Protected Material or Highly Sensitive Protected Material and are sealed pursuant to this Protective Order. If filed at the Commission, such documents shall be marked "PROTECTED MATERIAL" and shall be filed under seal with the

Docket No. 56165

Proposed Protective Order

Page 10 of 16

presiding officer and served under seal to the counsel of record for the Reviewing Parties. The presiding officer may subsequently, on his/her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to Protected Materials is such that such submission should remain under seal. If filing before a judicial body, the filing party: (a) shall notify the party which provided the information within sufficient time so that the producing party may seek a temporary sealing order; and (b) shall otherwise follow the procedures in Rule 76a, Texas Rules of Civil Procedure.

24. **Maintenance of Protected Status of Materials during Pendency of Appeal of Order Holding Materials are not Protected Materials.** In the event that the presiding officer at any time in the course of this proceeding finds that all or part of the Protected Materials are not confidential or proprietary, by finding, for example, that such materials have entered the public domain or materials claimed to be Highly Sensitive Protected Materials are only Protected Materials, those materials shall nevertheless be subject to the protection afforded by this Protective Order for three (3) full working days, unless otherwise ordered, from the date the party asserting confidentiality receives notice of the presiding officer's order. Such notification will be by written communication. This provision establishes a deadline for appeal of a presiding officer's order to the Commission. In the event an appeal to the Commissioners is filed within those three (3) working days from notice, the Protected Materials shall be afforded the confidential treatment and status provided in this Protective Order during the pendency of such appeal. Neither the party asserting confidentiality nor any Reviewing Party waives its right to seek additional administrative or judicial remedies after the Commission's denial of any appeal.
25. **Notice of Intent to Use Protected Materials or Change Materials Designation.** Parties intending to use Protected Materials shall notify the other parties prior to offering them into evidence or otherwise disclosing such information into the record of the proceeding. During the pendency of Docket No. 56165 at the Commission, in the event that a Reviewing Party wishes to disclose Protected Materials to any person to whom disclosure is not authorized by this Protective Order, or wishes to have changed the designation of certain information or material as Protected Materials by alleging, for example, that such

Docket No. 56165

Proposed Protective Order

Page 11 of 16

information or material has entered the public domain, such Reviewing Party shall first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of such Protected Materials. A Reviewing Party shall at any time be able to file a written motion to challenge the designation of information as Protected Materials.

26. **Procedures to Contest Disclosure or Change in Designation.** In the event that the party asserting confidentiality wishes to contest a proposed disclosure or request for change in designation, the party asserting confidentiality shall file with the appropriate presiding officer its objection to a proposal, with supporting affidavits, if any, within five (5) working days after receiving such notice of proposed disclosure or change in designation. Failure of the party asserting confidentiality to file such an objection within this period shall be deemed a waiver of objection to the proposed disclosure or request for change in designation. Within five (5) working days after the party asserting confidentiality files its objection and supporting materials, the party challenging confidentiality may respond. Any such response shall include a statement by counsel for the party challenging such confidentiality that he or she has reviewed all portions of the materials in dispute and, without disclosing the Protected Materials, a statement as to why the Protected Materials should not be held to be confidential under current legal standards; or that the party asserting confidentiality for some reason did not allow such counsel to review such materials. If either party wishes to submit the material in question for in camera inspection, it shall do so no later than five (5) working days after the party challenging confidentiality has made its written filing.
27. **Procedures for Presiding Officer Determination Regarding Proposed Disclosure or Change in Designation.** If the party asserting confidentiality files an objection, the appropriate presiding officer will determine whether the proposed disclosure or change in designation is appropriate. Upon the request of either the producing or Reviewing Party or upon the presiding officer's own initiative, the presiding officer may conduct a prehearing conference. The burden is on the party asserting confidentiality to show that such proposed disclosure or change in designation should not be made. If the presiding

Docket No. 56165

Proposed Protective Order

Page 12 of 16

officer determines that such proposed disclosure or change in designation should be made, disclosure shall not take place earlier than three (3) full working days after such determination unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such presiding officer's ruling.

28. **Maintenance of Protected Status during Periods Specified for Challenging Various Orders.** Any party electing to challenge, in the courts of this state, a Commission or presiding officer determination allowing disclosure or a change in designation shall have a period of ten (10) days from: (a) the date of an unfavorable Commission order; or (b) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is overruled by operation of law, to obtain a favorable ruling in state district court. Any party challenging a state district court determination allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from a state appeals court. Finally, any party challenging a determination of a state appeals court allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from the state supreme court, or other appellate court. All Protected Materials shall be afforded the confidential treatment and status provided for in this Protective Order during the periods for challenging the various orders referenced in this paragraph. For purposes of this paragraph, a favorable ruling of a state district court, state appeals court, Supreme Court or other appellate court includes any order extending the deadlines in this paragraph.
29. **Other Grounds for Objection to Use of Protected Materials Remain Applicable.** Nothing in this Protective Order shall be construed as precluding any party from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order constitutes a waiver of the right to argue for more disclosure, provided, however, that unless the Commission or a court orders such additional disclosure, all parties will abide by the restrictions imposed by the Protective Order.

30. **Protection of Materials from Unauthorized Disclosure.** All notices, applications, responses or other correspondence shall be made in a manner which protects Protected Materials from unauthorized disclosure.
31. **Return of Copies of Protected Materials and Destruction of Information Derived from Protected Materials.** Following the conclusion of these proceedings, each Reviewing Party must, no later than thirty (30) days following receipt of the notice described below, return to the party asserting confidentiality all copies of the Protected Materials provided by that party pursuant to this Protective Order and all copies reproduced by a Reviewing Party, and counsel for each Reviewing Party must provide to the party asserting confidentiality a letter by counsel that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the Protected Materials (including copies of Protected Materials) that have not been so returned, if any, have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of the substance of Protected Materials. As used in this Protective Order, "conclusion of these proceedings" refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law. If, following any appeal, the Commission conducts a remand proceeding, then the "conclusion of these proceedings" is extended by the remand to the exhaustion of available appeals of the remand, or the running of the time for making such appeals of the remand, as provided by applicable law. Promptly following the conclusion of these proceedings, counsel for the party asserting confidentiality will send a written notice to all other parties, reminding them of their obligations under this Paragraph. Nothing in this Paragraph shall prohibit counsel for each Reviewing Party from retaining two (2) copies of any filed testimony, brief, application for rehearing, hearing exhibit or other pleading which refers to Protected Materials provided that any such Protected Materials retained by counsel shall remain subject to the provisions of this Protective Order.

32. **Applicability of Other Law.** This Protective Order is subject to the requirements of the Public Information Act, the Open Meetings Act,¹⁶ the Texas Securities Act¹⁷ and any other applicable law, provided that parties subject to those acts will notify the party asserting confidentiality, if possible under those acts, prior to disclosure pursuant to those acts. Such notice shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.
33. **Procedures for Release of Information under Order.** If required by order of a governmental or judicial body, the Reviewing Party may release to such body the confidential information required by such order; provided, however, that: (a) the Reviewing Party shall notify the producing party of the order requiring the release of such information within five (5) calendar days of the date the Reviewing Party has notice of the order; (b) the Reviewing Party shall notify the producing party at least five (5) calendar days in advance of the release of the information to allow the producing party to contest any release of the confidential information; and (c) the Reviewing Party shall use its best efforts to prevent such materials from being disclosed to the public. The terms of this Protective Order do not preclude the Reviewing Party from complying with any valid and enforceable order of a state or federal court with competent jurisdiction specifically requiring disclosure of Protected Materials earlier than contemplated herein. The notice specified in this section shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.

¹⁶ TEX. GOV'T CODE ANN. § 551.001-551.146 (Vernon 2004 & Supp. 2008).

¹⁷ TEX. REV. CIV. STAT. ANN. arts. 581-1 to 581-43 (Vernon 1964 & Supp. 2008).

34. **Best Efforts Defined.** The term “best efforts” as used in the preceding paragraph requires that the Reviewing Party attempt to ensure that disclosure is not made unless such disclosure is pursuant to a final order of a Texas governmental or Texas judicial body, the written opinion of the Texas Attorney General sought in compliance with the Public Information Act, or the request of governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials. The Reviewing Party is not required to delay compliance with a lawful order to disclose such information but is simply required to timely notify the party asserting confidentiality, or its counsel, that it has received a challenge to the confidentiality of the information and that the Reviewing Party will either proceed under the provisions of §552.301 of the Public Information Act, or intends to comply with the final governmental or court order. Provided, however, that no notice is required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.
35. **Notify Defined.** “Notify” for purposes of Paragraphs 32, 33 and 34 means written notice to the party asserting confidentiality at least five (5) calendar days prior to release; including when a Reviewing Party receives a request under the Public Information Act. However, the Commission, OAG, or OPC may provide a copy of Protected Materials to the Open Records Division of the OAG as provided herein.
36. **Requests for Non-Disclosure.** If the producing party asserts that the requested information should not be disclosed at all, or should not be disclosed to certain parties under the protection afforded by this Protective Order, the producing party shall tender the information for in camera review to the presiding officer within ten (10) calendar days of the request. At the same time, the producing party shall file and serve on all parties its argument, including any supporting affidavits, in support of its position of non-disclosure. The burden is on the producing party to establish that the material should not be disclosed. The producing party shall serve a copy of the information under the classification of Highly

Docket No. 56165

Proposed Protective Order

Page 16 of 16

Sensitive Protected Material to all parties requesting the information that the producing party has not alleged should be prohibited from reviewing the information.

Parties wishing to respond to the producing party's argument for non-disclosure shall do so within five working days. Responding parties should explain why the information should be disclosed to them, including why disclosure is necessary for a fair adjudication of the case if the material is determined to constitute a trade secret. If the presiding officer finds that the information should be disclosed as Protected Material under the terms of this Protective Order, the presiding officer shall stay the order of disclosure for such period of time as the presiding officer deems necessary to allow the producing party to appeal the ruling to the Commission.

37. **Sanctions Available for Abuse of Designation.** If the presiding officer finds that a producing party unreasonably designated material as Protected Material or as Highly Sensitive Protected Material, or unreasonably attempted to prevent disclosure pursuant to Paragraph 36, the presiding officer may sanction the producing party pursuant to 16 TAC § 22.161.
38. **Modification of Protective Order.** Each party shall have the right to seek changes in this Protective Order as appropriate from the presiding officer.
39. **Breach of Protective Order.** In the event of a breach of the provisions of this Protective Order, the producing party, if it sustains its burden of proof required to establish the right to injunctive relief, shall be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. The producing party shall not be relieved of proof of any element required to establish the right to injunctive relief. In addition to injunctive relief, the producing party shall be entitled to pursue any other form of relief to which it is entitled.

ATTACHMENT A

Protective Order Certification

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket and that I have received a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in Docket No. 56165. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated here shall not apply.

Signature

Party Represented

Printed Name

Date

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

Signature

Party Represented

Printed Name

Date

ATTACHMENT B

I request to view/copy the following documents:

Document Requested	# of Copies	Non-Confidential	Protected Materials and/or Highly Sensitive Protected Materials

Signature

Party Represented

Printed Name

Date

DOCKET NO. 56165

APPLICATION OF AEP TEXAS INC. FOR AUTHORITY TO CHANGE RATES	§ § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS
--	-------------	--

**STATEMENT UNDER SECTION 4 OF THE PROTECTIVE ORDER
AND LIST OF CONFIDENTIAL/HIGHLY SENSITIVE INFORMATION**

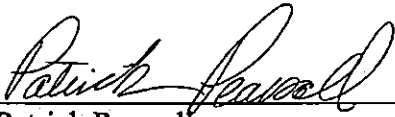
AEP Texas Inc.'s (AEP Texas) filing package includes customer specific information, confidential employee related information, proprietary information, commercially or competitively sensitive information, and/or trade secret information, or information whose public disclosure would be contrary to contractual obligations to which AEP Texas is bound. The public disclosure of this information would harm AEP Texas or third parties with whom AEP Texas must maintain an ongoing business relationship. Therefore, this information is protected under the Public Information Act, Tex. Gov't. Code §§ 552.101, 552.102, and 552.110, or Tex. Util. Code § 32.101(c). The following is a list of schedules, exhibits, and workpapers that include such information, along with the sponsoring witness, the designation of the information, and applicable legal exemption.

Confidential and Highly Sensitive Information

Witness	Exempt Material	Designation	Exempt Under Tex. Gov't Code
Chad Burnett	Confidential WP 2 Exhibit CMB-2 Confidential WP 3 Exhibit CMB-2	Confidential	§552.110
Chad Burnett	Schedule II-C-4	HIGHLY SENSITIVE	§ 552.110

Aaron Thomas	Schedule II-D-3.8.1 Attachment 1 Schedule II-D-3.8.1 Attachment 2 Schedule II-D-3.8.1 Attachment 3 Schedule II-D-3.8.1 Attachment 4 Schedule II-D-3.9.1 Attachment 1 Schedule II-D-3.8.1 Attachment 2	HIGHLY SENSITIVE	§§552.102, 552.110
Noah Hollis	Schedule II-C-2.6 Schedule II-C-2.7 Schedule II-C-2.10	HIGHLY SENSITIVE	§ 552.110
Andrew Carlin	Exhibit ARC-14 Exhibit ARC-15 WP Exhibit ARC-4 WP Exhibit ARC-5 WP Exhibit ARC-6 WP Exhibit ARC-7 WP Schedule II-D-3-7-3 WP Schedule II-D-3-10-2	Confidential	§§552.102, 552.110
Andrew Carlin	HS Workpapers	HIGHLY SENSITIVE	§552.102, 552.110
Trenton Feasel	Schedule II-H-2-2A Schedule II-H-2-2B Schedule II-H-2-2C Schedule II-H-2-2D	HIGHLY SENSITIVE	§§ 552.101, 552.110; Tex. Util. Code § 32.101(c)
Pat Baryenbruch	Confidential Workpapers	Confidential	§552.110
Ann Bulkley	Confidential Workpapers	Confidential	§552.110

I certify that I have reviewed the information sufficiently to state in good faith that the Information is exempt from public disclosure under the Public Information Act or Tex. Util. Code § 32.101(c) and merits the applicable designation of Confidential (Protected) Materials or Highly Sensitive (Highly Sensitive Protected) Materials detailed in the Protective Order accompanying this Application.


Patrick Pearsall

Date: February 29, 2024

NOTICE OF RATE CHANGE REQUEST

AEP Texas Inc. (AEP Texas) publishes this notice that on February 29, 2024, AEP Texas filed with the Public Utility Commission of Texas (Commission) its Petition and Statement of Intent to Change Rates (the Petition), a copy of which is kept at AEP Texas' office at 400 W. 15th Street, Suite 1500, Austin, Texas, 78701. The Petition has been assigned Docket No. 56165. This notice is being published in accordance with 16 Tex. Admin. Code § 22.51(a)(1).

AEP Texas' Petition is based on the system-wide financial results for a 12-month test year ending on September 30, 2023, adjusted for known and measurable changes. Related to its distribution cost of service, the Company requests a rate increase of approximately \$100.4 million over its adjusted test year revenues. This net change is a 13.1% increase over net present distribution revenues. When expected annualized Transmission Cost Recovery Factor revenues are included in the comparison to present revenues, the net increase to distribution cost-of-service is 8.4%. Related to its transmission cost of service, the Company requests a rate increase of \$63.1 million above its adjusted test year revenues, an increase of 9.29%.

In addition to new rates, AEP Texas requests a prudence determination on all capital investment made to its system for the period from January 1, 2019, through September 30, 2023.

AEP Texas' Petition requests Commission approval to continue its offering of facilities rental services, as described in tariff schedules 6.1.2.3.6, 6.1.3.3.6, and 6.1.4.3.6, and a good-cause exception to the Commission's rule requiring AEP Texas to obtain the Commission's approval to provide these services every three years. If approved, the requested good-cause exception will allow the Company to extend the effective date of its existing tariff schedules through the effective date of the tariffs approved in its next comprehensive rate case.

Finally, AEP Texas requests recovery of its reasonable rate-case expenses associated with this proceeding and certain prior rate proceedings, including those expenses paid to reimburse municipalities for their participation.

If approved, the increased rates will be charged to AEP Texas' direct customers, all retail electric providers (REPs) in AEP Texas' service area, as well as the retail electric customers of those REPs. The extent to which the REPs pass along to their customers the increased retail rates is a function of the competitive market. In addition, AEP Texas' petition affects customers taking service under the Company's wholesale transmission rates.

AEP Texas has requested its proposed rate change become effective 35 days after the filing of its Petition.

Persons who wish to intervene in or comment upon these proceedings, in Docket No. 56165, *Application of AEP Texas Inc. for Authority to Change Rates*, should notify the Commission as soon as possible, as an intervention deadline will be imposed. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals

with text telephones (TTY) may contact the Commission at (512) 936-7136. The deadline for intervention in the proceeding is 45 days after the date the Petition was filed with the Commission.

DOCKET NO. 56165
PUBLIC UTILITY COMMISSION OF TEXAS

APPLICATION OF
AEP TEXAS INC.
FOR AUTHORITY TO CHANGE RATES

DIRECT TESTIMONY OF
JUDITH E. TALAVERA
FOR
AEP TEXAS INC.

FEBRUARY 2024

TESTIMONY INDEX

<u>SECTION</u>	<u>PAGE</u>
I. INTRODUCTION	1
II. PURPOSE OF TESTIMONY AND FILING	2
III. AEP TEXAS OVERVIEW	5
IV. RESILIENCY AND RELIABILITY	8
V. AEP TEXAS GROWTH AND INVESTMENT	11
VI. REQUESTED RATE RELIEF	18
VII. CONCLUSION.....	20

EXHIBITS

<u>EXHIBITS</u>	<u>DESCRIPTION</u>
EXHIBIT JET-1	AEP Texas Witnesses - 2024 Texas Base Rate Case

GLOSSARY OF ACRONYMS

ADMS/DERMS	Advanced Distribution Management System/Distributed Energy Resource Management System
AEP	American Electric Power Company, Inc.
AEP Texas	AEP Texas Inc.
AEPSC	American Electric Power Service Corporation
Commission	Public Utility Commission of Texas
CPI	Consumer Price Index
DACR	Distribution Automation Circuit Reconfiguration
ERCOT	Electric Reliability Council of Texas
FFO	Funds from Operations
GRIP	Grid Resilience and Innovation Partnership
IJA	Infrastructure Improvement and Jobs Act
ITR	Income Tax Refund
kWh	Kilo-watt Hour
REP	Retail Electric Provider
SCADA	Supervisory Control and Data Acquisition
STEM	Science, Technology, Engineering and Math
T&D	Transmission and Distribution
TBBS	Tax Basis Balance Sheet
TC	Transition Charges

I. INTRODUCTION

1
2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is Judith E. Talavera. My business address is 539 N. Carancahua, Corpus
4 Christi, Texas 78401.

5 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

6 A. I am President and Chief Operating Officer of AEP Texas Inc. (AEP Texas or the
7 Company). AEP Texas is a transmission & distribution (T&D) utility and a wholly
8 owned subsidiary of American Electric Power Company, Inc. (AEP). AEP Texas
9 operates exclusively within the borders of the Electric Reliability Council of Texas
10 (ERCOT).

11 Q. WHAT ARE YOUR RESPONSIBILITIES AS PRESIDENT AND CHIEF
12 OPERATING OFFICER OF AEP TEXAS?

13 A. I oversee the distribution operations of AEP Texas, which delivers electricity to
14 approximately 1.1 million end-use customers in south and west Texas. I also
15 oversee the Company's safety, customer services, communications, community
16 affairs, governmental affairs, and regulatory functions. In addition, although the
17 AEP Texas Transmission Organization is managed on an AEP enterprise-wide
18 functional basis, I oversee financial matters concerning that organization's support
19 of AEP Texas.

20 Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND JOB
21 EXPERIENCE.

22 A. I received a Bachelor of Journalism from the University of Texas at Austin in 1996.
23 Before joining AEP, I spent nearly eight years in the public policy arena working

1 for a state senator from the Houston area. In 2000, AEP hired me as a Manager of
2 Government Affairs in their Texas State Office. In 2008, I became Director of
3 Regulatory Services for AEP Texas.¹ In June 2016, I was promoted to my current
4 position as President and Chief Operating Officer of AEP Texas.

5 Q. WHO ARE YOU TESTIFYING ON BEHALF OF IN THIS PROCEEDING?

6 A. I am testifying on behalf of AEP Texas Inc.

7 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUBLIC UTILITY
8 COMMISSION OF TEXAS (COMMISSION)?

9 A. Yes, I testified before the Commission in Docket No. 46050, *Application of AEP*
10 *Texas Central Company, AEP Texas North Company, and AEP Utilities, Inc. for*
11 *Approval of Merger*, Docket No. 46368, *Application of AEP Texas North Company*
12 *for Regulatory Approvals Related to the Installation of Utility-Scale Battery*
13 *Facilities*, Docket No. 48577, *Application of AEP Texas Inc. for Determination of*
14 *System Restoration Costs*, and Docket No. 49494, *Application of AEP Texas Inc.*
15 *for Authority to Change Rates*.

16
17 II. PURPOSE OF TESTIMONY AND FILING

18 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

19 A. My direct testimony supports the Company's request to change rates by providing
20 a high-level introduction to AEP Texas and this rate case. My direct testimony will

¹ At that point, "AEP Texas" was the brand name for the jointly managed operations of AEP Texas Central Company and AEP Texas North Company, prior to the Commission's approval of their merger in Docket No. 46050.

1 discuss some of the challenges and opportunities we have experienced during the
2 last four years since our previous rate case, including an unprecedented amount of
3 load growth that has come with our support of the growing Texas economy. My
4 testimony will identify some of the major drivers for the rate request, provide an
5 overview of the relief requested, introduce the other witnesses, and provide a brief
6 description of the subject matters in their testimony.

7 Q. WHY IS AEP TEXAS FILING THIS CASE AT THIS TIME?

8 A. There are several reasons AEP Texas is filing this case. Much has happened since
9 AEP Texas filed its last base rate case in 2019. The world was beginning to respond
10 to a global pandemic just as the Commission was issuing its final order in our last
11 rate case. During that same year and following, the state experienced several
12 extreme weather events, most notably Winter Storm Uri in February 2021.

13 AEP Texas has also experienced significant growth opportunities since the
14 last base rate case. The State of Texas is fortunate to have a vibrant and diverse
15 economy, and the AEP Texas service territory has been a key contributor to its
16 recent economic growth. AEP Texas has experienced unprecedented growth, most
17 recently hitting a year-over-year weather-normalized growth rate of 9% at the end
18 of the Test Year. The commercial and industrial classes have been the primary
19 drivers of this growth. New and existing businesses continue to find an attractive
20 environment for growth and investment in the AEP Texas service territory, which
21 has required AEP Texas to make significant investments in its transmission and
22 distribution (T&D) system to support the expanding economy.

1 Between January 1, 2019 and September 30, 2023, AEP Texas invested
2 more than \$2 billion in distribution capital additions and \$3 billion in transmission
3 capital additions. This capital investment was necessary to address load changes
4 of new and existing customers and allow AEP Texas to fulfill its obligations under
5 PURA, the Commission's Substantive Rules, and its Commission-approved tariffs.
6 In the face of this growth and investment it is important for AEP Texas to maintain
7 and improve its financial profile. To achieve this objective, our rates must provide
8 us with the opportunity to recover our reasonable costs of doing business and a
9 competitive return on our investments in Texas. Maintaining and improving AEP
10 Texas' financial profile is discussed at more length by AEP Texas witnesses Chad
11 Burnett and Noah Hollis.

12 While unprecedented load growth and the resulting \$5 billion in T&D
13 investment play a significant role in the timing of this rate case, costs have been
14 rising as well since AEP Texas' most recent rate case. Rising inflation has
15 contributed to an increase in the cost of service. These higher costs are reflected in
16 the Test Year cost of service and are discussed by several AEP Texas witnesses.

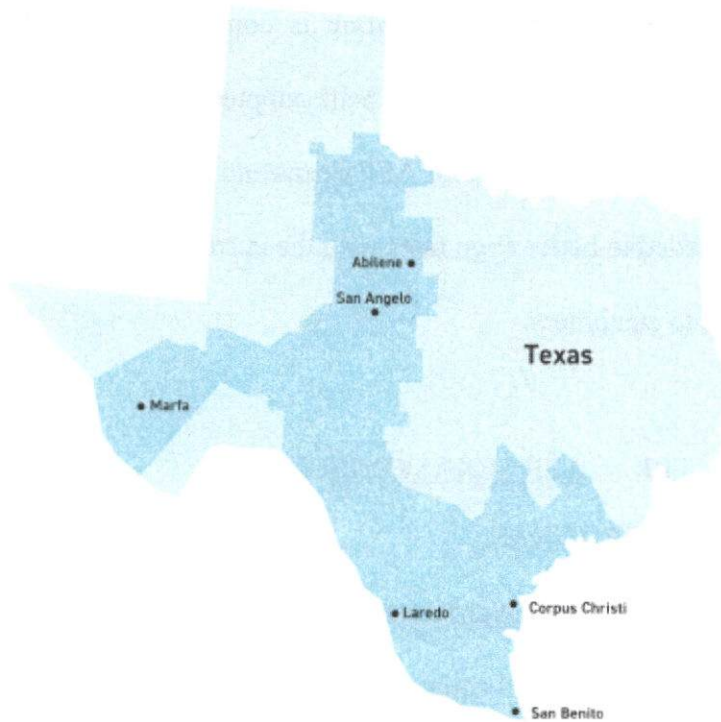
17 Since its most recent rate case, AEP Texas has provided safe and reliable
18 service in the face of significant challenges and opportunities. Our company has
19 and continues to respond to the changing environment. Customers' needs and
20 expectations continue to evolve as new technology becomes available and there are
21 increasing demands on the system. AEP Texas remains committed to providing
22 them with the essential service we provide at an affordable cost.

1 Finally, while the timing of this filing is consistent with AEP Texas'
2 commitment made in the settlement agreement adopted by the Commission in
3 Docket No. 49494, much has changed for AEP Texas and customers since that time
4 and a rate case is needed to better align rates with the current cost of providing safe
5 and reliable service to customers.

6
7 III. AEP TEXAS OVERVIEW

8 Q. PLEASE DESCRIBE AEP TEXAS.

9 A. AEP Texas delivers electricity to approximately 1.1 million homes, businesses and
10 industries across its nearly 100,000 square mile service territory in south and west
11 Texas. It is headquartered in Corpus Christi, with regulatory and external affairs
12 offices in Austin. Major cities served include Abilene, Corpus Christi, Harlingen,
13 Laredo, McAllen, San Angelo, Vernon, and Victoria. AEP Texas builds, operates,
14 maintains and repairs its transmission and distribution system, reads electric meters,
15 and handles connections and disconnections as directed by the Retail Electric
16 Providers (REPs) selling electricity to end-use customers. AEP Texas has nearly
17 45,000 miles of distribution lines and around 8,500 miles of transmission lines.
18 Below is a map of the AEP Texas service territory.



1

2 Q. WILL YOU PLEASE DESCRIBE AEP TEXAS' SUPPORT FOR ITS
3 COMMUNITIES?

4 A. AEP Texas employees are actively involved in their local Texas communities and
5 participate in many civic organizations, helping to make their communities better
6 places to live, work, and play. The Company is a financial supporter of non-profit
7 organizations whose focus is improving quality of life and makes significant
8 contributions to help improve education and health as well as support the economic
9 vitality of the areas we serve. AEP Texas is proud to be a partner in education –
10 through workshops, initiatives, and educational resources – to thousands of teachers
11 and students, particularly in grades pre-K to 12, with a focus on Science,
12 Technology, Engineering, and Math (STEM). Our employees also engage with
13 numerous community stakeholders to teach the public about electrical safety.

1 Through our economic development efforts and in partnership with the
2 communities we serve, AEP Texas strives to make certain our service territory
3 remains vibrant and strong.

4 Q. PLEASE DESCRIBE AEP, AEPSC, AND THE SERVICES AEPSC PROVIDES
5 TO AEP TEXAS FOR THE BENEFIT OF CUSTOMERS

6 A. AEP Texas is part of the AEP family of operating companies, collectively one of
7 the largest electric utilities in the United States, delivering electricity to more than
8 5.6 million customers in eleven states. AEP's utility units operate as AEP Texas,
9 Southwestern Electric Power Company (in Texas, Louisiana, and Arkansas), Public
10 Service Company of Oklahoma, AEP Ohio, Appalachian Power (in Virginia, West
11 Virginia, and Tennessee), Indiana Michigan Power, and Kentucky Power. Shared
12 services are provided to AEP Texas and the other AEP operating companies
13 through the American Electric Power Service Corporation (AEPSC).

14 AEPSC; a wholly owned subsidiary of AEP, provides utility support
15 services such as engineering, financial, human resource, and accounting services,
16 at cost, for all operating units within the AEP system. AEP Texas and the other
17 AEP operating companies benefit from the use of services provided by AEPSC.
18 Company witnesses Brian J. Frantz and Patrick L. Baryenbruch discuss the AEPSC
19 services and billings in more detail. Additionally, individual Company witnesses
20 support the reasonableness and necessity of various classes of AEPSC charges to
21 AEP Texas.

1 Q. PLEASE INTRODUCE THE OTHER AEP TEXAS WITNESSES.

2 A. EXHIBIT JET-1 to this testimony identifies each AEP Texas witness and provides
3 a brief description of the subject matters covered by that testimony.
4

5 IV. RESILIENCY AND RELIABILITY

6 Q. PLEASE DESCRIBE AEP TEXAS' APPROACH TO MAINTAINING AND
7 IMPROVING SERVICE RELIABILITY.

8 A. Generally, AEP Texas' approach for improving system performance focuses on
9 two areas: prevention and minimizing duration of outages. While the reliability of
10 service is important, having a system in place that is resilient, particularly in light
11 of the increase in extreme weather events is also a priority of AEP Texas. As the
12 transmission and distribution utility with the largest coastal exposure in the state,
13 AEP Texas is not a stranger to preparing for catastrophic weather events. I am
14 proud of how our team has responded to some of the damaging weather events that
15 have impacted our expansive service territory over the last four years. For example,
16 in south Texas our teams worked quickly and safely to restore service despite the
17 challenging circumstances of Hurricane Hanna making landfall during the
18 COVID-19 pandemic in 2020. Winter Storm Uri presented its own unique
19 challenges, but again, our employees were ready to respond when needed. Our
20 system held up remarkably well during that winter event and our teams were
21 focused on making sure customers had service restored as soon as possible after the
22 load shed directive ended. More recently in 2023, a tornado devastated the town of
23 Matador, Texas, and our team responded safely and quickly to restore service to

1 those impacted in less than 24 hours despite losing an entire substation as a result
2 of the tornado.

3 AEP Texas is committed to providing safe and reliable electric service to
4 the 1.1 million end-use customers in the AEP Texas service area. Through the use
5 of existing programs that have proven to enhance reliability, as well as planned
6 future programs to further improve the resiliency of our system, AEP Texas works
7 to prevent and minimize service interruptions. AEP Texas' efforts to maintain and
8 improve service reliability are discussed further in the testimonies of AEP Texas
9 witnesses Jeffery Stracener and Jeffrey Ellis.

10 Q. HOW DID AEP TEXAS ADAPT DURING THE PANDEMIC TO CONTINUE
11 TO PROVIDE RELIABLE SERVICE?

12 A. AEP Texas employees excel during challenges. They take a great deal of pride in
13 the service they provide our customers and recognize the importance of having safe
14 and reliable electricity. Working through the COVID-19 pandemic required many
15 changes in the way we work, but our employees adjusted as necessary and
16 persevered. AEP Texas had plans in place in case we had to maintain our operations
17 with a significantly reduced workforce, but thankfully that did not happen. Safety
18 is our most important value, and I am proud to say we had one of the best years in
19 terms of safety performance during 2020. While many of our office personnel were
20 able to work remotely from home during the height of the pandemic, our field
21 employees continued working on the frontlines, ensuring our customers had the
22 safe and reliable service they needed to continue their daily lives.

1 Q. HAVE INVESTMENTS IN RELIABILITY CONTRIBUTED TO THE
2 EXPENDITURE OF SIGNIFICANT CAPITAL FUNDS?

3 A. Yes. AEP Texas is committed to providing safe, reliable, and affordable service to
4 its customers. While the Company's overall approach is preventing interruptions
5 in service, AEP Texas also invests in the system to minimize outages if they take
6 place.

7 System hardening efforts to make specific areas across its service territory
8 more storm resistant, adding distribution automation circuit reconfiguration
9 (DACR) to modernize the system and make it capable of "self-healing" when a
10 fault is detected, and increasingly using data analytics to help identify preventative
11 maintenance opportunities are some of the initiatives AEP Texas has in place to
12 maintain and improve system reliability. AEP Texas witnesses Jefferey Stracener
13 and Jeffrey Ellis discuss efforts in more detail in their testimonies.

14 Q. THE FEDERAL GOVERNMENT MADE GRANT FUNDING AVAILABLE
15 FOR ELECTRIC GRID IMPROVEMENTS THROUGH THE
16 INFRASTRUCTURE IMPROVEMENT AND JOBS ACT (IIJA). HAS THE
17 COMPANY FILED AN APPLICATION IN THIS PROGRAM?

18 A. Yes, the Company participated in applications for IIJA grant funding as a part of
19 an application made by AEP Texas' parent company, American Electric Power
20 Company (AEP). Specifically, AEP Texas Distribution was part of applications
21 through the Department of Energy Funding Opportunity Announcement DE-FOA-
22 0002740, otherwise known as Grid Resilience and Innovation Partnership (GRIP)
23 Smart Grid Grants. AEP Texas was part of applications for:

- 1 ▪ Undergrounding of specific existing distribution facilities
- 2 ▪ Distribution Automation Circuit Reconfiguration (DACR)
- 3 ▪ Expansion of Supervisory Control and Data Acquisition (SCADA)
- 4 capabilities; and
- 5 ▪ Development and implementation of an Advanced Distribution
- 6 Management System/Distributed Energy Resource Management
- 7 System (ADMS/DERMS)

8 Q. HAS AEP RECEIVED FUNDING THROUGH THIS GRANT PROGRAM?

9 A. Yes. AEP has been notified that it has received funding for the development and
10 implementation of an ADMS/DERMS. This grant funding is further discussed by
11 AEP Texas witness Stracener.

12

13 V. AEP TEXAS GROWTH AND INVESTMENT

14 Q. HOW HAS YOUR BUSINESS ENVIRONMENT CHANGED SINCE THE LAST
15 BASE RATE CASE PROCEEDING?

16 A. While the mission to provide safe and reliable service to our customers and the
17 communities we serve remains unchanged for AEP Texas, the business
18 environment that AEP Texas serves in has changed dramatically since the test year
19 of our last base rate case. As mentioned above, our state survived a catastrophic
20 winter storm, a global pandemic, and a short but severe recession, which all led to
21 a rapid increase in inflation and interest rates that have challenged AEP Texas
22 financial position since the last case. At the same time, the AEP Texas service
23 territory has experienced unprecedented growth as more businesses have expanded
24 or selected the State of Texas for their business. The pipeline of future economic
25 development projects has never been bigger, which will require additional capital

1 investment to meet the growing needs of our customers and the communities we
2 serve. Additionally, customers' needs are increasingly dynamic and AEP Texas
3 must be prepared to meet those changes.

4 Q. HAVE THESE CHALLENGES IMPACTED AEP TEXAS' CREDIT RATING?

5 A. It is important for AEP Texas to be a financially healthy utility to serve as the
6 essential services provider we are to our communities. While we are able to utilize
7 the cost recovery mechanisms available for capital investments, the reality is that
8 the level of investment needed to address the growth AEP Texas is experiencing
9 across its footprint and that is needed to invest in the reliability and resiliency of
10 the system is significant. This puts pressure on AEP Texas' credit metrics and
11 makes it very challenging for AEP Texas to earn its authorized ROE.

12 A recent credit opinion written by Fitch Ratings states, "As a result of
13 AEPTX's lower equity capitalization and continued regulatory lag due to the
14 service territory's high growth, AEPTX's FFO [Funds from Operations] leverage
15 has declined significantly... Fitch expects parent AEP will only make equity
16 infusions to maintain the regulatory capital structure as authorized, which will
17 result in credit metrics lower than most 'BBB' rated utilities."

18 A similar recent opinion by Moody's Investors Service states, "The Texas
19 regulatory framework provides timely rider recovery mechanisms for investment
20 in transmission and distribution assets, which reduces regulatory lag and increases
21 cash flow predictability, a credit positive. However, [AEP Texas] financial metrics
22 have weakened materially since 2020, largely a result of the utility's unfavorable
23 2020 rate case outcome." Moody's goes on to mention that "More favorable

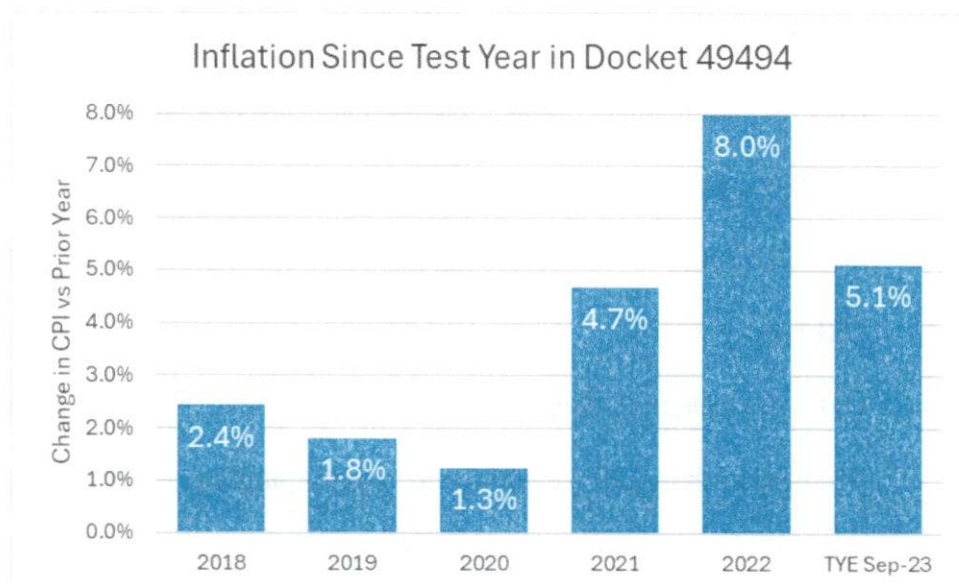
1 regulatory provisions, such as a higher authorized equity layer or return on equity,
2 expense reductions, other operational improvements or a reduction in
3 leverage...could put upward pressure on the rating.”

4 Q. WHAT COULD THE EFFECTS BE IF AEP TEXAS’ RATING WERE TO
5 FALL?

6 Our bond rating is important to securing debt financing. If our rating were to fall,
7 it would result in AEP Texas having to pay higher interest rates on debt. This would
8 increase the cost of capital for investments made to serve the needs of our customers
9 throughout our service territory, which would increase AEP Texas’ cost of service
10 and ultimately harm our customers. To prevent this from happening, we are seeking
11 an authorized rate of return of 10.6% and an increase in the equity layer of the
12 Company’s capital structure to 45% equity financing with 55% debt financing as
13 discussed in more detail by Company witnesses Burnett, Hollis, Buckley, and
14 Shipman. Without adjustments to our ROE and capital structure AEP Texas may
15 face challenges in attracting capital investment at a reasonable cost.

16 Q. HOW HAS INFLATION IMPACTED AEP TEXAS SINCE THE LAST BASE
17 CASE?

18 A. Year-over-year inflation during the test year of our last base case (Docket No.
19 49494), as measured by the Consumer Price Index (CPI) was 2.4%. Year-over-
20 year inflation for the test year in this case is more than double that at 5.1%.



1

2

3

4

5

6

7

8

9

10

11

12

13

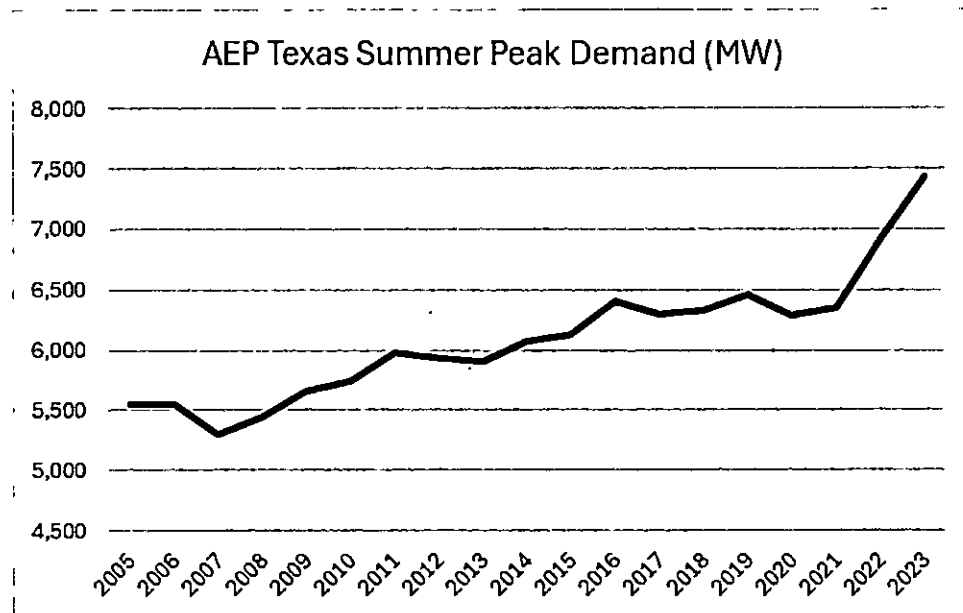
14

With higher inflation, the cost of serving our customers has also increased. Part of the request in this proceeding is to update our rates to capture the current costs of serving our customers. Several Company witnesses, including Stracener, Robinson, and T. Reynolds discuss the increasing costs in greater detail.

Q. CAN YOU DESCRIBE WHAT YOU MEANT BY 'UNPRECEDENTED LOAD GROWTH' EXPERIENCED BY AEP TEXAS SINCE THE LAST BASE RATE CASE?

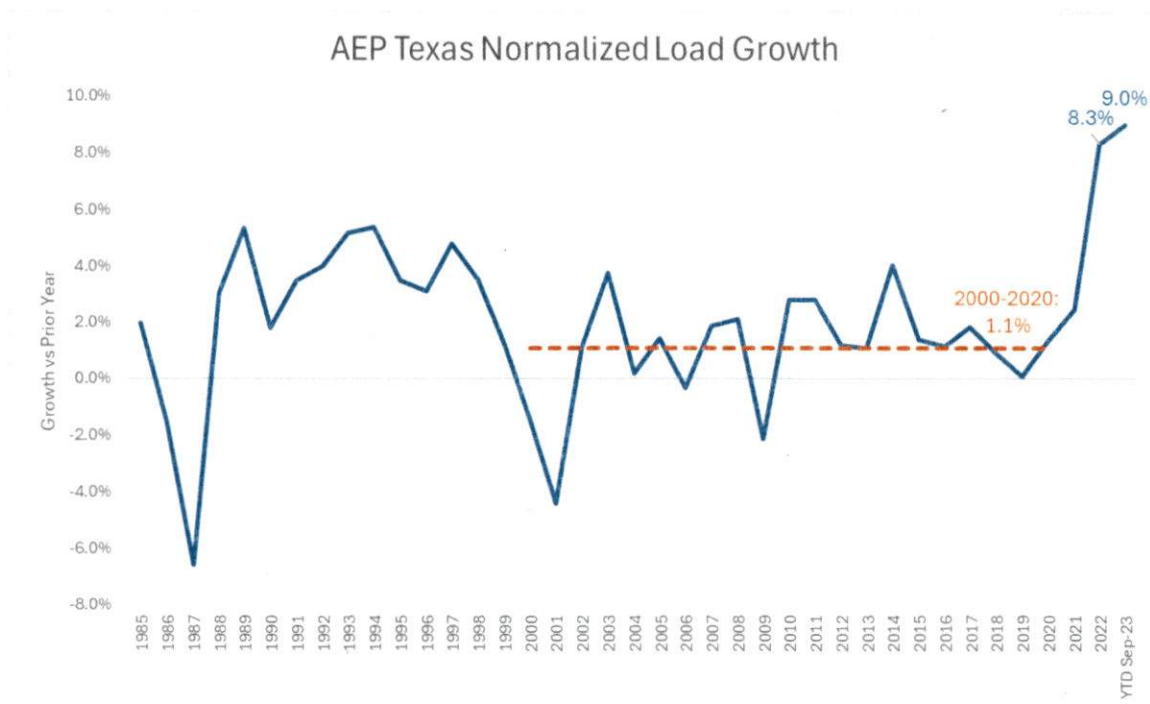
A. Yes. As described above, AEP Texas has experienced significant growth since the last base case. For the last three consecutive summers (2021, 2022, & 2023) AEP Texas has set new all-time peak demand records. Over the previous decade (from 2011-2021), AEP Texas summer peak demand increased on average by 56 MW. Over the past two summers alone, AEP Texas' peak demand has gone up by well over 500 MW each year. In other words, our peak demand has grown more in the

1 last two years (> 1 GW) than it had in the previous twenty years. Today, the AEP
2 Texas system peak demand is just under 7,500 MW.



3
4
5
6
7
8
9
10
11
12

This unprecedented load growth is not just happening with the annual peak hour, but also with our energy (GWh) delivered over all 8,760 hours of the year. The chart below shows AEP Texas annual weather normalized energy delivered growth back to 1985 in the blue line. The orange dashed line shows energy delivered in the AEP Texas service territory grew on average by 1.1% per year from 2000 to 2020. In 2021, AEP Texas load increased by 8.3%, and through the end of the test year in 2023, AEP Texas load is up another 9.0% on top of the 2022 levels. In other words, the growth that we are experiencing today is nearly 9 times greater than what we have historically experienced.



1

2

Further, we continue to see new customers and industries looking to locate throughout the AEP Texas footprint. This should support continued load growth for years to come.

4

5

Q. IS ALL OF THIS LOAD GROWTH HAPPENING IN JUST ONE REGION, INDUSTRY, OR CUSTOMER CLASS?

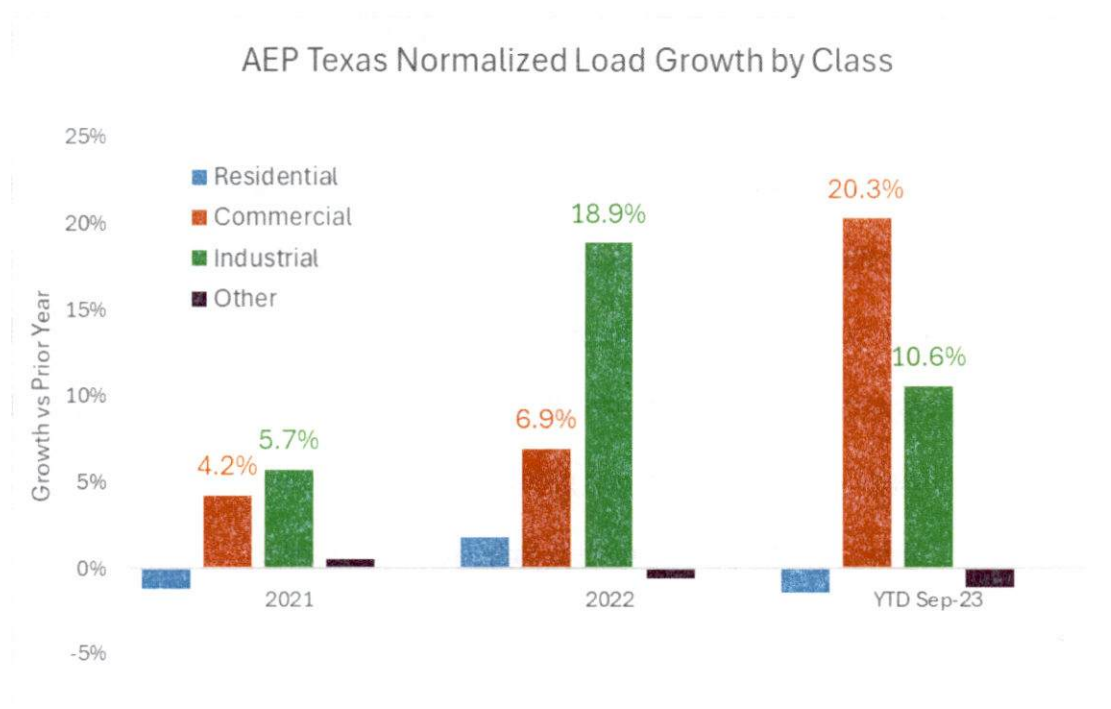
6

7

A. No. We are seeing strong growth in our Commercial class from data centers and crypto mining facilities located primarily in west Texas. Our Industrial class sales are being led by growth in the oil & gas sectors, and Primary Metals manufacturing located in the Permian basin and around the coastal areas of the AEP Texas footprint. The chart below shows growth by class over the past several years.

10

11



1

2 Q. DOES SUPPORTING THIS GROWTH REQUIRE THE EXPENDITURE OF
3 SIGNIFICANT CAPITAL FUNDS?

4 A. Yes. As noted above, AEP Texas has invested \$5 billion in its T&D system since
5 the close of our previous test year, and much of that capital has been to support the
6 economic growth in the AEP Texas service territory. The Company also has
7 invested in the reliability of its system, but has had to balance the increased
8 investments needed to support new customers with incremental reliability projects.
9 I would like to point out, however, that projects supporting new load and reliability
10 projects are not necessarily mutually exclusive. Supporting new load often
11 provides the Company with the opportunity to replace aging infrastructure at the
12 same time, helping to maintain and improve reliability on our system. Our capital
13 spending programs are further discussed by AEP Texas witnesses Stracener and
14 Ellis.

1 Q. HOW HAVE SUPPLY CHAIN CONSTRAINTS IMPACTED AEP TEXAS
2 OPERATIONS SINCE THE LAST BASE RATE CASE?

3 A. Supply chain constraints have been one of the most difficult challenges to manage
4 over the past four years. Key commodities used on our system have seen substantial
5 lead time increases. The growth AEP Texas is experiencing across its service
6 territory has put additional pressure on the demand for more material. Longer
7 delays and higher costs for products like transformers and breakers are discussed
8 further by Company witnesses Stracener and Steinke.

9

10 VI. REQUESTED RATE RELIEF

11 Q. PLEASE DESCRIBE THE RATE INCREASE REQUESTED IN THIS FILING.

12 A. Related to its distribution cost of service, as discussed by AEP Texas witness
13 Jennifer Jackson, the net change to distribution service billings is approximately
14 \$100.4 million over adjusted test year revenues. This net change is a 13.09%
15 increase over net present distribution revenues. When expected annualized TCRF
16 rider revenues are included in the comparison to present revenues, the \$100.4
17 million net change is an 8.40% increase.

18 Related to its transmission cost of service, the Company requests a rate
19 increase of \$63.1 million above its adjusted test year revenues, an increase of
20 9.29%.

1 Q. IS THE DISTRIBUTION COST OF SERVICE INCREASE IDENTIFIED
2 ABOVE NET OF THE PROPOSED INCOME TAX REFUND RIDER?

3 A. Yes. AEP Texas is requesting to institute an Income Tax Refund (ITR) rider to
4 return tax benefits associated with the Tax Basis Balance Sheet (TBBS) as
5 explained in the testimony of Company witness Linda M. Schlessman. The
6 distribution cost of service increase identified above is net of a nearly \$6.6 million
7 ITR credit.

8 Q. WILL CUSTOMERS IN THE CENTRAL DIVISION RECEIVE A RATE
9 REDUCTION IN 2024 THAT WILL MODERATE THE INCREASE
10 DESCRIBED ABOVE?

11 A. Yes. Customers in the Central Division are currently charged amounts associated
12 with stranded costs called Transition Charges (TC). One TC charge remains in
13 effect, known as TC3. As explained by AEP Texas witness Jackson, in December
14 2024, the TC3 Rider ends and, as a result, every customer class in the Central
15 Division will see a decrease in AEP Texas charges that will moderate the total base
16 rate change requested in this case.

17 Q. WHAT IS THE EFFECT OF THIS RATE REQUEST ON AEP TEXAS'
18 CUSTOMERS AS COMPARED TO EXISTING RATES?

19 A. As calculated by AEP Texas witness Jackson, if approved and implemented
20 through the Company's proposed rates for Retail Delivery Service, the impact on a
21 residential customer using 1,000 kilowatt-hours (kWh) per month would be an
22 increase of \$4.89 or 14.1% per month. With the approval of the ITR rider refund,
23 the impact of the proposed rates on such a residential customer would be \$4.59 or

1 13.24% per month. After the TCRF and other rider revenues are considered, this
2 \$4.59 increase represents a 9.16% increase in distribution rates for customers in
3 AEP Texas' North Division. Finally, regarding customers in AEP Texas' Central
4 Division, TC-3 expires in December 2024. Considering the expiration of TC3, as
5 well as the TCRF and other rider revenues, the impact of the proposed rate change
6 on customers in AEP Texas' Central Division customer would be an increase of
7 just \$2.11 or 3.9%.

8 We are mindful of the impact that our investments have on our customer
9 bills and continue to work to operate as efficiently as possible to provide safe and
10 reliable electricity at reasonable rate.

11
12 VII. CONCLUSION

13 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

14 A. Since the last rate case, AEP Texas has invested \$5 billion to support the growing
15 Texas economy and meet the evolving needs of customers across our service
16 territory with safe and reliable electric service. Despite the challenges faced in the
17 last four years, our employees rose to the occasion and will continue to do so. While
18 we are always mindful of the impact a rate increase has on the customers and
19 communities we serve, the inflationary pressures AEP Texas is experiencing,
20 coupled with the increasing demands on the system, require us to file this rate
21 request. It is necessary to align the rates with the current cost of serving customers
22 and supporting the exciting growth we are experiencing in the State of Texas. AEP
23 Texas is a proud partner with the communities we serve and they depend on us to

1 provide safe, reliable and affordable service. A strong and financially healthy
2 utility will continue to help the State of Texas and the local communities we serve
3 continue to thrive.

4 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

5 A. Yes, it does.

AEP Texas Witnesses 2024 Texas Base Rate Case			
	Subject	Witness	Description of Testimony
1.	Policy and Overview	Judith E. Talavera	Ms. Talavera presents the AEP Texas rate case application and discusses some of the challenges and opportunities experienced since the previous rate case, including an unprecedented amount of load growth that has come with support of the growing Texas economy. Further, she discusses the rate relief requested and impact on customers.
2.	Policy, Affiliate Expenses and Rate Case Expenses	Chad Burnett	Mr. Burnett introduces proposals for regulatory approval supported by various witnesses. Mr. Burnett also discusses AEP Texas affiliate expenses related to legal, regulatory, and environmental services and supports AEP Texas' rate-case expenses.
3.	Cost of Service and Rate Base	Tiffany Day	Ms. Day presents AEP Texas' requested total company cost of service and associated RFP schedules.
4.	Pro Forma Accounting Adjustments	Aaron Thomas	Mr. Thomas describes various pro forma accounting adjustments.
5.	Catastrophe Reserve	Greg Wilson	Mr. Wilson discusses AEP Texas' approach to the use of a Catastrophe Reserve.
6.	Lead-Lag Study	Jay Joyce	Mr. Joyce sponsors the results of the lead-lag study for measuring the cash working capital allowance required for AEP Texas' operations.
7.	Cost of Common Equity	Ann Bulkley	Ms. Bulkley presents her recommended return on equity.
8.	Capital Structure and Overall Cost of Capital	Noah Hollis	Mr. Hollis supports the calculations of AEP Texas' cost of debt as well as AEP Texas' overall capital structure. He further discusses AEP Texas' financial condition and the implementation of ring-fencing measures from the AEP Texas' prior rate case.
9.	Capital Structure	Todd Shipman	Mr. Shipman discusses AEP Texas' requested capital structure from the perspective of credit rating agencies and investors.
10.	Service Reliability, Affiliate Distribution Costs, Distribution Capital Additions	Jeff Stracener	Mr. Stracener discusses AEP Texas' performance with respect to various reliability and quality of service measures. He also supports the reasonableness and necessity of AEP Texas' overall and affiliate O&M costs for distribution services, as well as distribution capital additions.
11.	Overall and Affiliate Transmission O&M Costs	K. Shawn Robinson	Mr. Robinson discusses AEP's transmission organization and operations. He supports AEP Texas' overall and affiliate O&M costs for transmission services.

AEP Texas Witnesses 2024 Texas Base Rate Case			
	Subject	Witness	Description of Testimony
12.	Transmission Capital Additions – Need	Jeffrey L. Ellis	Mr. Ellis supports the need for and cost of AEP Texas' transmission capital additions.
13.	Transmission Capital Additions – Cost	Thomas W. Reynolds, III	Mr. Reynolds supports the reasonableness of the cost of AEP Texas' transmission capital investments included in Schedule M of the rate filing package.
14.	AEP Texas External Affairs and Corporate Communications, Affiliate External Affairs, Grid Solutions and Government Affairs, Corporate Communications, and Customer Operations O&M Costs, and Advertising, Contributions and Memberships	Gilbert Hughes	Mr. Hughes discusses AEP Texas' External Affairs and Corporate Communications organizations and the services they provide. He also discusses AEPSC's External Affairs, Grid Solutions and Government Affairs, Corporate Communications, and Customers Operations organizations and demonstrates the reasonableness and necessity of the affiliate charges billed to AEP. He supports the advertising costs, contributions, and membership dues requested in this case.
15.	Depreciation	Jason Cash	Mr. Cash discusses the depreciation study overview, the study methods and procedures, and the study results.
16.	Federal and State Income Taxes and Tax-Related Adjustments	Linda Schlessman	Ms. Schlessman discusses AEP Texas' Federal Income Taxes included in its cost of service and describes the RFP's tax schedules. She also addresses accumulated deferred income tax (ADFIT), the corporate alternative minimum tax (CAMT) created by the Inflation Reduction Act, and certain inputs to the proposed ITR Rider.
17.	AEPSC and Affiliate Transactions	Brian Frantz	Mr. Frantz discusses AEPSC and the corporate support services it provides. He describes AEPSC's internal controls, billing and cost allocation methods, and how they assure that AEP Texas is charged reasonable and necessary costs for affiliate services. He also provides supporting testimony regarding the reasonableness and necessity of the Chief Financial Officer, Chief Executive Officer, Internal Support, and AEPSC Incentives classes of AEPSC affiliate costs. He explains the allocation factors used to bill the various affiliate classes of cost to support the conclusion that AEP Texas is charged affiliate costs by AEPSC that are no higher than those billed to other AEP affiliates.

AEP Texas Witnesses 2024 Texas Base Rate Case			
	Subject	Witness	Description of Testimony
18.	Necessity of AEPSC Services and Charges, AEPSC Budgeting Processes, and Cost Allocation	Patrick Baryenbruch	Mr. Baryenbruch presents an independent assessment of the reasonableness and necessity of the services provided to AEP Texas by AEPSC, and the associated costs. This assessment includes review of the necessity and benefit of AEPSC services, the appropriateness of AEPSC allocation factors, and the reasonableness of AEPSC and AEP Texas costs.
19.	Human Resources Organization and Affiliate Charges	Mary Catherine Grayem	Ms. Grayem describes AEPSC Human Resources and discusses the services provided by the AEPSC Human Resources Department. She supports the reasonableness and necessity of the Human Resource Department affiliate charges to AEP Texas.
20.	Employee Compensation & Benefit Plans	Andrew Carlin	Mr. Carlin describes the reasonableness and market competitiveness of the AEP compensation plan and the salary and incentive compensation levels for AEP Texas and AEPSC, and supports a pro forma adjustment made by Mr. Thomas for base pay increases effective in 2024. Mr. Carlin also describes and supports the reasonableness of the benefit plans for AEP Texas and AEPSC employees.
21.	Supply Chain, Fleet, Property Management Affiliate Charges	Brian Steinke	Mr. Steinke describes the services provided by the AEP Supply Chain, Fleet, Property Management Department. He supports the reasonableness and necessity of AEP Texas' costs for these services.
22.	Real Estate and Workplace Services Affiliate Charges	Kweku Ofei-Amoh	Mr. Ofei-Amoh describes the services provided by AEPSC Real Estate and Workplace Services. He supports the reasonableness and necessity of AEP Texas' affiliate costs for these services.
23.	Technology and Security Organization and Affiliate Charges	Joe Brenner	Mr. Brenner describes the AEP Technology and Security organization and the services provided. He supports the reasonableness and necessity of AEP Texas' Technology and Security affiliate costs. He also provides testimony describing Technology and Security-related capital additions since AEP Texas' last base rate case and supporting the reasonableness of those capital costs.
24.	Energy Forecast and Weather Normalization; Load Research Schedule Sponsorship	Trenton Feasel	Mr. Feasel presents the weather normalization processes used in forecasting and supports several associated schedules. Mr. Feasel also sponsors various schedules related to load and demand.

AEP Texas Witnesses 2024 Texas Base Rate Case			
	Subject	Witness	Description of Testimony
25.	Cost of Service Study	Earlyne Reynolds	Ms. Reynolds presents and supports AEP Texas' class cost-of-service study. She also supports the pro forma adjustments made to the test year customer, revenue, and sales volume data.
26.	Rate Design and Tariff Riders	Jennifer Jackson	Ms. Jackson presents AEP Texas' retail class rate design.
27.	Tariff Issues/Rate Design	Gricelda Calzada	Ms. Calzada discusses and supports various changes to the Company's Retail Tariff.
28.	Rate-Case Expenses	Mark Santos	Mr. Santos addresses the reasonableness of the rate-case expenses that have been and will be incurred by AEP Texas to litigate this rate case and in certain prior rate proceedings.

**Resolution – Suspending the Effective Date of 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 – Suspending the Effective Date of AEP’s Application to Increase Distribution Rates

- On February 29, 2024, AEP Texas Inc. (AEP) filed an application to amend its distribution cost recovery factor effective April 4, 2024.
- This resolution will suspend the effective date, for 90 days after the date the proposed rate change would be effective, to allow the City time to study the request, 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: 3/14/2024

TO: Robert Hanna, City Manager

FROM: Troy Swanson, IT Director

SUBJECT: **19. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving an Agreement with Telecom Unlimited for the Telephone System Upgrade and Three Years of Support Services (*Troy Swanson*)**

GENERAL INFORMATION

The City's current phone system requires an upgrade to most of its components and the replacement/upgrade of two components to become current. The current system requires support services to maintain the license and access to patches and fixes to the system, and the current agreement for support ends 4/30/24. The license upgrades and the professional services cost is \$41,160, and the annual support service commitment will be \$32,935 each year for a three-year commitment which totals \$98,805 for support services. Total cost of the upgrades and support services from TeleCom Unlimited over a three-year period will not exceed \$139,965.

SPECIAL CONSIDERATIONS

TeleCom is a sole provider for the required upgrades and support services.

FUNDING/FISCAL IMPACT

Technology Fund

STAFF RECOMMENDATION

To Approve

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution - Telecom Unlimited - Phone System
2. Telecom Unlimited Pro Services Contract Mar 14 2024
3. IT - Telecom Unlimited

RESOLUTION NO. 2024-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS TO APPROVE THE PROCUREMENT OF THE TELEPHONE SYSTEM UPGRADE AND PROVIDE FOR THREE YEAR'S OF SUPPORT SERVICES

WHEREAS, the City Council of the City of Abilene recognizes the need for a upgrade to the City core phone system; and

WHEREAS, the Information Technology Department will require an upgrade to the OXE, SBC, VAA, 8770, OXR components of the phone system; and

WHEREAS, the Information Technology Department will require an upgrade to two end-of-life systems, OpenTouch to OXE 4645 Voicemail and the Emergency Notification Service to Virtual Notification Assistant; and

WHEREAS, the upgrades and the professional services have a cost of \$41,160; and

WHEREAS, the Information Technology Department also requires annual support for the phone system; and

WHEREAS, the Information Technology Department can save \$5,545 annually by agreeing to a 3-year commitment on support; and

WHEREAS, that annual support service commitment will be \$32,935 annually, and

WHEREAS, that total 3-year support service commitment will be \$98,805, and

WHEREAS, this acquisition will be from Telecom Unlimited as the sole provider of these services in the Abilene area; and

WHEREAS, it is the staff's recommendation that the City Council endorses this acquisition and the Information Technology Department's upgrade of the phone system and acquisition of support services; and

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

Part 1: That the City Council approves the procurement of phone system upgrades and services from Telecom Unlimited for a not to exceed amount of \$145,525

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

ADOPTED this 14th day of March, 2024.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney



PROFESSIONAL SERVICES CONTRACT (Not Architect or Engineer)

This Contract, dated the 14th day of March, 2024, is between the City of Abilene, a home rule municipal corporation of the State of Texas (“City”), and Telecom Unlimited. (“Professional”).

The City is engaged in telecommunications services and desires to engage the services of Professional, as an independent contractor and not as an employee, to assist in the project and to render his or her services on the terms and conditions provided in this Contract.

The Professional is a[n] qualified telecommunications services provider properly licensed/certified to practice in the State of Texas. Professional desires to render professional services as further described in Attachment A to the City on the terms and conditions provided in this Contract.

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

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

I. TERM

In consideration of the compensation stated in Paragraph II and further described in Attachment B., the Professional must provide all services as described in Attachment A, which is incorporated by reference for all purposes. The Professional must complete all services by April 30, 2024.

II. PAYMENT

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

III. ASSIGNMENT

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

IV. STATUS OF PROFESSIONAL

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

V. AMENDMENT OR MODIFICATION

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

VI. OWNERSHIP OF DOCUMENTS AND MATERIALS

Ownership of Documents and Materials is according to Attachment C.

VII. NONDISCLOSURE

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

VIII. INDEMNITY

A. Definitions

For the purpose of this section the following definitions apply:

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

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

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

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

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

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

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

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

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

B. Indemnity

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

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

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

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

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

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

IX. INSURANCE

A. GENERAL REQUIREMENTS

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

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

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

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

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

(A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;

(B) remodeling, extending, repairing, or demolishing a structure; or

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

B. ADDITIONAL REQUIREMENTS

The required liability insurances and their certificates must:

1. Name the City as an additional insured with respect to operations for which this Contract is made.

2. Provide for thirty (30) days advance written notice of cancellation or material change.

C. TYPES AND AMOUNTS OF INSURANCE

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

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

X 4. Professional Liability

\$500,000 combined single limit
(per occurrence)

 5. See Addendum for Special
Coverages and/or revisions

 6. No Insurance Required

X. VENUE, CHOICE OF LAW, AND INTERPRETATION

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

XI. TERMINATION

This Contract may be terminated at any time upon thirty (30) days written notice by City to Professional. In the event of termination, Professional will be compensated for work satisfactorily performed before the termination date. For any funding beyond the current fiscal year, the City reserves the right to immediately terminate this Contract by giving written notice, without liability to the City, in the event that funding for this Contract is discontinued or is no longer available. The City's fiscal year runs from October 1st to September 30th.

If, through any cause, the Professional fails to fulfill his obligations under this Contract, or if the Professional violates any of the agreements of this Contract, the City has the right to terminate the Contract by giving five (5) days written notice to the Professional. The Professional will be compensated for work satisfactorily performed before the termination date.

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

XII. PROJECT REPRESENTATION

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

XIII. NOTICE

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

City – ATTN:

Troy Swanson, CIO
555 Walnut St
Abilene, TX 79601

Professional – ATTN:

John Brogan, President
2094 Industrial
Abilene, TX 79602

XIV. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES

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

XV. NO INDEBTEDNESS

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

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

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

XVI. EQUAL EMPLOYMENT OPPORTUNITY

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

XVII. VERIFICATION OF EMPLOYMENT ELIGIBILITY

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

XVIII. MINORITY AND WOMEN BUSINESS ENTERPRISES

The City hereby gives notice that Minority and Women Business Enterprises will be afforded equal opportunities to submit bids for this Contract and will not be discriminated against on the grounds of race, ethnicity, color, sex, religion, or national origin in awarding the contract. Technical assistance is available to Minority and Women Business Enterprises through the Texas Tech University Small Business Development Center, 749 Gateway St., #301, Building C, Abilene, Texas, 79602, 325-670-0300.

XIX. SALES TAX

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

XX. LEGAL CONSTRUCTION

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

XXII. STATUTORY VERIFICATIONS

Verification Against Boycott of Israel Provision. In accordance with Chapter 2271 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. The term "company" does not include a sole proprietorship.

Chapter 2271 of the Texas Government Code only applies to an agreement that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000.00 or more that is paid wholly or partly from public funds of the governmental entity.

Verification Against Discrimination of Firearm or Ammunition Industries Provision.

Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the company employs at least 10 full-time employees, and this agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company verifies that: (1) the company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the company will not discriminate during the term of the Agreement against a firearm entity or firearm trade association. The term “company” does not include a sole proprietorship. This provision does not apply to a governmental entity that contracts with a sole-source provider, or does not receive any bids from a company that is able to provide the written verification required.

Verification Against Boycott of Energy Companies Provision. Pursuant to Texas Government Code Chapter 2276, unless otherwise exempt, if the company employs at least 10 full-time employees, and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company represents that: (1) the company does not boycott energy companies; and (2) the company will not boycott energy companies during the term of this Agreement. The term “company” does not include a sole proprietorship. This provision does not apply to a governmental entity that determines the requirements are inconsistent with the governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

Prohibition on Contracts with Certain Companies Provision. In accordance with Section 2252.152 of the Texas Government Code, the company verifies that company is not on a list maintained by the State Comptroller’s office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

Unless the Professional is not subject to a provision above, the signatory executing this Agreement on behalf of the Professional verifies that the Professional: (1) does not boycott Israel and will not boycott Israel during the term of this Agreement; (2) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association; (3) does not boycott energy companies, and will not boycott energy companies during the term of this Agreement; and (4) is not on a list maintained by the State Comptroller’s office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

XXII. SECTIONS AND OTHER HEADINGS

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

XXIII. COUNTERPARTS

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

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

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

CITY OF ABILENE

PROFESSIONAL

By: Robert Hanna

By: John Brogan

Title: City Manager

Title: President

Address: 2094 Industrial
Abilene, TX 79602

Phone Number: 325.690.9500

Federal Tax ID#: 75-24374921

ATTEST:

ATTEST: (if corporation)

City Secretary

Corporation's Secretary

APPROVED:

Corporate Seal (if available)

By: _____
City Attorney

ATTACHMENT A

Scope of Services

See attached.

ATTACHMENT B

PAYMENT SCHEDULE

PARTIES TO INITIAL OPTION(S) SELECTED

OPTION 1 X

Compensation is based on actual hours of work/time devoted to providing the described professional services and will be paid at a rate of \$79,655.00, then \$32,935.00 in year 1 and \$32,935.00 in year 2, not to exceed \$145,545.00.

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

OPTION 2

Payment is in a lump sum amount of \$Click or tap here to enter text. upon completion of the work and written acceptance by the City.

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

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

OPTION 3

Payment is a fixed fee amount of \$Click or tap here to enter text. payable per Click or tap here to enter text. upon completion of the work and written acceptance by the City.

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

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

ATTACHMENT C

OWNERSHIP OF DOCUMENTS AND MATERIALS

Parties to initial option chosen

(Option 1) X

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

(Option 2)

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

ATTACHMENT D

STATE MANDATED WORKERS' COMPENSATION INSURANCE LANGUAGE

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

a. Definitions

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

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

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

b. The Professional shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Professional providing services on the project, for the duration of the project.

c. The Professional must provide a certificate of coverage to the City prior to being awarded the contract.

d. If the coverage period shown on the Professional's current certificate of coverage ends during the duration of the project, the Professional must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.

e. Professional shall obtain from each person providing services on a project and provide to City:

(1) a certificate of coverage, prior to that person beginning work on the project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the project; and

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

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

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

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



Abilene Office: 2094 Industrial, Abilene, TX, 79602
325-690-9500 FAX: 325-690-6590
www.telecomunlimited.com
Midland Office: 432-520-3481
El Paso Office: 915-533-2400

Alcatel-Lucent Enterprise Regional Dealer

ALE Upgrades w/ 1-Year Software Support, 3-Year Support Commitment

Date: February 15, 2024

Company Name: City of Abilene	Company Contact (Name/Phone#): Mike Harmon	Salesperson Contact: John Brogan john@telecomunlimited.com
Billing Address:	Installation Address 555 Walnut Street	Warranty Term: Materials: Varies Labor: 1 Year
City, State, Zip:	City, State, Zip: Abilene, TX 79601	

Background

1. Software Support period is 5/1 through 4/30. The 5-year commitment for support ends 4/30/24.
2. Prior Software Support was \$31,435/yr. This was based on a discounted, 5-year commitment at the time of initial purchase.
3. Two systems (OpenTouch & Emergency Notification Services) are End-of-Life and cannot be extended for a full renewal term.

Description of Equipment or Services

Total

License Upgrades for End-Life Systems:	5,560
OpenTouch to OXE 4645 Voicemail	Note 1
Emergency Notification Services to Virtual Notification Assistant	Note 2
License Upgrades for Remaining Systems (OXE, SBC, VAA, 8770, OXR)	Included w/ Support Plan
Professional Services -- Alcatel-Lucent Enterprise & Telecom Unlimited	41,160
1-Year Software Support w/ a 3-Year Support Commitment (All Systems) - Annual Recurring	32,935 Note 3

Notes:

1. OpenTouch (OT) has been replaced with OXE 4565 Voicemail and requires an upgrade/migration. This requires a new VM in the CoA VMWare farm, but once complete, the current VM for OT can be eliminated (resources freed-up).
2. Emergency Notification Services (ENS) has been replaced with Virtual Notification Assistant (VNA) and requires an upgrade/migration. This requires a new VM in the CoA VMWare farm, but once complete, the current VM for ENS can be eliminated (resources freed-up).
3. Cost shown is the annual recurring software support, and is discounted based on a 3-year commitment.

Telecom Unlimited is the only accredited Alcatel-Lucent Enterprise dealer in the West Texas region.

Limitation of Liability - Liability of Telecom Unlimited (TU) shall not exceed the purchase price of any product or service that gives rise to a claim. TU shall not be liable for any incidental, indirect, or consequential loss arising out of this agreement, including losses due to use of telecom carrier services. For personal injury caused by TU's negligence, TU's liability shall be limited to proven damages to person. No action may be taken against TU more than 12 months after a cause.

Total (Taxes Not Included):

79,655

Advance Payment:

Phone System Upgrade and Support Services

Troy Swanson





Phone System Upgrade and Support Services

Phone System Upgrade:

- Upgrade existing systems; OXE, SBC, VAA, 8770, OXR
 - Provides for bringing systems current
- Upgrade end-of-life systems; OpenTouch and Emergency Notification Service
 - Ability to use currently available features
 - Reduces infrastructure hardware expenses

Phone System Support Services:

- Provides the licenses for the phone system use
- Provides for patches and keep the system current

IT Department Recommendation

- Endorses the upgrade and support services for a not-to-exceed amount of \$139,965
 - A one-time upgrade cost of \$41,160
 - Annual support of \$32,935 for three years, \$98,805
 - Annual savings of \$5,545 in first year over a year-to-year commitment





**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: **20. Ordinance (Final Reading) CUP-2024-01: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from the Owner, Represented By Enprotec/Hibbs & Todd, Inc., to Apply a Conditional Use Permit to Approximately 25.44 Acres Zoned Agricultural Open (AO) to Allow for an RV Park. Located At 9017 West Lake Road. *(Tim Littlejohn)***

GENERAL INFORMATION

The subject property is 25.44 acres out of the F. Sieberman Survey #12. The applicant proposes a 60 space RV Park that includes: a dog park, playground, garden, a pool, and a butterfly observatory. The applicant proposes to develop the park in phases.

SPECIAL CONSIDERATIONS

All the surrounding properties are zoned Agricultural Open (AO). In July 2023, a Conditional Use Permit was approved for an RV Park in AO zoning approximately 5 miles south of this location.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends **approval**, subject to compliance with Site Plan review requirements and the following condition:

1. The proposed RV Park shall be developed and used in accordance with the Plan of Operation and Park Rules submitted by the applicant, as shown in the proposed

ordinance.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of 7-0.

ATTACHMENTS:

1. Ordinance
2. Staff Report
3. park rules
4. plan of operations
5. Presentation

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING THE, "LAND DEVELOPMENT CODE" OF THE ABILENE CITY CODE, BY APPROVING A CONDITIONAL USE PERMIT (CUP) AFFECTING A CERTAIN PROPERTY; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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

PART 1: That Chapter 23 of the Land Development Code of the City of Abilene, is hereby amended by approving a Conditional Use Permit (CUP) as set out in Exhibit A, attached hereto and made a part of this ordinance for all purposes.

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than 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 22nd day of February, 2024.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the *Abilene Reporter-News*, a daily newspaper of general circulation in the City of Abilene, said publication being on the 19th day of January, 2024, 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 14th day of March, 2024, 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 14th day of March, 2024.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

EXHIBIT A

Approve a Conditional Use Permit (CUP) on a site zoned Agricultural Open (AO) to allow for an RV Park on approximately 25.44 acres.

The Conditional Use Permit is subject to compliance with the following conditions:

1. The RV Park shall operate in accordance with the submitted Plan of Operation (**EXHIBIT B**).
2. The RV Park shall operate in accordance with the submitted Park Rules (**EXHIBIT C**).
3. The RV Park shall be limited to 60 pad spaces.
4. Requirements set forth during the official Site Plan Review.

Legal description as follows:

METES AND BOUNDS DESCRIPTION OF 25.44 ACRES OF LAND, THIS TRACT BEING IDENTIFIED AS "H-5" ON THE ATTACHED PLAT, BEING OUT OF A CALLED 112.65 ACRE TRACT AS DESCRIBED IN VOLUME 369, PAGE 205, PUBLIC RECORDS OF JONES COUNTY, LOCATED ON THE EAST SIDE OF F.M. HIGHWAY 600 (100' R.O.W.) IN THE FREDERICK SIEBERMAN SURVEY NUMBER 12 (A-312), JONES COUNTY, TEXAS.

BEGINNING AT A 5/8 INCH REBAR WITH A CAP MARKED "SHEPPARD 3697" SET ON THE EAST RIGHT OF WAY OF F.M. HIGHWAY 600 FOR THE SOUTHWEST CORNER OF THIS TRACT AND THE NORTHWEST CORNER OF THE TRACT IDENTIFIED AS "H-4" ON THE ATTACHED PLAT AND SURVEYED THIS SAME DATE. FROM THIS 5/8 INCH REBAR, THE CALLED NORTHEAST CORNER OF THE FREDERICK SIEBERMAN SURVEY NUMBER 12 BEARS N 89°10'25" W AT 7079.50 FEET AND S 00°49'35" W AT 747.06 FEET.

THENCE ALONG THE EASTERN RIGHT OF WAY OF F.M. HIGHWAY 600 AND THE WEST BOUNDARY OF THE ORIGINAL CALLED 112.65 ACRE TRACT FOLLOWING A CURVE TO THE LEFT HAVING A RADIUS OF 5779.58 FEET, AN ARC LENGTH OF 787.13 FEET, A CHORD BEARING OF N 24°26'03" E, AND WITH A CHORD LENGTH OF 786.52 FEET, TO A TEXAS D.O.T. RIGHT-OF-WAY MARKER RECOVERED FOR THE END OF A CURVE TO THE LEFT.

THENCE N 20°30'05" E ALONG THE EASTERN RIGHT OF WAY OF F.M. HIGHWAY 600 AND THE WEST BOUNDARY OF THE ORIGINAL CALLED 112.65 ACRE TRACT FOR A DISTANCE OF 28.00 FEET TO A 1 INCH GALVANIZED IRON PIPE WITH A CAP MARKED "SHEPPARD 3697 NORTHWEST CORNER HAGER" SET ON THE BOUNDARY LINE BETWEEN THE FREDERICK SIEBERMAN SURVEY NUMBER 12 AND THE ALEXANDER H. PHILLIPS SURVEY NUMBER 11 (A-287) FOR THE NORTHWEST CORNER OF THIS TRACT BEING ALSO THE NORTHWEST CORNER OF THE CALLED 112.65 ACRE TRACT.

THENCE S 89°10'25" E ALONG THE COMMON LINE BETWEEN THE FREDERICK SIEBERMAN SURVEY NUMBER 12 AND THE ALEXANDER H. PHILLIPS SURVEY NUMBER 11, BEING ALSO THE NORTHERN BOUNDARY OF THE ORIGINAL CALLED 112.65 ACRE TRACT FOR A DISTANCE OF 1168.75 FEET TO A 1 INCH GALVANIZED IRON PIPE WITH A CAP MARKED "SHEPPARD 3697 NORTHEAST CORNER HAGER" SET ON THE BOUNDARY LINE BETWEEN THE FREDERICK SIEBERMAN SURVEY NUMBER 12 AND THE ALEXANDER H. PHILLIPS SURVEY NUMBER 11 FOR THE NORTHEAST CORNER OF THIS TRACT, BEING ALSO THE NORTHEAST CORNER OF THE CALLED 112.65 ACRE TRACT.

THENCE S 29°54'46" E ALONG THE EASTERN BOUNDARY OF THE ORIGINAL CALLED 112.65 ACRE TRACT FOR A DISTANCE OF 809.70 FEET TO A 5/8 INCH REBAR WITH A CAP MARKED "SHEPPARD 3697" SET FOR THE SOUTH EAST CORNER OF THIS TRACT, BEING ALSO THE NORTHEAST CORNER OF THE TRACT IDENTIFIED AS "H-4" ON THE ATTACHED PLAT AND SURVEYED THIS SAME DATE.

THENCE S 88°58'24" W ALONG THE COMMON BOUNDARY LINE BETWEEN THIS TRACT AND THE TRACT LABELED AS "H-4" FOR A DISTANCE OF 954.50 FEET TO A 4 INCH PIPE FENCE POST RECOVERED FOR AN ANGLE POINT IN THESE TRACTS.

THENCE S 89°36'30" W ALONG THE COMMON BOUNDARY LINE BETWEEN THIS TRACT AND THE TRACT LABELED AS "H-4" FOR A DISTANCE OF 953.23 FEET TO THE POINT OF BEGINNING AND CONTAINING AN AREA OF 25.44 ACRES.

NOTE: BEARINGS AND DISTANCES ARE GRID NAD 83, TXNC ZONE 4202 BASED UPON AN OPUS SOLUTION. COMBINED GRID SCALE FACTOR 0.9998.

SURVEYED ON THE GROUND THE 16TH DAY OF NOVEMBER 2021.

Located at 9017 West Lake Road, Abilene, Taylor County, Texas.



EXHIBIT B

Abilene Butterfly RV Resort Plan of Operation

The proposed RV park will consist of approximately 60 RV spaces when fully built out. The site will have a main office building that will also contain laundry and restroom facilities. Other amenities at the RV park will be a dog park, playground, garden, and pool. A planned future addition includes an indoor butterfly conservatory where visitors may come and tour various exhibits. Site utilities will consist of water, sewer, electric, and wifi service to each RV space as well as exterior lights.

Hours of operation of the RV park will be 7:00 am to 7:00 pm. The site amenities such as the dog park, playground, pool, etc. will have hours from 10:00 am to 8:00 pm. The RV park will have quiet hours from 10:00 pm to 7:00 am daily. See Park Rules for other items.

In order to mitigate disturbances to adjoining neighbors, the site will maintain a minimum of a 50 foot buffer from Collet Road and the existing mature trees along this road will remain. New trees will be spaced every 20' on the south property line to provide some screening.

The site will adhere to all City of Abilene development regulations, specifically Section 4.2, Division 11 in regard to vacation travel trailer/recreational vehicle parks, and Section 4.2, Division 7 in regard to site lighting. Lights will be designed to minimize the lighting impact to surrounding properties and the nearby Lake Fort Phantom.

Abilene Butterfly RV Resort Park Rules

For the RV portion:

1. Operating times for the office would be 7am-7pm.
2. Quiet hours would be 10pm-7am. No loud music/noises that are a nuisance to other guests.
3. Dogs will be leashed at all times unless in the fenced dog park. Current certificate of shots are required for presentation to the front office upon check-in. Pets are not welcome in the pool area. Pet waste will be picked up immediately and disposed of properly. Pet waste will not be performed in any building, meadow, bush, tree or conservatory. Violators will be fined and repeat offenders risk being ejected without refund.
4. Barking or aggressive dogs will be required to leave the park if they become a common nuisance to other guests. Dogs cannot be kept leashed outside without an owner present.
5. Paths surrounding the resort are private, vehicle use on these areas is restricted to staff members.
6. Age and aesthetic recreational vehicles preferred. 15 years old or newer. Exceptions are on a case-by-case basis from company management.
7. Members staying a month or longer will be background checked. We reserve the right to not provide service at our choice.
8. No walking into non-pathed areas of the butterfly wildflower meadow or conservatory. Obey all barriers, railings and posted signs. Do not pick flowers or touch the plants, they are for the wildlife. Destruction of a plant will result in a fine and possible ejection without refund.
9. Do not remove butterflies from meadows or exhibit areas, even if they are dead.
10. Children under the age of 14 are required to be supervised at all times. Climbing trees, throwing stones, and play that may cause injury to persons and property is not permitted.
11. All visitors that are not clients are required to check in and register at the office.
12. Gates to the property will be closed from 7pm - 8am. A code to open the gate will be provided to clients/registered visitors.
13. Any behavior that threatens or is harmful to a visitor, staff, animal or disrupts another clients enjoyment could result in the violator being ejected without refund. This includes loud, boisterous, threatening, abusive, insulting and indecent language, as is disorderly conduct.
14. Speed limit is 5 mph. No speeding or off-roading is permitted. This is strictly enforced.
15. Smoking/vaping/chewing tobacco is prohibited in all buildings, playgrounds, and dog parks and within 50 feet of them. This also includes the butterfly conservatory and meadows. All smoking/vaping/chewing tobacco materials must be disposed in proper receptacles. Do not throw them on the ground, to include the site area.
16. Do not feed or handle wildlife, including butterflies. Do not harass or approach wild animals. Notify staff members of wild animals.
17. Do not take wildlife including insects, caterpillars, chrysalids, butterflies and moths.
18. No solicitation or sale of any goods, products or services is allowed without full written consent from the company management.
19. All RV's must be fully self-contained, well-kept, and in good condition.
20. Each site is charged for 1 RV, 2 vehicles (golf cart not included), 2 adults, 2 children, 1 pet (dog/cat). A maximum of 6 total persons per site per day allowed. No parking on vacant or undeveloped sites, or on the grass/landscaped areas. Additional vehicles will be parked in a designated storage area. Additional persons, vehicles, and pets may be allowed with approval of management and will include additional charges. The fee schedule may be updated by management as necessary.
21. No clotheslines, freezers, refrigerators, fencing, barriers, pallets, dog kennels/pens/runs allowed.
22. All water hoses and sewer lines must be free from leaks.
23. No discharging or use of fireworks are allowed. Firearm use is strictly prohibited unless you determine it necessary for legal self-defense and you accept full-responsibility for the firearms use.

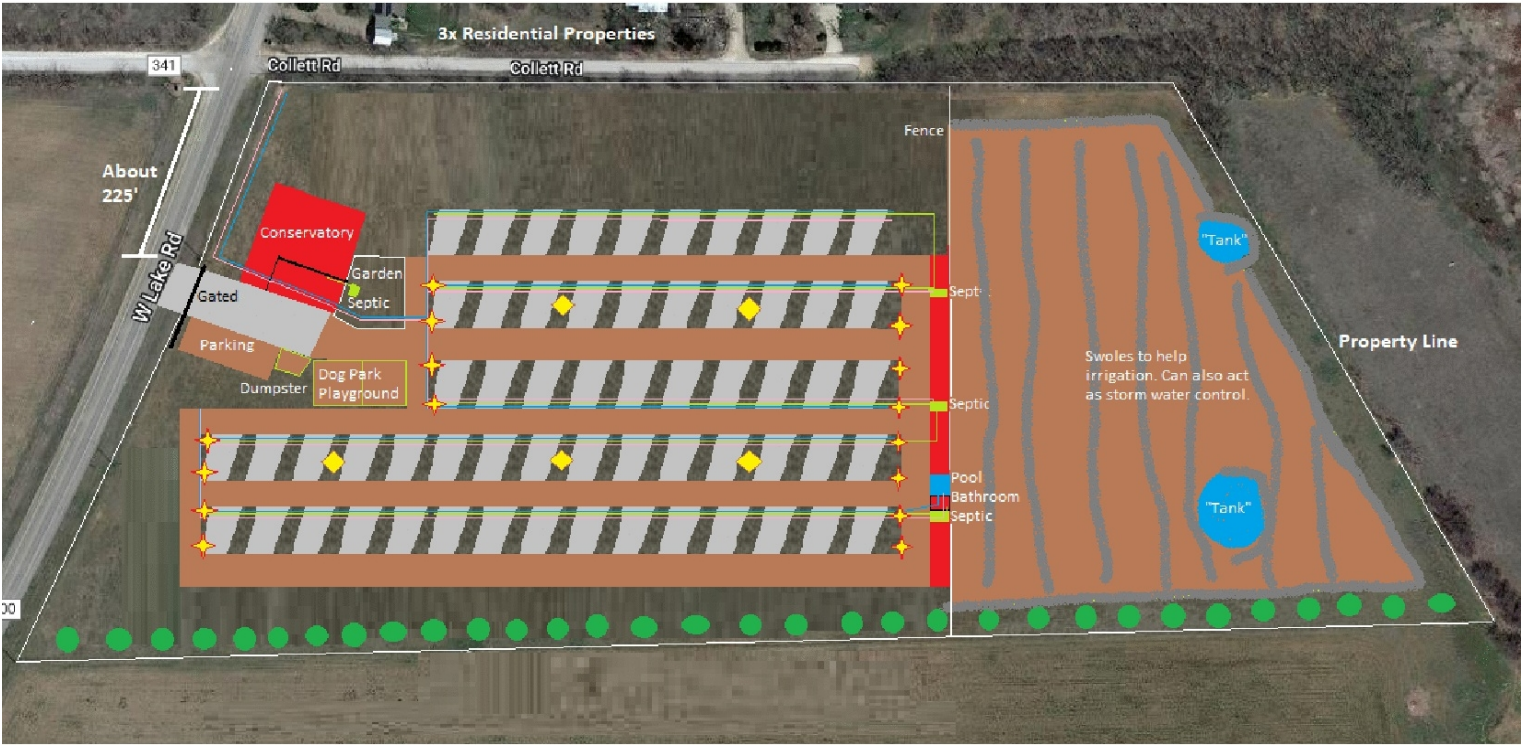
24. Alcohol is not permitted in any common area without full written consent from the company management.
25. Zero-tolerance for illegal/criminal/drug related activities. It will result in a fine and ejection without refund. All damages will be included in the fine.
26. All persons must have a valid drivers license to operate ANY motorized vehicle on the property (including golf carts).
27. No repairs or washing of vehicles or RV's is allowed without full written consent from the company management.
28. Damage to the company property, including but not limited to restrooms, utilities, offices, landscaping, vehicles, street lights, wifi towers, or signage is strictly prohibited. Clients will be held responsible for the repair of any damages.
29. We reserve the right to refuse service to anyone, and the right to refuse any RV that is not in good appearance or age. No refunds if you choose to shorten your stay or have to be asked to leave due to violation of rules. Rules are designed for safety, convenience, and a clean resort for clients enjoyment. We are a service oriented business and therefore we do not have a landlord/tenant relationship/agreement with any daily/weekly/monthly/yearly clients.
30. Pool hours are from 10am-8pm. No lifeguard. All children will be accompanied by an adult.

For the Conservatory portion (including the above):

1. Food and drinks are not allowed in the exhibit. Smoking/vaping/chewing tobacco are not allowed in the conservatory.
2. Do not pick up or handle insects unless a staff member invites you to do so.
3. Strollers and wagons are not allowed in the conservatory. They pose an escape risk for butterflies.
4. Butterfly Conservatory will follow the rules of federal regulations.
5. The use of scooters, bicycles, hover boards, skate boards, roller blades (list not inclusive) are prohibited.
6. Photography and filming: Personal use only. Any use, reuse, or reproduction for commercial purposes is prohibited without full written consent from the company management.

More rules to consider:

1. Visitors and clients enter at their own risk. The owner, management, office personnel of the company will not be responsible for any loss, theft, injury, accident, fire, illegal/criminal activity or damage to visitors, clients, animals, personal property, personal vehicles, and personal items.
2. Be aware of wildlife. We are not responsible for injuries from animals, reptiles, mammals, or insects. Do not feed wildlife and do not leave food outside for any animals.
3. Property rules, regulations, and rates may be changed at any time without prior notice.



END

ZONING CASE CUP-2024-01

STAFF REPORT

Scheduled Hearings

Planning & Zoning Commission: February 6, 2024
City Council 1st Reading: February 22, 2024
City Council 2nd Reading: March 14, 2024

Applicant

Owner: Cedric & Kelti De Bourbon-Poisson
Agent: Enprotec/Hibbs & Todd Inc.

Case Manager

Mason Teegardin – Planner

Request

Apply a Conditional Use Permit to approximately 25.44 acres zoned Agricultural Open (AO) to allow for an RV Park.

Location

9017 West Lake Road, Abilene, Jones County, Texas.

Background

The subject property is 25.44 acres out of the F. Sieberman Survey #12. The applicant proposes a 60 space RV Park that includes: a dog park, playground, garden, a pool, and a butterfly observatory. The applicant proposes to develop the park in phases. A Plan of Operation describing the proposed uses and phasing schedule is attached with this report.

Existing Uses/Zoning

All the surrounding properties are zoned Agricultural Open (AO). In July 2023, a Conditional Use Permit was approved for an RV Park in AO zoning approximately 5 miles south of this location.

Criteria Assessment

Staff has reviewed the request based upon the factors established in Section 1.4.3.5, Criteria for Approval, of the Land Development Code. These factors are identified and addressed below:

1. The proposed use at the specified location is consistent with the policies embodied in the adopted Comprehensive Plan.

The Future Land Use Map recommends Very Low Residential. It is common for RV Parks to be located within Agricultural Open (AO) zoning.

2. The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations

The proposed use, as detailed, is consistent with the surrounding uses and zoning district regulations. The maximum size density for RV Parks is 12 units per acre. The applicant is proposing 60 units on approximately 25 acres. This would generally be consistent with Very Low Residential zoning.

3. **The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes improvements either on-site or within the public rights-of-way to mitigate development-related adverse impacts, such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent development and neighborhoods.**

The use should not negatively affect the surrounding uses to the north, south, east or west.

4. **The proposed use does not generate pedestrian and vehicular traffic which will be hazardous or conflict with the existing and anticipated traffic in the neighborhood.**

The proposed use will generate more traffic but it should not be conflicting or hazardous to the existing traffic located within the area.

5. **The proposed use incorporates roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development-generated traffic on neighborhood streets.**

The proposed use does not generate a level of traffic that would adversely affect the existing road network in the vicinity of the subject site.

6. **The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed conditional use on adjacent properties.**

The use does generate visual impacts for the surrounding areas. However, the applicant is proposing a 50' buffer along Collett Road, as well as trees evenly spaced along the southern property line.

7. **The proposed use meets the standards for the zoning district, or to the extent variations from such standards have been requested, that such variations are necessary to render the use compatible with adjoining development and the neighborhood.**

The use would comply with all applicable LDC requirements. A Site Plan review is required at this location because it will be a new development on a previously undeveloped lot.

P&Z Recommendation

The Planning and Zoning Commission recommends **approval**, subject to compliance with Site Plan review requirements and the following condition:

1. The proposed RV Park shall be developed and used in accordance with the Plan of Operation and Park Rules submitted by the applicant, as shown in the proposed ordinance.

Attachments

- Plan of Operation
- Proposed Park Rules

NOTIFICATIONS

Legend:
O- Opposed
F- In Favor

PROPERTY OWNER	PROPERTY ID	SITUS	RESPONSE
	0		
COLLETT WENDELL & ENA BEE	0	1018 COLLETT RD	
COLLETT WENDELL & ENA BEE	0	942 COLLETT RD	
COLLETT WENDELL & ENA BEE	0	902 COLLETT RD	
	0		
TUTT RONNY & JANET	0		
HAGAR RONNIE & BETTY	0	8888 W LAKE RD	
MEADOR LESTER DALE &	0	9135 W LAKE RD	
POWERS FOUNDATION	0	9017 W LAKE RD	
POWERS FOUNDATION	0	8889 W LAKE RD	

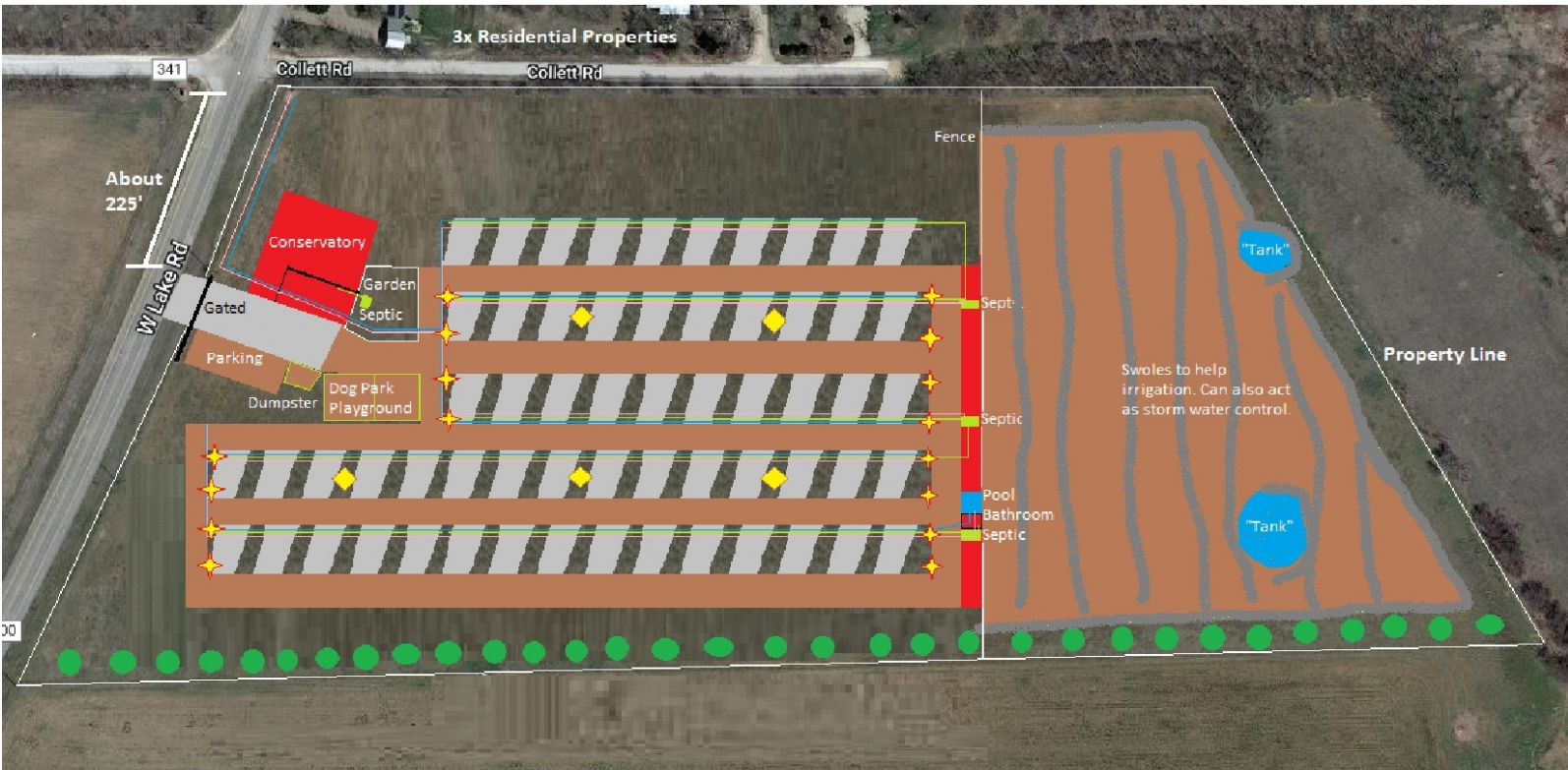
SITE LAYOUT – PHASE 1



Line Legend:	
Electricity	
Water	
Septic	

- Notes:**
1. Individual RV Sites: Refer to RV Site Layout
 2. All roads in brown are 30' wide, non-dust producing, and allow a semi-trailer to drive through.
 3. Septic systems are aerobic. Water will be used on flower gardens.
 4. Total of 30 RV sites will be built with full hook ups. 50 amp.
 5. The office building will be 60' from the property line. Refer to office layout (it also has a laundry room and bathrooms).
 6. The entrance to the property will be 40' wide concrete or asphalt.

SITE LAYOUT – FULL BUILD



LOCATION MAP



Aerial Map



Legend

- CUP-2024-01
- CourierParcels

ZONING MAP



Zoning Map



- Legend
- CUP-2024-01
 - Arterial
 - Arterial
 - AO - Agricultural
 - Open Space
 - GC: General Commercial

Abilene Butterfly RV Resort Park Rules

For the RV portion:

1. Operating times for the office would be 7am-7pm.
2. Quiet hours would be 10pm-7am. No loud music/noises that are a nuisance to other guests.
3. Dogs will be leashed at all times unless in the fenced dog park. Current certificate of shots are required for presentation to the front office upon check-in. Pets are not welcome in the pool area. Pet waste will be picked up immediately and disposed of properly. Pet waste will not be performed in any building, meadow, bush, tree or conservatory. Violators will be fined and repeat offenders risk being ejected of service without refund.
4. Barking or aggressive dogs will be required to leave the park if they become a common nuisance to other guests. Dogs cannot be kept leashed outside without an owner present.
5. Paths surrounding the resort are private, vehicle use on these areas is restricted to staff members.
6. Age and aesthetic recreational vehicles preferred. 15 years old or newer. Exceptions are on a case-by-case basis from company management.
7. Members staying a month or longer will be background checked. We reserve the right to not provide service at our choice.
8. No walking into non-pathed areas of the butterfly wildflower meadow or conservatory. Obey all barriers, railings and posted signs. Do not pick flowers or touch the plants, they are for the wildlife. Destruction of a plant will result in a fine and possible ejection of service without refund.
9. Do not remove butterflies from meadows or exhibit areas, even if they are dead.
10. Children under the age of 14 are required to be supervised at all times. Climbing trees, throwing stones, and play that may cause injury to persons and property is not permitted.
11. All visitors that are not clients are required to check in and register at the office.
12. Gates to the property will be closed from 7pm - 8am. A code to open the gate will be provided to clients/registered visitors.
13. Any behavior that threatens or is harmful to a visitor, staff, animal or disrupts another clients enjoyment could result in the violator being ejected of service without refund. This includes loud, boisterous, threatening, abusive, insulting and indecent language, as is disorderly conduct.
14. Speed limit is 5 mph. No speeding or off-roading is permitted. This is strictly enforced.
15. Smoking/vaping/chewing tobacco is prohibited in all buildings, playgrounds, and dog parks and within 50 feet of them. This also includes the butterfly conservatory and meadows. All smoking/vaping/chewing tobacco materials must be disposed in proper receptacles. Do not throw them on the ground, to include the site area.
16. Do not feed or handle wildlife, including butterflies. Do not harass or approach wild animals. Notify staff members of wild animals.
17. Do not take wildlife including insects, caterpillars, chrysalids, butterflies and moths.
18. No solicitation or sale of any goods, products or services is allowed without full written consent from the company management.
19. All RV's must be fully self-contained, well-kept, and in good condition.
20. Each site is charged for 1 RV, 2 vehicles (golf cart not included), 2 adults, 2 children, 1 pet (dog/cat). Additional persons are charged \$15 per day fee for daily sites, \$300 for monthly sites. A maximum of 6 total persons per site per day allowed. No parking on vacant or undeveloped sites, or on the grass/landscaped areas. Additional vehicles are \$50 per month and will be parked in a designated area for storage.
21. No clotheslines, freezers, refrigerators, fencing, barriers, pallets, dog kennels/pens/runs allowed.
22. All water hoses and sewer lines must be free from leaks.
23. No discharging or use of fireworks are allowed. Firearm use is strictly prohibited unless you determine it necessary for legal self-defense and you accept full-responsibility for the firearms use.

24. Alcohol is not permitted in any common area without full written consent from the company management.
25. Zero-tolerance for illegal/criminal/drug related activities. It will result in a fine and ejection without refund. All damages will be included in the fine.
26. All persons must have a valid drivers license to operate ANY motorized vehicle on the property (including golf carts).
27. No repairs or washing of vehicles or RV's is allowed without full written consent from the company management.
28. Damage to the company property, including but not limited to restrooms, utilities, offices, landscaping, vehicles, street lights, wifi towers, or signage is strictly prohibited. Clients will be held responsible for the repair of any damages.
29. We reserve the right to refuse service to anyone, and the right to refuse any RV that is not in good appearance or age. No refunds if you choose to shorten your stay or have to be asked to leave due to violation of rules. Rules are designed for safety, convenience, and a clean resort for clients enjoyment. We are a service oriented business and therefore we do not have a landlord/tenant relationship/agreement with any daily/weekly/monthly/yearly clients.
30. Pool hours are from 10am-8pm. No lifeguard. All children will be accompanied by an adult.

For the Conservatory portion (including the above):

1. Food and drinks are not allowed in the exhibit. Smoking/vaping/chewing tobacco are not allowed in the conservatory.
2. Do not pick up or handle insects unless a staff member invites you to do so.
3. Strollers and wagons are not allowed in the conservatory. They pose an escape risk for butterflies.
4. Butterfly Conservatory will follow the rules of federal regulations.
5. The use of scooters, bicycles, hover boards, skate boards, roller blades (list not inclusive) are prohibited.
6. Photography and filming: Personal use only. Any use, reuse, or reproduction for commercial purposes is prohibited without full written consent from the company management.

More rules to consider:

1. Visitors and clients enter at their own risk. The owner, management, office personnel of the company will not be responsible for any loss, theft, injury, accident, fire, illegal/criminal activity or damage to visitors, clients, animals, personal property, personal vehicles, and personal items.
2. Be aware of wildlife. We are not responsible for injuries from animals, reptiles, mammals, or insects. Do not feed wildlife and do not leave food outside for any animals.
3. Property rules, regulations, and rates may be changed at any time without prior notice.

Abilene Butterfly RV Resort Plan of Operation

The proposed RV park will consist of approximately 60 RV spaces when fully built out. The site will have a main office building that will also contain laundry and restroom facilities. Other amenities at the RV park will be a dog park, playground, garden, and pool. A planned future addition includes an indoor butterfly conservatory where visitors may come and tour various exhibits. Site utilities will consist of water, sewer, electric, and wifi service to each RV space as well as exterior lights.

Hours of operation of the RV park will be 7:00 am to 7:00 pm. The site amenities such as the dog park, playground, and pool will be closed at sundown and the RV park will have quiet hours from 10:00 pm to 7:00 am daily. See Park Rules for other items.

In order to mitigate disturbances to adjoining neighbors, the site will maintain a minimum of a 50 foot buffer from Collet Road and the existing mature trees along this road will remain. New trees will be spaced every 20' on the south property line to provide some screening.

The site will adhere to all City of Abilene development regulations, specifically Section 4.1, Division 11 in regard to vacation travel trailer/recreational vehicle parks.



CONDITIONAL USE PERMIT

Case: CUP-2024-01

Agent: Enprotec/Hibbs & Todd Inc.

Request: Apply a Conditional Use Permit to approximately 25.44 acres zoned Agricultural Open (AO) to allow for an RV Park

Location: 9017 West Lake Road

Notification: 0 in Favor, 0 Opposed

Planning & Zoning: February 6, 2024

Council Hearing: February 22, 2024
March 14, 2024





AERIAL LOCATION MAP

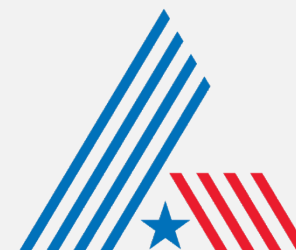


Aerial Map



Legend

- CUP-2024-01
- CourierParcels



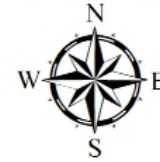
CITY OF
ABILENE
TEXAS



ZONING MAP

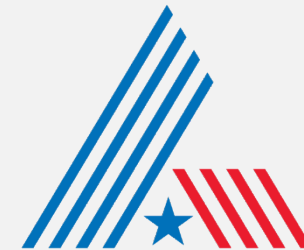


Zoning Map



Legend

- CUP-2024-01
- Arterial
- Arterial
- AO - Agricultural Open Space
- GC: General Commercial



CITY OF
ABILENE
TEXAS

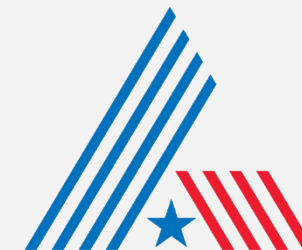


SITE LAYOUT – PHASE 1



Line Legend:	
Electricity	
Water	
Septic	

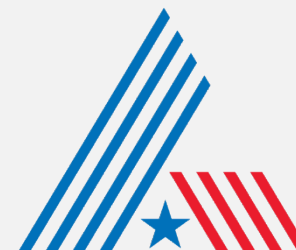
- Notes:**
1. Individual RV Sites: Refer to RV Site Layout
 2. All roads in brown are 30' wide, non-dust producing, and allow a semi-trailer to drive through.
 3. Septic systems are aerobic. Water will be used on flower gardens.
 4. Total of 30 RV sites will be built with full hook ups. 50 amp.
 5. The office building will be 60' from the property line. Refer to office layout (It also has a laundry room and bathrooms).
 6. The entrance to the property will be 40' wide concrete or asphalt.



CITY OF
ABILENE
TEXAS



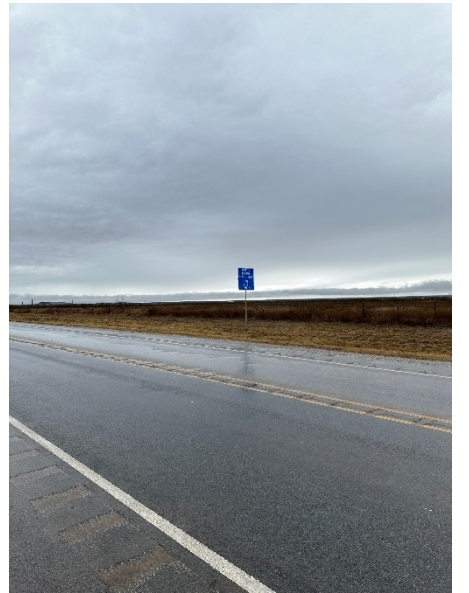
SITE LAYOUT – FULL BUILD



CITY OF
ABILENE
TEXAS



VIEWS OF SUBJECT PROPERTY

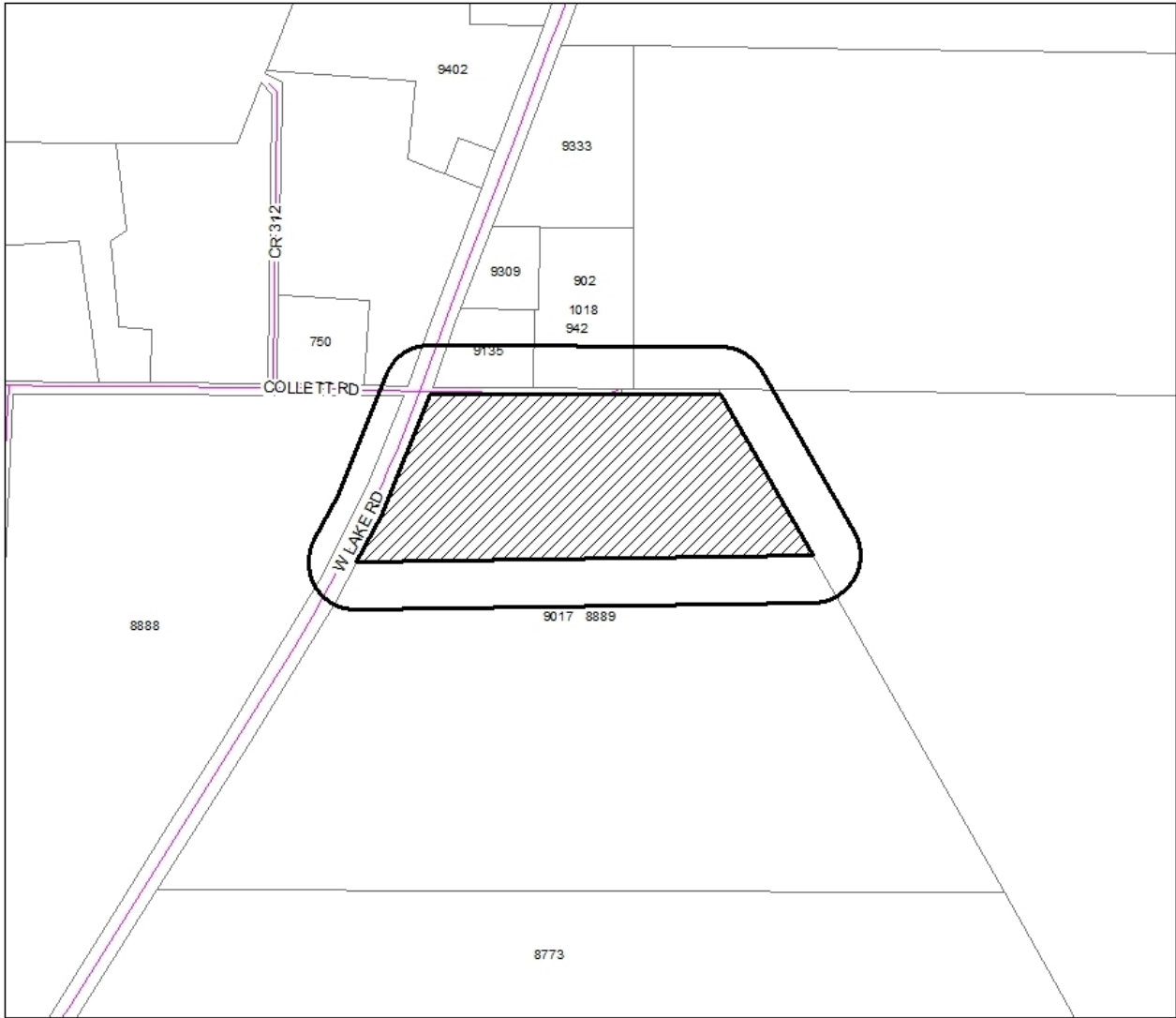


North Neighboring Property





NOTIFICATION AREA MAP



Notification Map



Legend

- CUP-2024-01
- Notification Area

0- In Favor-

0- Opposed-



CITY OF
ABILENE
TEXAS



FINDINGS AND RECOMMENDATION

The 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 subject to the proposed Plan of Operation and “Park Rules” provided by the applicant.





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: **21. Ordinance (Final Reading) Z-2024-04:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from the Owner, Represented By Geotex Property Solutions, LLC, to Change the Zoning of Approximately 1.28 Acres From Agricultural Open (AO) To Mobile Home (MH). Located Within the 7500 Block of West Lake Road. *(Tim Littlejohn)*

GENERAL INFORMATION

The subject property has remained vacant since annexation. The owner proposes to rezone the site to the Mobile/Manufactured Home zoning district.

SPECIAL CONSIDERATIONS

Properties zoned AO zoning surround the property. Two properties zoned MH are located to the east and southeast are located in the immediate vicinity of the subject property. Nearby existing land uses include agricultural uses, two manufactured homes, and the Texas State Veterans Cemetery at Abilene.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of 7-0.

ATTACHMENTS:

1. Z-2024-04 Ordinance
2. Z-2024-04 Staff Report
3. Project Overview
4. Z-2024-04

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 22nd day of February, 2024.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the *Abilene Reporter-News*, a daily newspaper of general circulation in the City of Abilene, said publication being on the 19th day of January, 2024, 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 22nd day of February 2024, 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 14th day of March, 2024.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT A

Change the zoning classification of the following described land, from the Agricultural Open (AO) district to the Mobile/Manufactured Home (MH) district.

BEING 1.28 acres out of Section 46, Block 16, T. & P. RR. Company Surveys, Jones County, Texas, said 1.28 acres being part of a 24.48 acre tract recorded in Instrument No. 182151, Official Public Records, Jones County, Texas and being more particularly described as follows:

BEGINNING at a 3/8" rebar found at the northwest corner of Lot 1, Block A, Section 3, Gonzales Subdivision, as shown by plat recorded in Slide 400, Plat Records, Jones County, Texas, for the southeast corner of this tract;

THENCE N89°22'31"W 177.66 feet, over and across said 24.48 acre tract, to a 3/8" rebar set for the most southerly southwest corner of this tract;

THENCE N0°48'49"E 225.27 feet, over and across said 24.48 acre tract, to a 3/8" rebar set for an interior corner of this tract;

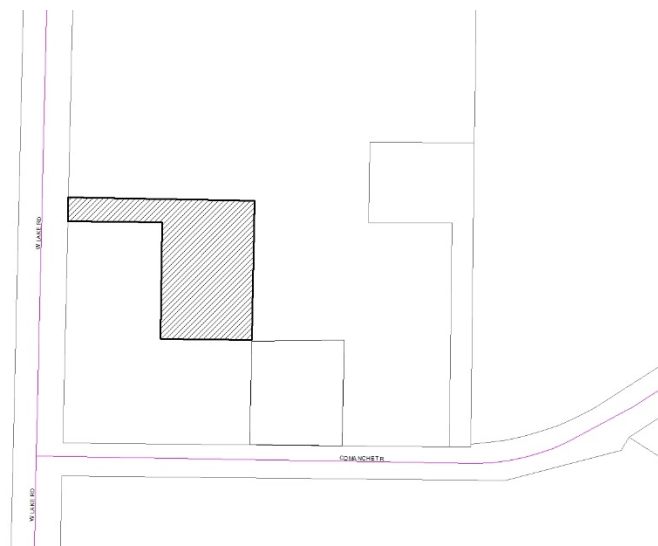
THENCE N89°22'31"W 175.68 feet to a 3/8" rebar set on the EBL of West Lake Road (100 foot right-of-way - AKA F.M. Highway 600), for the most westerly southwest corner of this tract, whence a 3/8" rebar found on the SBL of said Section 46, and on the EBL of said road and the NBL of Comanche Trail (80 foot right-of-way), at the southwest corner of said 24.48 acre tract bears S1°04'52"W 425.0 feet;

THENCE N1°04'52"E 45.0 feet, along the EBL of West Lake Road, to a 3/8" rebar set on the WBL of said 24.48 acre tract, for the northwest corner of this tract;

THENCE S89°22'31"E 353.13 feet, over and across said 24.48 acre tract, to a 3/8" rebar set for the northeast corner of this tract;

THENCE S0°48'49"W 270.16 feet, over and across said 24.48 acre tract, to the place of beginning and containing 1.28 acres of land.

Surveyed on the ground April 19, 2023.



END

ZONING CASE Z-2024-04

STAFF REPORT

Scheduled Hearings

Planning & Zoning Commission: February 6, 2024

City Council 1st Reading: February 22, 2024

City Council 2nd Reading: March 14, 2024

Applicant

Owner: Antonio and Elizabeth Gonzales

Agent: Geotex

Case Manager

Adam Holland – Planner

Request

Rezoning of approximately 1.28 acres from Agricultural Open (AO) to Mobile/Manufactured Home (MH).

Location

7500 Block of W Lake Road

Background

The subject property has remained vacant since annexation. The owner proposes to rezone the site to the Mobile/Manufactured Home zoning district.

Zoning, Existing and Proposed Land Use

Properties zoned AO zoning surround the property. Two properties zoned MH are located to the east and southeast are located in the immediate vicinity of the subject property. Nearby existing land uses include agricultural uses, two manufactured homes, and the Texas State Veterans Cemetery at Abilene.

Criteria Assessment

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

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

The Future Land Use Map (FLUM) recommends very low-density residential use for this property. The comprehensive plan identifies MH zoning as a secondary zoning consideration for this category of land use. The owner intends to place one manufactured home on this property, resulting in a density of approximately of one (1) unit per acre, which is low-density.

(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 MH zoning is consistent with the uses and zoning in the immediate vicinity of the subject property.

(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 is served by nearby water lines and will require a septic system.

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

None known.

P&Z Recommendation

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

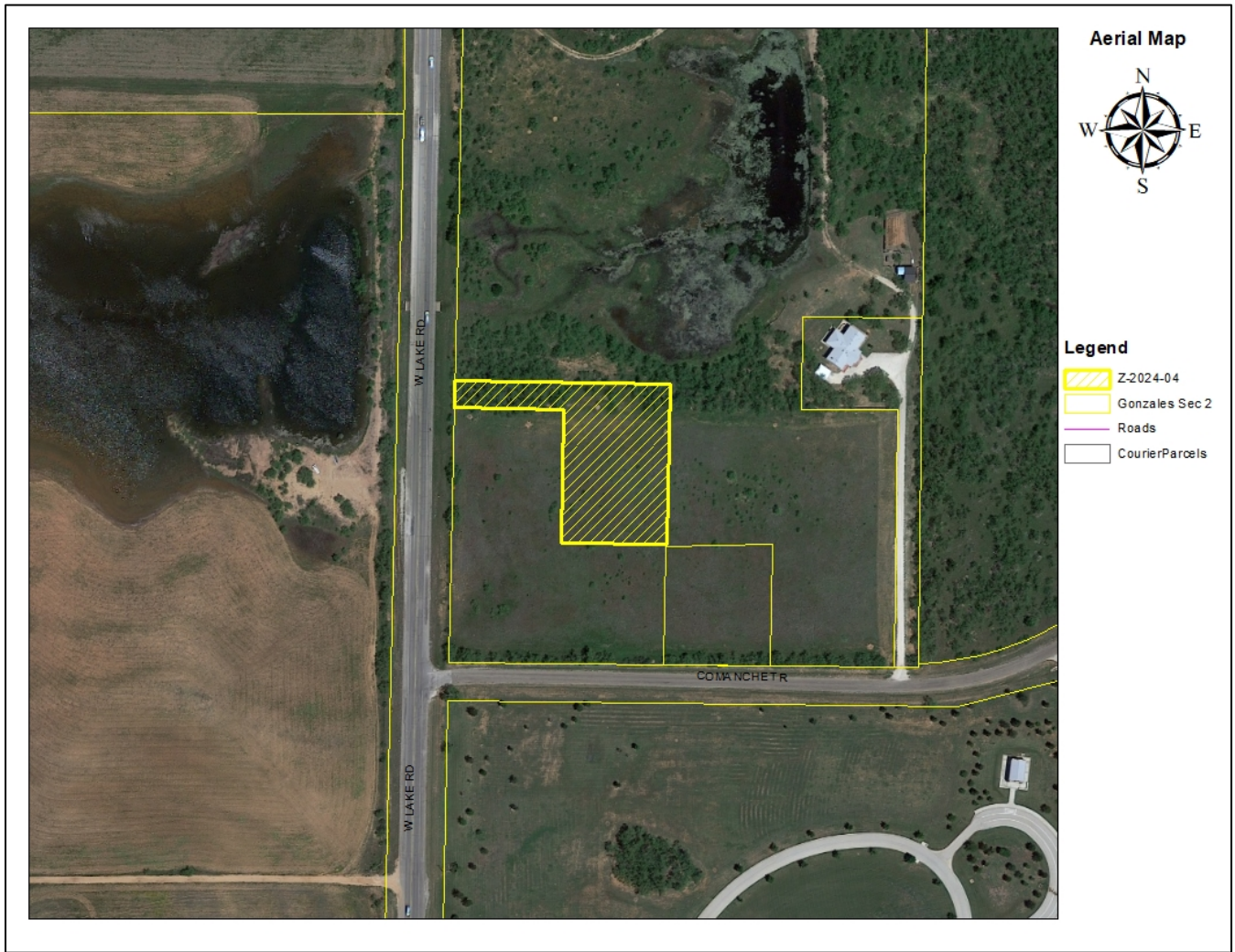
Notification

TABLE 1

Owner & Prop ID

Owner	Property ID	Situs	Response
REVES ROBERT L	20361	7450 W LAKE RD	
SHAMBLIN DAVID J & CAROL A	54279	340 COMANCHE TR	

LOCATION MAP



ZONING MAP



PROJECT OVERVIEW

Project Type: Zoning Application | **Project Title:** Z-2024-04 (AO to MH)

ID # 23-000246 | **Started** 12/21/2023 at 10:04 AM



Address

340 Comanche, Abilene, TX USA 79601

Legal

No legal information

Description

Rezonpproperty in North Abilene

PROPERTY DETAILS

No data for Property Details.

PROPERTY ADDITIONAL INFORMATION

No data for Property Additional Information.

CONTACTS	CONTACT INFO	ADDRESS	CREDENTIALS	ROLE
Kelsey Williams	kelsey@geotexsolutions.com 3256776712	209 South Pioneer 2 Abilene, TX 79605	Surveyor	Contractor
Shamblin David J & Carol A % Gonzales Antonio P & El	-	350 Comanche Trl Abilene, TX 79601-8267	-	APPLICANT

INFORMATION FIELDS

Owner Name

Antonio Gonzales

Agent Name

Geotex

Block

-

Lot

-

Acreage

-

Legal Description of property

T&P RR Company Survey 16

Subdivision Name

-

Current Zoning

AO

Agree to Terms
YES

MYGOV.US



REZONE REQUEST

Case: Z-2024-04

Owner: Antonio and Elizabeth Gonzales

Agent: Geotex

Request: Rezone from AO to MH

Location: 7500 Block of W. Lake Rd.

Notification: 0 in Favor, 0 Opposed

Planning & Zoning: February 6, 2023

City Council Hearing: February 22, 2023
March 14, 2023





LOCATION MAP



Aerial Map



Legend

- Z-2024-04
- Gonzales Sec 2
- Roads
- CourierParcels





ZONING MAP





Permitted Uses in AO Zoning

RESIDENTIAL USES:

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

ACCESSORY AND INCIDENTAL USES:

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

CULTURAL AND RECREATIONAL USES:

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

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

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

EDUCATIONAL AND RELIGIOUS USES:

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

SERVICE

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

TRADE – RETAIL USES

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

TRANSPORTATION, COMMUNICATION AND UTILITIES:

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

RESOURCE PRODUCTION AND EXTRACTION USES:

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

LEGEND

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





Permitted Uses in MH Zoning

RESIDENTIAL USES:

- P Dwelling – Industrialized Housing Unit
- P Dwelling – Manufactured Home (HUD-Code)
- P Dwelling – Mobile Home
- P Dwelling – Single-Family Detached

ACCESSORY AND INCIDENTAL USES:

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

CULTURAL AND RECREATIONAL USES:

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

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Community Home
- P Fire/Police Station
- C Homeless/Emergency Shelter

EDUCATIONAL AND RELIGIOUS USES:

- P Church or Place of Worship
- P School: Public/Private

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- P Public Utility Facility
- 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



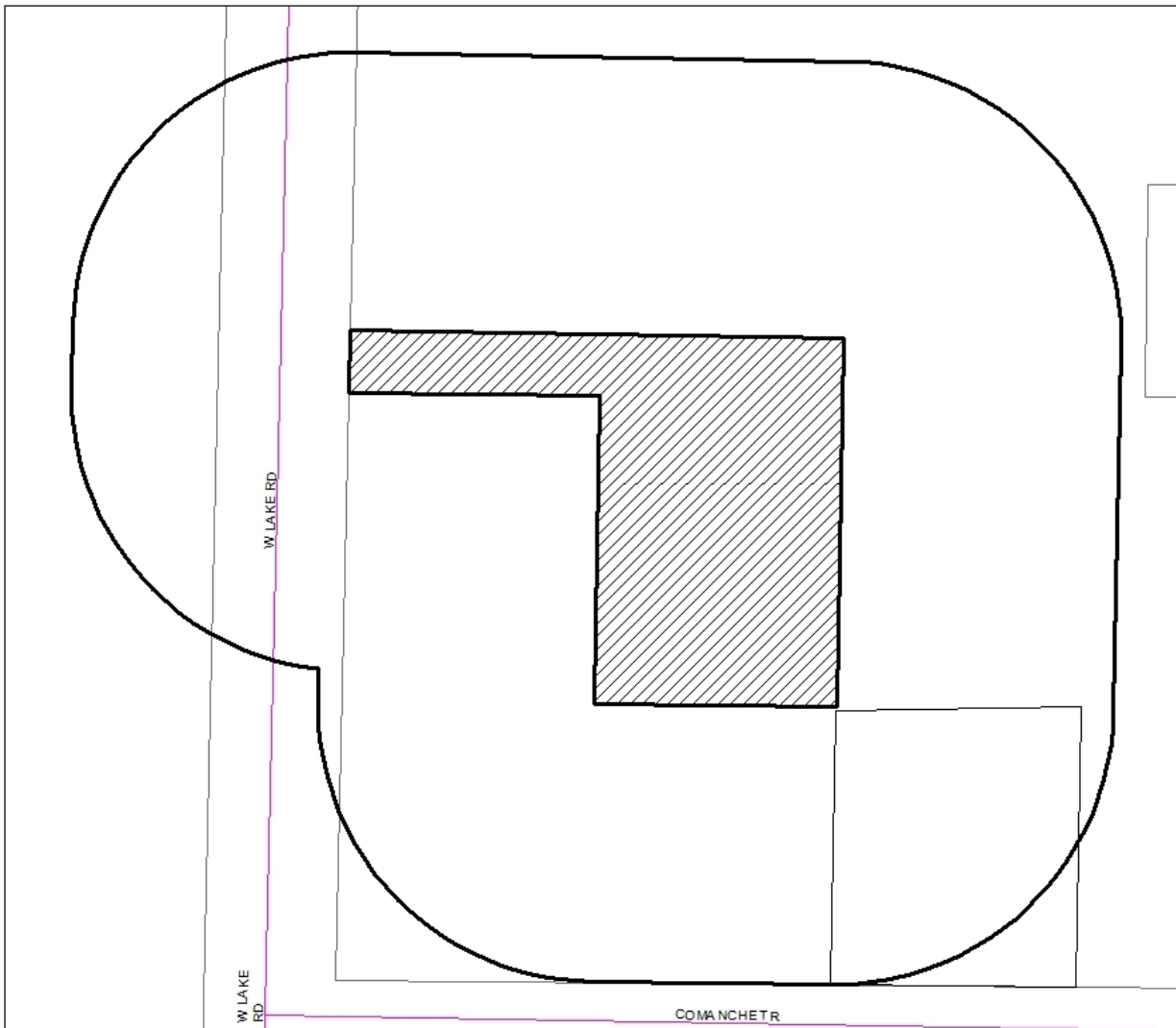


VIEWS OF SUBJECT & NEIGHBORING PROPERTIES

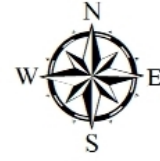




NOTIFICATION AREA MAP



Notification Map



Legend

-  Z-2024-04
-  Notification Buffer
-  Gonzales Sec 2
-  Roads
-  CourierParcels

- 0- In Favor- 
- 0- Opposed- 
- 0% Opposed





FINDINGS AND RECOMMENDATIONS

The proposed request for MH rezoning 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: 3/14/2024

TO: Honorable Mayor and City Council Members

FROM: Stanley Smith, City Attorney

SUBJECT: 22. 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. 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
2. 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
3. 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
4. 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
5. 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
6. Richard Scheriger, et al. v. City of Abilene; Cause No. CV33253, In the 90th Judicial District Court, Stephens County, Texas, filed April 21, 2023
7. The Woodlands Pride, Inc., et al. v. Ken Paxton, Attorney General of Texas, et al., Case No. 4:23-cv-02847, In the United States District Court, Southern District of Texas, Houston Division, filed August 2, 2023
8. PFAS Litigation
9. Ginger Robertson v. City of Abilene and Abilene Zoological Society; Cause No. 13179-D, In the 350th Judicial District Court, Taylor County, Texas; filed December 5, 2023
10. City of Dallas, et al, v. Disney DTC, LLC, et al., Cause No. DC-22-09128, In the 14th Judicial District Court, Dallas County, Texas, filed August 3, 2022

B. 551.072 (Deliberations about Real Property)

1. Donation of Land to the Veteran's Land Board

C. 551.073 (Deliberations about Gifts and Donations)

1. Donation of Land to the Veteran's Land Board

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



**City Council
Agenda Memo**

City Council Meeting Date: 3/14/2024

TO: Honorable Mayor and City Council Members

FROM: Robert Hanna, City Manager

SUBJECT: 23. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Donation of Land to the Veteran's Land Board for the Veteran's Cemetery Expansion (*Robert Hanna*)

GENERAL INFORMATION

Information will be provided at the meeting.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Donate Land to VLB

APPROVE DONATION OF LAND TO TEXAS VETERANS LAND BOARD FOR EXPANSION OF STATE VETERANS CEMETARY

