



City of Abilene City Council Agenda

Brian Yates, Mayor Pro-tem
Blaise Regan, Deputy Mayor Pro-tem
Shane Price, Council Member
Lynn Beard, Council Member
Emily Crawford, City Manager

Weldon Hurt, Mayor

Miguel Espinoza, 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 July 10, 2025, 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 Blaise Regan

PLEDGE TO THE UNITED STATES FLAG AND THE TEXAS FLAG

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS AND ANNOUNCEMENTS

2. **Proclamation:**

- Parks & Recreation Month

CONSENT AGENDA AND PUBLIC COMMENTS

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

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

listed on the Council agenda.

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

3. **Minutes:** Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on June 26, 2025 **(Shawna Atkinson)**
4. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Authorizing the City Manager to enter into a Contract with Teinert Construction for the Pedestrian Plaza **(Lesli Andrews)**
5. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Approving an Extended Term Street Use License with the Center for Contemporary Arts in alleyway, North of North 2nd Street to 240 Cypress Street **(Max Johnson)**
6. **Resolution:** Receive a Report, Hold a Discussion and Take Action on the purchase of one (1) 2026 Freightliner M2-106 Ledwell 2000 Gallon Water Truck from Houston Freightliner, Houston TX for Streets Services **(Don Green)**
7. **Resolution:** Receive a Report, Hold a Discussion and Take Action on the Approval of the Acquisition of Dell Server Products and Parts from Dell **(Troy Swanson)**
8. **Resolution:** Receive a Report, Hold a Discussion and Take Action on the Approval of the acquisition of recovery services from GuidePoint Security LLC through the City's cyber insurance counsel **(Troy Swanson)**
9. **Ordinance (First Reading) Z-2025-20:** Receive a Report, Hold a Discussion and Take Action on A Request From The Owner, To Amend The Terms And Conditions Of A Planned Development District (PDD-181). Specifically, To Amend The Buffer Area Surrounding The Property. Located At 617 F.M. 2404. **(Tim Littlejohn)**

REGULAR AGENDA - ORDINANCES AND PUBLIC HEARINGS - RESOLUTIONS

10. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Amending the City of Abilene Pace Program Report **(Tim Littlejohn)**
11. **Ordinance:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Amending Chapter 17, "Miscellaneous Provisions," Code of Ordinance by Approving a Permit Requirement for Bring Your Own Beverage (BYOB) Establishments **(Emily Crawford)**
12. **Ordinance:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Amending the Fee Schedule Ordinance to Add a BYOB Permit Fee **(Emily Crawford)**

EXECUTIVE SESSION

13. **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

11. Patricia Anderson v. City of Abilene; Cause No. 51867-A, IN the 42nd Judicial District Court, Taylor County, Texas; filed March 1, 2024

12. Mary Lou Gonzales v. City of Abilene, Board of Building Standards; Cause No. 29156-B; In the District Court, 104th Judicial District, Taylor County, Texas; filed April 10, 2024

13. Bouldin Pat Crofton v. City of Abilene, Board of Building Standards; Cause No. 52175-A, In the 42nd Judicial Court, Taylor County, Texas; filed May 9, 2025

B. 551.072 (Deliberations about Real Property)

1. 1002 S. 32nd St.

C. 551.073 (Deliberations about Gifts and Donations)

D. 551.074 (Personnel Matters)

1. City Council may consider appointment, employment, compensation, reassignment, duties, discipline, or dismissal of public officers or employees, City Manager, City Attorney, Municipal Court Judge, City Secretary, and City Board and Commission Members

2. City of Abilene Boards & Commissions May be Discussed, as needed for (re)appointment

E. 551.076 (Deliberations about Security Devices)

F. 551.087 (Business Prospect/Economic Development)

1. Project Surf

RECONVENE

REGULAR AGENDA

14.

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

- Landmarks Commission

15.

Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Authorizing the City Manager to Enter into a New Building Lease Agreement for a New Main Branch Library at Abilene Heritage Square (**Mindy Patterson**)

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 3rd day of July, 2025, at 4:00 p.m.

Kaitlin Richardson, TRMC
Deputy City Secretary



**City Council
Agenda Memo**

City Council Meeting Date: 7/10/2025

TO:

FROM:

SUBJECT: 2. Proclamation:

- **Parks & Recreation Month**

GENERAL INFORMATION

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

None



**City Council
Agenda Memo**

City Council Meeting Date: 7/10/2025

TO: Honorable Mayor & Members of City Council

FROM: Shawna Atkinson, City Secretary

SUBJECT: **3. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on June 26, 2025 (Shawna Atkinson)**

GENERAL INFORMATION

Approval of the Minutes from the Regular Meeting Held on June 26, 2025

SPECIAL CONSIDERATIONS

None.

FUNDING/FISCAL IMPACT

None

STAFF RECOMMENDATION

Approval of the Minutes

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 06-26-2025 Minutes - Regular - Morning

**CITY COUNCIL MEETING
June 26, 2025 at 10:00 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 June 26, 2025, at 10:00 a.m. in the Council Chambers, 555 Walnut St. Mayor Weldon Hurt was present and presiding, along with Mayor Pro-tem Brian Yates, Deputy Mayor Pro-tem Blaise Regan, and Councilmembers Shane Price, Lynn Beard, and Miguel Espinoza. Councilmember Travis Craver was absent. Also present were City Manager Mindy Patterson, City Attorney Stanley Smith, and City Secretary Shawna Atkinson.

Councilmember Lynn Beard led the invocation.

Zoi Martinez led the Pledge of Allegiance to the Flag of the United States of America and the State of Texas Flag.

PRESENTATION OF CONSENT AGENDA

The Consent Agenda consisted of items 2-14. Item 6 was pulled from consideration prior to the meeting. Item 7 was pulled for individual consideration.

Item pulled for individual consideration:

- Item 7 – Mayor Pro-tem Yates

Item pulled from consideration:

- Item 6

PUBLIC COMMENTS

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

- Mark Leon
- Tammy Fogle

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

CONSENT AGENDA

Councilmember Beard moved to approve the consent agenda consisting of 2-5 and 8-14. Councilmember Price seconded the motion. Motion carried.

AYES (6): Mayor Hurt, Mayor Pro-tem Yates, Deputy Mayor Pro-tem Regan, and Councilmembers Price, Beard, and Espinoza

NAYS (0): None

ABSENT (1): Councilmember Craver

Councilmember Beard had a conflict of interest on item 3 and abstained from voting on that item. A Conflict of Interest Affidavit was filled out before the meeting and filed with the City Secretary's office. The vote for item 3 alone was:

AYES (5): Mayor Hurt, Mayor Pro-tem Yates, Deputy Mayor Pro-tem Regan, and Councilmembers Price, and Espinoza

NAYS (0): None

ABSTAIN (1): Councilmember Beard

ABSENT (1): Councilmember Craver

2. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on June 12, 2025, and the Special Meeting Held on June 16, 2025
3. Resolution: Receive a Report, Hold a Discussion, and Take Action to Approve an Agreement with MetLife to provide Voluntary Fully Insured Dental for City Employees
[ASSIGNED RESOLUTION NO. 106-2025]
4. Resolution: Receive a Report, Hold a Discussion and Take Action on the Approval of the Acquisition of Professional and Implementation Services for Tyler Municipal Justice from Tyler Technologies, Inc.
[ASSIGNED RESOLUTION NO. 107-2025]
5. Resolution: Receive a Report, Hold a Discussion and Take Action on the Approval of the Acquisition of Synology Storage Products and Parts from CDW-G
[ASSIGNED RESOLUTION NO. 108-2025]
8. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving the Contract with Vortex Services LLC for the Installation of a 36" UV CIPP Liner on an Aerial Sewer Line
[ASSIGNED RESOLUTION NO. 111-2025]
9. Resolution: Receive a Report, Hold a Discussion and Take Action on the Purchase of One (1) 2025 Takeuchi TB290CR Mini Excavator for Street Services from Kirby Smith Machinery of Abilene, Texas
[ASSIGNED RESOLUTION NO. 112-2025]
10. Resolution: Receive a Report, Hold a Discussion and Take Action on Renewing a Lease Agreement with Capps Rent A Car, Inc for Short-Term Vehicle Leases
[ASSIGNED RESOLUTION NO. 113-2025]
11. Resolution: Receive a Report, Hold a Discussion and Take Action on the Purchase of One (1) 2025 Battle Motors LNT chassis with Heil Curahee 13-yard Rear Load Refuse Body for Solid Waste Services from Bond Equipment Company of Irving, Texas
[ASSIGNED RESOLUTION NO. 114-2025]
12. Resolution: Receive a Report, Hold a Discussion and Take Action on Entering Into an Economic Development Agreement with Chowning Realty LLC for 3450 S 11th St.
[ASSIGNED RESOLUTION NO. 115-2025]
13. Resolution: Receive a Report, Hold a Discussion and Take Action on Entering Into an Economic Development Agreement with Chowning Realty LLC for 3549 N 11th St.
[ASSIGNED RESOLUTION NO. 116-2025]
14. Resolution: Receive a Report, Hold a Discussion and Take Action on Approval of Single-Family Rehabilitation Program Project Budget with HOME Program Funds Located at 2226 Old Anson Road with Mackie Construction
[ASSIGNED RESOLUTION NO. 117-2025]

ITEMS PULLED FOR INDIVIDUAL CONSIDERATION

7. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving a Professional Services Contract with Enprotec/Hibbs & Todd, Inc. for the Cedar Ridge Reservoir Federal Permitting
[ASSIGNED RESOLUTION NO. 110-2025]

Having pulled the item, Mayor Pro-tem Yates asked to hear the presentation from staff. Jeremiah Bihl, Assistant Director of Water Utilities, presented the item. Adoption of the item would approve a professional services contract with Enprotec/Hibbs & Todd, Inc. for the Cedar Ridge Reservoir Federal Permitting.

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

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

AYES (6): Mayor Hurt, Mayor Pro-tem Yates, Deputy Mayor Pro-tem Regan, and Councilmembers Price, Beard, and Espinoza

NAYS (0): None

ABSENT (1): Councilmember Craver

ITEMS PULLED FROM INDIVIDUAL CONSIDERATION

6. Resolution: Receive a Report, Hold a Discussion and Take Action on the Approval of the Acquisition of Dell Server Products and Parts from Dell
[NOT CONSIDERED]

OATH OF OFFICE

15. City Secretary Shawna Atkinson administered the Oath of Office to new City Manager Emily Crawford.

The City Council also recognized Mindy Patterson at this time.

Mayor Hurt recessed the meeting from 10:33am to 10:53am to allow for a reception honoring Ms. Crawford.

REGULAR AGENDA

16. Ordinance (Final Reading) CUP-2025-09: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from the Owner, to Apply a Conditional Use Permit to Allow a Freight Container Within General Retail (GR) Zoning. Located at 6410A Buffalo Gap Road
[ASSIGNED ORDINANCE NO. 42-2025]

Deputy Mayor Pro-tem Regan had a conflict of interest on this item and left the room during deliberation and abstained from voting. A Conflict of Interest Affidavit was filled out before the meeting and filed with the City Secretary's office.

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would apply a Conditional Use Permit (CUP) to allow for a freight container at the above referenced

location.

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

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

AYES (5): Mayor Hurt, Mayor Pro-tem Yates, and Councilmembers Price, Beard, and Espinoza

NAYS (0): None

ABSTAIN (1): Deputy Mayor Pro-tem Regan

ABSENT (1): Councilmember Craver

17. Ordinance (Final Reading) CUP-2025-10: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from the Owner to Apply a Conditional Use Permit (CUP) to Allow for a Social Organization within Medium Density (MD) Zoning. Located at 1726 Swenson Street
[ASSIGNED ORDINANCE NO. 43-2025]

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would apply a Conditional Use Permit (CUP) to allow for a social organization at the above referenced location.

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

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

AYES (6): Mayor Hurt, Mayor Pro-tem Yates, Deputy Mayor Pro-tem Regan, and Councilmembers Price, Beard, and Espinoza

NAYS (0): None

ABSENT (1): Councilmember Craver

18. Ordinance (Final Reading) CUP-2025-11: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from the Owner to Apply a Conditional Use Permit (CUP) to Allow for Ambulance Services within General Retail (GR) Zoning. Located at 3301 S 14th St Suite 34A
[ASSIGNED ORDINANCE NO. 44-2025]

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would apply a Conditional Use Permit (CUP) to allow for ambulance services within General Retail (GR) Zoning, at the above referenced location.

Mayor Hurt opened the public hearing. The following spoke in support of the item:

- James Bryant, applicant

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

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

AYES (6): Mayor Hurt, Mayor Pro-tem Yates, Deputy Mayor Pro-tem Regan, and Councilmembers Price, Beard, and Espinoza

NAYS (0): None

ABSENT (1): Councilmember Craver

19. Ordinance (Final Reading) Z-2025-10: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from the Owner, to Rezone Approximately 12.5 Acres from Agricultural Open (AO) to Patio Home (PH) Located at the 3400-3500 blocks of Maple Street
[ASSIGNED ORDINANCE NO. 45-2025]

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would rezone the above referenced location from Agricultural Open Space (AO) to Patio Home (PH).

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

Mayor Pro-tem Yates moved to approve the item as presented. Councilmember Espinoza seconded the motion; motion carried.

AYES (6): Mayor Hurt, Mayor Pro-tem Yates, Deputy Mayor Pro-tem Regan, and Councilmembers Price, Beard, and Espinoza

NAYS (0): None

ABSENT (1): Councilmember Craver

20. Ordinance (Final Reading) Z-2025-11: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from the Owner, to Rezone Approximately 0.32 Acres from Medium Density (MD) to Heavy Industrial (HI). Located at 1233 and 1241 Cherry Street.
[ASSIGNED ORDINANCE NO. 46-2025]

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would rezone the above referenced location from Medium Density (MD) to Heavy Industrial (HI).

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

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

AYES (6): Mayor Hurt, Mayor Pro-tem Yates, Deputy Mayor Pro-tem Regan, and Councilmembers Price, Beard, and Espinoza

NAYS (0): None

ABSENT (1): Councilmember Craver

21. Ordinance (Final Reading) Z-2025-12: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from the Owner to Change the Zoning of Approximately 0.31 Acres from General Retail (GR) to General Commercial (GC). Located at 1801 Grape Street
[ASSIGNED ORDINANCE NO. 47-2025]

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would rezone the above referenced location from General Retail (GR) to General Commercial (GC).

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

Deputy Mayor Pro-tem Regan moved to approve the item as presented. Mayor Pro-tem Yates seconded the motion; motion carried.

AYES (6): Mayor Hurt, Mayor Pro-tem Yates, Deputy Mayor Pro-tem Regan, and Councilmembers Price, Beard, and Espinoza

NAYS (0): None

ABSENT (1): Councilmember Craver

22. Ordinance (Final Reading) Z-2025-13: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from the Owners to Amend the Terms and Conditions of a Planned Development District (PDD-177), Specifically to Allow Residential Single-Family Uses with Alternative Lot Dimensions. Located along Jolly Rogers Road
[ASSIGNED ORDINANCE NO. 48-2025]

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would amend the terms and conditions of Planned Development District (PDD-177) to allow Residential Single Family uses with alternative lot dimensions at the above referenced location.

Mayor Hurt opened the public hearing. The following spoke in support of the item:

- Jon Loudermilk, applicant

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

Deputy Mayor Pro-tem Regan moved to approve the item as presented. Mayor Pro-tem Yates seconded the motion; motion carried.

AYES (6): Mayor Hurt, Mayor Pro-tem Yates, Deputy Mayor Pro-tem Regan, and Councilmembers Price, Beard, and Espinoza

NAYS (0): None

ABSENT (1): Councilmember Craver

23. Ordinance (Final Reading) Z-2025-14: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from the Owners to Amend the Terms and Conditions of a Planned Development District (PDD-104), Specifically to Allow for Multi-Family (MF) Base Zoning in Tract 5. Located Along East South 27th Street
[ASSIGNED ORDINANCE NO. 49-2025]

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would amend the terms and conditions of a Planned Development District (PDD-104) to allow for Multi-Family (MF) base zoning in tract 5 of the above referenced location.

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

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

AYES (6): Mayor Hurt, Mayor Pro-tem Yates, Deputy Mayor Pro-tem Regan, and Councilmembers Price, Beard, and Espinoza

NAYS (0): None

ABSENT (1): Councilmember Craver

24. Ordinance (Final Reading) Z-2025-15: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from the Owners to Rezone Approximately 11.25 Acres from Agricultural Open (AO) and Planned Development (PDD-120) to Multi Family (MF). Located at 1717 Musgrave Boulevard
[ASSIGNED ORDINANCE NO. 50-2025]

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would rezone 11.25 acres of the above referenced location from Agricultural Open Space (AO) and Planned Development (PDD-120) to Multi Family (MF).

Mayor Hurt opened the public hearing. The following spoke in support of the item:

- Mark Leon, applicant

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

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

AYES (6): Mayor Hurt, Mayor Pro-tem Yates, Deputy Mayor Pro-tem Regan, and Councilmembers Price, Beard, and Espinoza

NAYS (0): None

ABSENT (1): Councilmember Craver

25. Ordinance (Final Reading) Z-2025-16: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from the Owner to Amend the Terms and Conditions of a Planned Development District (PDD-188), Specifically, to Reduce the Interior Side Yard Setback to 5 Feet. Located at 894-970 Minda St and 933-985 Hailey St.

[ASSIGNED ORDINANCE NO. 51-2025]

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would amend the terms and conditions of a Planned Development District (PDD-188) at the above referenced location to allow for an interior side yard setback to 5 feet.

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

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

AYES (6): Mayor Hurt, Mayor Pro-tem Yates, Deputy Mayor Pro-tem Regan, and Councilmembers Price, Beard, and Espinoza

NAYS (0): None

ABSENT (1): Councilmember Craver

26. Ordinance (Final Reading) Z-2025-17: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from the Owner to Rezone Approximately 2.06 Acres from Agricultural Open (AO) to Multi-Family (MF). Located at 5233 Old Andy Street.

[ASSIGNED ORDINANCE NO. 52-2025]

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would rezone the above referenced location from Agricultural Open Space (AO) to Multi-Family (MF).

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

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

AYES (6): Mayor Hurt, Mayor Pro-tem Yates, Deputy Mayor Pro-tem Regan, and Councilmembers Price, Beard, and Espinoza

NAYS (0): None

ABSENT (1): Councilmember Craver

27. Ordinance (Final Reading) Z-2025-18: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from the Owner to Rezone Approximately 12.96 Acres from Patio Home (PH), Neighborhood Office (NO), Medium Density (MD), and Office (O) to Neighborhood Retail (NR) and General Retail (GR). Located at 6817X Horse Head Crossing

[ASSIGNED ORDINANCE NO. 53-2025]

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would rezone the above referenced location from Patio Home (PH), Neighborhood Office (NO), Medium Density (MD), and Office (O), to Neighborhood Retail (NR) and General Retail (GR).

Mayor Hurt opened the public hearing. The following spoke in support of the item:

- Clayton Farrow, agent

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

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

AYES (6): Mayor Hurt, Mayor Pro-tem Yates, Deputy Mayor Pro-tem Regan, and Councilmembers Price, Beard, and Espinoza

NAYS (0): None

ABSENT (1): Councilmember Craver

EXECUTIVE SESSION

Mayor Hurt recessed into Executive Session at 11:30 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:

28.B.551.071 (Consultation with Attorney)

1. The Woodlands Pride, Inc., V. Ken Paxton, AG of Texas et al

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

1. Project Surf

The Executive Session ended at 11:41 a.m. and reconvened to Open Session. Mayor Hurt reported no votes or action were taken in Executive Session.

REGULAR AGENDA – END

25. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Appointing Members to Various Boards and Commissions per the City Charter
[ASSIGNED RESOLUTION NO. 118-2025]

Adoption of the item would approve the (re)appointments of the following board & commission members, per the City Charter:

<i>Abilene-Taylor County Child Advocacy Center Board</i>	
Kyle McAlister [New]	November 2026 [unexpired term]
<i>Abilene-Taylor County Event Venue District Board</i>	
Miguel Espinoza [New]	November 2027
<i>Street Maintenance Advisory & Appeals Board</i>	
James Bailey [New]	March 2027

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

Deputy Mayor Pro-tem Regan moved to approve the item as presented. Mayor Pro-tem Yates seconded the motion; motion carried.

AYES (6): Mayor Hurt, Mayor Pro-tem Yates, Deputy Mayor Pro-tem Regan, and Councilmembers
Price, Beard, and Espinoza

NAYS (0): None

ABSENT (1): Councilmember Craver

ADJOURNMENT

There being no further business, the meeting adjourned at 11:42 a.m.

Shawna Atkinson
City Secretary

Weldon Hurt
Mayor

Minutes approved on: _____



**City Council
Agenda Memo**

City Council Meeting Date: 7/10/2025

TO: Emily Crawford, City Manager

FROM: Lesli Andrews, Director

SUBJECT: **4. Resolution: Receive a Report, Hold a Discussion and Take Action on Authorizing the City Manager to enter into a Contract with Teinert Construction for the Pedestrian Plaza (*Lesli Andrews*)**

GENERAL INFORMATION

The City of Abilene has received private funds to develop a pedestrian plaza located on Cypress Street between North 1st and North 2nd streets. The plaza will have two pavilions, two lawns, one water feature, landscaping and lighting. The pavilions will compliment the appearance of nearby downtown buildings. The plaza will be open to the public unless reserved for a special event.

The City of Abilene received three bids for the Cypress Street Pedestrian Plaza #CB-2543 on June 24, 2025. Teinert Construction was the low bid and best value. The construction is anticipated to last 7 months.

The bid includes an "Owners Allowance" in the amount of \$150,000 for work directed in writing by the City. The owner's allowance is for work not required within the Plans and Specification and may be used in the event additional (or less) work from that shown on the Plans and Specification is required.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

The Pedestrian Plaza is being funded through private donations. The construction base bid was \$1,488,000. The construction budget was \$1,565,000, so the base bid was within budget.

STAFF RECOMMENDATION

Staff recommend approval of the contract with Teinert Construction for Pedestrian Plaza.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 25_7_10 Resolution Teinert Construction of Pedestrian Plaza
2. CB #2543 bid tab
3. PPlazaTeinert contract 7102025
4. 2025-06-10 - LTS - 24010 Abilene Pedestrian Plaza - Final Plan Rendering - 30X42
10scale
5. Pedestrian Plaza Pavilion
6. 25_7_10 Presentation Teinert Construction of Pedestrian Plaza

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH TEINERT
CONSTRUCTION FOR THE CONSTRUCTION OF A PEDESTRIAN PLAZA.**

WHEREAS, the City of Abilene has received private funds to develop a pedestrian plaza located on Cypress Street between North 1st and North 2nd streets; and

WHEREAS, on June 24, 2025 three bids were received for construction of a pedestrian plaza; and

WHEREAS, Teinert Construction was the low bid and best value.

**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 Teinert Construction for the construction of the pedestrian plaza at a cost of \$1,488,000.

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

ADOPTED this 10th day of July 2025.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

BID SUMMARY SHEET
TAL FILLINGIM, P.E.
CITY OF ABILENE - CYPRESS STREET PEDESTRIAN PLAZA
JM PROJECT #24507 / ABILENE CONTRACT #CB-2543
BID DATE: JUNE 24, 2025 AT 10:00 AM
ENGINEER: JACOB & MARTIN, LLC

	CONTRACTOR	TOTAL BASE BID (ITEMS 1-23)	ADDITIVE ALTERNATE (ITEMS A1-A2)
1	C.E. Barker, LTD	\$3,382,342.00	\$31,367.50
2	Teinert Construction	\$1,488,000.00	\$575,000.00
3	The Crowe Group, Inc.	\$2,134,692.00	\$8,105.00
4		\$	\$
5		\$	\$
6		\$	\$
7		\$	\$
8		\$	\$
9		\$	\$
10		\$	\$
11		\$	\$

CONSTRUCTION CONTRACT

BACKGROUND

THIS CONTRACT, made on the 10 day of July, 2025, is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and Teinert Construction of the City of Abilene, State of Texas. ("Contractor").

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

THE AGREEMENT

1. Work and Consideration. The Contractor hereby agrees to commence and complete the construction of Work required in the Contract Documents – incorporated herein by reference – Cypress Street Pedestrian Plaza

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

In consideration of this Work, the City will pay the Contractor the sum of 1,488,000.

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, licensees and invitees of Contractor.

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

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

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

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

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

B. Indemnity

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

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

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

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

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

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

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

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

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

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

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

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

11. Statutory Verifications. Unless the Contractor is not subject to a provision below, the signatory executing this Agreement on behalf of the Contractor verifies that the Contractor: (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.

A. 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.

B. 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.

C. 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.

D. 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.

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:

Teinert Construction

Business Address:

935 Pine Street

Abilene, TX, 79601

Business Phone No.

325-704-1211

Federal Tax I.D. # 75-1803657

ATTEST: (If Corporation)

Corporate Secretary's Signature

Corporate Seal
(If none, write "None")



Name - Typed or Printed

Title - Typed or Printed

Vice President

CITY OF ABILENE

Authorized Signature

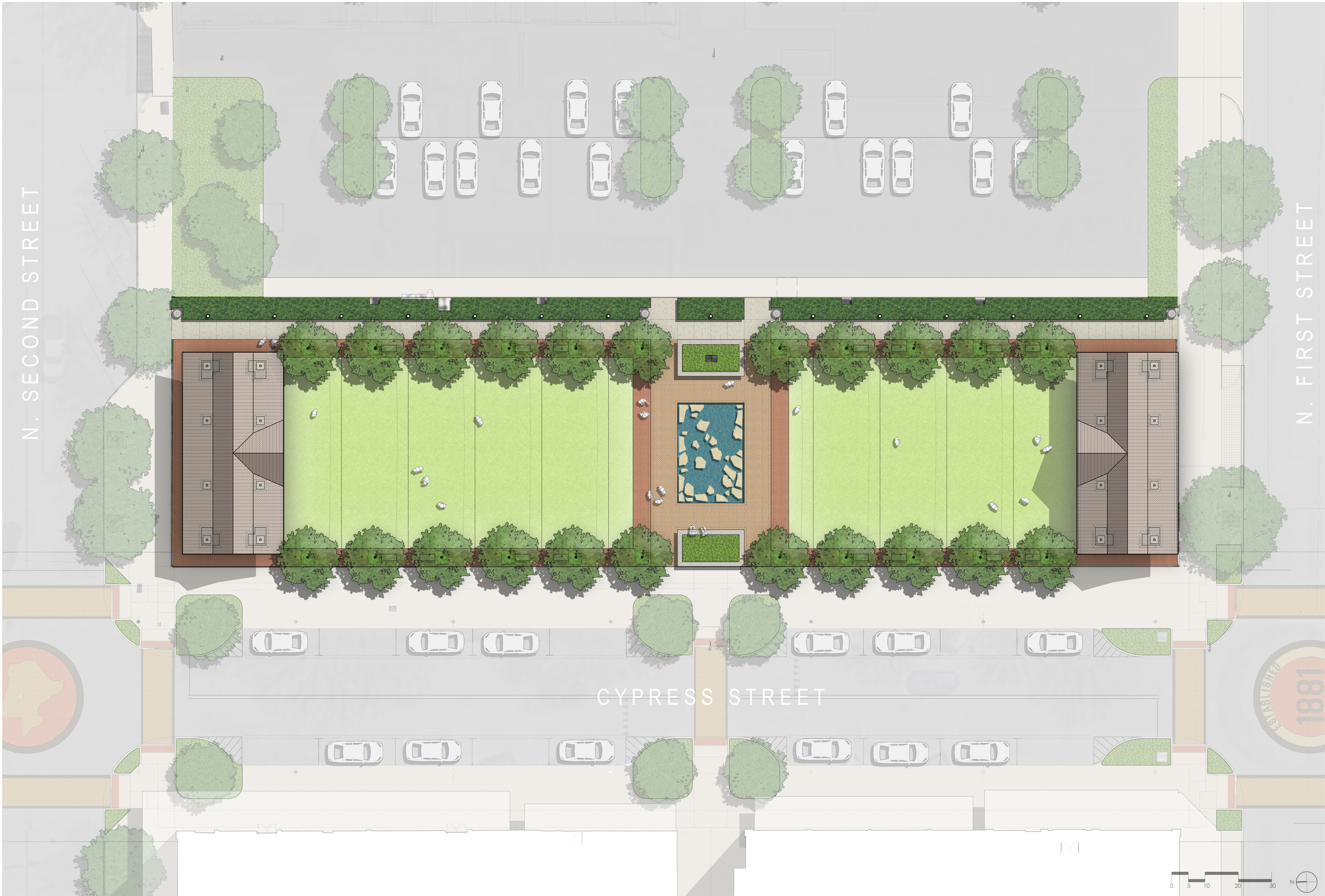
APPROVED:

City Attorney

ATTEST:

City Secretary

Seal





Contract Teinert Construction Pedestrian Plaza

July 10, 2025





General Information:

- On June 24, 2025 three bids were received for the construction of a pedestrian plaza located on Cypress Street between North 1st and North 2nd
- Teinert Construction submitted a low bid best value of \$1,488,000
- Private funds to be used for project
- Request is to have City Manager enter into contract with Teinert Construction for the construction of a pedestrian plaza





**City Council
Agenda Memo**

City Council Meeting Date: 7/10/2025

TO: Emily Crawford, City Manager

FROM: Max Johnson, Director of Public Works

SUBJECT: 5. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving an Extended Term Street Use License with the Center for Contemporary Arts in alleyway, North of North 2nd Street to 240 Cypress Street (*Max Johnson*)

GENERAL INFORMATION

The Center for Contemporary Arts has submitted an application for an Extended Term Street Use License. The applicant's desire is to paint on alley ground as continuation of existing mural on adjacent walls located North of North 2nd Street to North end of United Way building at 240 Cypress Street.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff have reviewed this request and recommends that the City Council authorize the City Manager to execute the attached Extended Term Street Use License with the Center for Contemporary Arts to paint on alley ground as continuation of existing mural on adjacent walls.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Street Use License Resolution
2. Street Use License Application
3. Street Use License Agreement Extended Term
4. Street Use License SLIDE PRESENTATION

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AUTHORIZING THE CITY MANAGER TO EXECUTE THE EXTENDED TERM STREET USE
LICENSE WITH THE CENTER FOR CONTEMPORARY ARTS**

WHEREAS the applicant has submitted an Extended Term Street Use License application to paint on alley ground as continuation of existing mural on adjacent walls; and

WHEREAS, this application and Extended Term Street Use License has been reviewed and approved by City Staff.

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

PART 1: That the City Manager is hereby authorized to execute the Extended Term Street Use License with The Center for Contemporary Arts.

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

ADOPTED this 10th day of July, 2025.

ATTEST:

Shawna Atkinson, City Secretary

ATTEST:

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney



STREET USE LICENSE AGREEMENT
EXTENDED TERM

APPLICATION

Applicant: Center for Contemporary Arts Phone: 325-677-8389
Address: 220 Cypress Street Email: Rebecca@center-arts.com
Agent: Rebecca Bridges Phone: 325-513-3259

Description of Public Right-of-Way to be used: ground; alley between Center for Contemporary Arts/seven and one books and silverthorne insurance. Boundary is North of North 2nd to North end of United Way building (240 Cypress)

Owner of adjacent property: Nathan Hathorn

Proposed use of public right-of-way: painting on alley ground as continuation of existing mural on adjacent walls. Paint will not cover the entire ground - only where design is shown.

Reasons for the request: This project is part of a Texas Commission on the Arts Cultural District Improvement grant.

Application is not complete unless all of the following are included:

- Application fee- \$300
- Certificate or other evidence of insurance
- A dimensioned drawing showing existing and proposed features in the public right-of-way and on adjacent property (sidewalks, curbs, fire hydrants, buildings, fences, etc.)



Signature of Applicant or Agent

4/28/2025

Date

Return Application to:
Public Works Dept.
City of Abilene
PO Box 60
Abilene TX 79604

THE STATE OF TEXAS

STREET USE LICENSE AGREEMENT
EXTENDED TERM

COUNTY OF TAYLOR

THIS STREET USE LICENSE AGREEMENT, hereinafter referred to as "License", executed this 10th day of July, 2025, by and between the CITY OF ABILENE, a municipal corporation situated in Taylor and Jones Counties, Texas, hereinafter referred to as "City", and Center for Contemporary Arts, hereinafter referred to as "Licensee".

WITNESSETH:

That City, pursuant to Chapter 29, "Streets and Sidewalks", Article V, "Street Use License", does hereby grant to Licensee the privilege of using the following described public property, to-wit:

To paint on alley surface as continuation of existing mural on adjacent walls. North of North 2nd Street to North end of United Way building (240 Cypress).

for and in consideration of a THREE HUNDRED AND NO/100 (\$300.00) DOLLARS application fee, commencing the date of execution unless otherwise specified, and upon the conditions and covenants set forth in this License and in Exhibit A incorporated by reference for all purposes herein.

I. Purpose:

The purpose of this License is to permit Licensee to:

To paint on alley surface as continuation of existing mural on adjacent walls.

II. 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.

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

"Licensee's employees" shall mean any employees, officers, agents, subcontractors, licensee and invitees of Licensee.

"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:

injury or damage to any property or right

injury, damage, or death to any person or entity

attorneys fees, witness fees, expert witness fees and expenses, and

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 part that is unmixed with the fault of any other person or entity.

B. Indemnity

The Licensee agrees to indemnify, hold harmless, and defend the City from and against liability for any claims arising out of the Licensee's occupancy or use of the premises described above and/or activities conducted in connection with this License.

Licensee must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Licensee'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 Licensee or Licensee's employees.

The City assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects which may now exist or which may hereafter arise on the premises, whether or not caused in whole or in part by improvements constructed by the Licensee. Responsibility for all such defects is expressly assumed by the Licensee.

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

BOTH CITY AND LICENSEE EXPRESSLY INTEND THIS LICENSE'S INDEMNITY PROVISION TO REQUIRE LICENSEE 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.

III. Insurance

Licensee agrees to secure and maintain the following types and amounts of insurance, for the term of this license:

<u>Type</u>	<u>Amount</u>
Comprehensive General Liability	\$250,000 -----Per Person
to include (but not limited to)	\$500,000 -----Per Occurrence for
the following:	Bodily Injury, and
a) Premises/Operations Coverage	\$100,000 -----Per Occurrence for
a) Contractual Liability Coverage	Property Damage

The preceding insurance requirements notwithstanding, the City reserves the right to revise the types and amounts of insurance required by this License prior to the approval of the License or if License is in effect, to be effective thirty (30) days after notice is sent to the address provided herein.

All insurance policies or certificates shall contain the following provisions:

- a. That the City of Abilene, Texas, is named as an additional insured.
- b. That such insurance shall not be cancelled or materially changed without a minimum of thirty (30) day's advance notice in writing to the City.

All insurance policies shall be subject to the examination and approval of the Office of the City Attorney, City of Abilene, Texas, for their adequacy as to form and content, form of protection, and insurance company. Licensee shall furnish to City Secretary for her License file certificates or copies of the policies, plainly and clearly evidencing such insurance at the time of application, and thereafter new certificates prior to the expiration date of any prior certificate.

Licensee understands that it is its sole responsibility to provide this necessary information and that failure to timely comply with the requirements of this article shall be a cause for termination of this License.

IV. License Requirements and Restrictions:

1. During the term of this License, Licensee shall maintain the premises licensed herein in a good and safe condition at all times. If the street surface, parkway, or facilities in the parkway, including landscaping, are damaged or disturbed by any activity associated with this License, the Licensee shall at its expense, restore the same to as good a condition as before the activity, to the satisfaction of the Director of Public Works or designee.

2. The construction signing and barricading requirements of the Texas Manual On Uniform Traffic Control Devices shall be met for all work done in the public right-of-way.

3. The Licensee shall be responsible for locating, protecting, and repairing (if damaged) all utilities within the area permitted and shall pay all costs associated with adjustments to utilities including street lights that are necessitated by the permitted use.

4. Permitted facilities shall be installed in accordance with all applicable laws, regulations, and codes.

5. The Licensee shall relocate its facilities at its own expense to accommodate public improvements in the right-of-way.

6. In the performing or permitting of work consistent with its normal course of duty within the right-of-way, the City shall not be liable for any damages to the Licensee's facilities, equipment, materials or injury to Licensee, all such claim for damage or injury being expressly waived by Licensee.

7. If Street Use License regulations change, the Licensee shall agree to any new requirements or shall remove all constructed facilities from the right-of-way.

8. Upon termination the Licensee shall restore the property at its expense, to a good workmanlike condition and in a manner satisfactory to the Director of Public Works or designee.

9. The City Manager, Police Chief, Fire Chief, or a designee of such officials, shall have the authority to order immediate removal of any objects or materials placed on the premises by Licensee if, in the City's opinion, removal is necessary to protect the health, safety, or welfare of the public. If the Licensee fails to comply with the order, the City shall remove the materials, and the Licensee shall reimburse the City for the cost of compliance. The Licensee may appeal the removal order to the Abilene City Council by filing written notice with the City Secretary within 5 days of the order; provided, however that ANY APPEAL SHALL NOT STAY THE OFFICIAL'S ORDER OR THE REMOVAL PROCEDURE.

V. Termination

1. This License shall automatically terminate 10 years from the date of execution.

2. The City shall have the right to cancel this License at any time by giving Licensee thirty (30) days notice of its cancellation. The notice shall be in writing delivered to Licensee by certified mail.

3. In the event Licensee shall permit any City of Abilene, Abilene Independent School District, West Central Texas Municipal Water District, or any other taxes assessed against it to become delinquent, this License shall automatically terminate and become null and void.

4. This License may not be assigned or conveyed; any attempt by Licensee to do either shall automatically terminate the License. In the event Licensee should sell the property adjacent to the area for which the License has been granted, this License shall automatically terminate.

CITY OF ABILENE, TEXAS

City Manager

ATTEST:

City Secretary

APPROVED:

City Attorney

NAME OF LICENSEE:

CENTER FOR CONTEMPORARY ARTS

By: _____

Signature

Rebecca L. Bridges

Printed Name and Title

Business Address: 220 CYPRESS STREET

ABILENE, TEXAS 79601

EXHIBIT "A"
STREET USE LICENSE AGREEMENT
WITH

CONDITIONS AND COVENANTS

The Street Use License Agreement is subject to the following conditions and covenants:

1. The Licensee shall contact the city's Engineering Division (325-676-6281) prior to commencing any work in the right-of-way.
2. The Licensee shall submit a traffic control plan to the City Engineer's office (325-676-6281) for approval before beginning any work that will result in blocking traffic lanes.
3. The Licensee shall contact the Traffic Signal Shop (325-676-6066) or the City Engineer's office (325-676-6281) for location of traffic signal facilities and shall contact the Water Utilities Department (325-676-6425) for location of water and sewer lines before beginning excavation in the right-of-way.
4. The Licensee shall contact the City of Abilene Building Inspections (325-676-6232) regarding any necessary permits for the installation of the requested facility.
5. The Licensee shall ensure all underground utilities are identified and marked prior to any excavation.
6. The Licensee shall barricade any excavation in the right-of-way to prevent pedestrian and/or vehicular access while excavation is unattended. Any barricades left in the right-of-way overnight must be lighted.
7. The Licensee shall promptly repair all signs, pavement markings, and other traffic control devices damaged by its work in the right-of-way.
8. If the City determines that the subject right-of-way is needed for purposes that would be adversely impacted by the permitted facility, the Licensee shall remove the permitted facility within sixty (60) days notice of cancellation.
9. If any street, alley or utility work performed by the City, its subcontractors or franchisees, damages Licensee's paint work and/or results in it needing to be repaired, all responsibility for painting is solely with Licensee.
10. All paint used on alley surface by Licensee shall be non-slip, textured paint.

Approval of Extended Term Street Use License – Alleyway from North 2nd Street to North end of United Way building (240 Cypress)

(Max Johnson)





Extended Street Use License – 220 Cypress Alleyway

**CENTER FOR
CONTEMPORARY
ARTS**

Permit Request Area
with Design



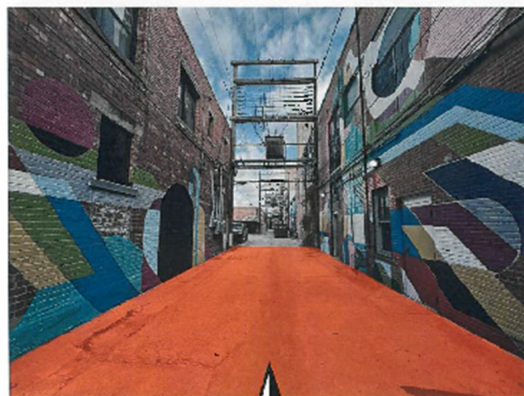
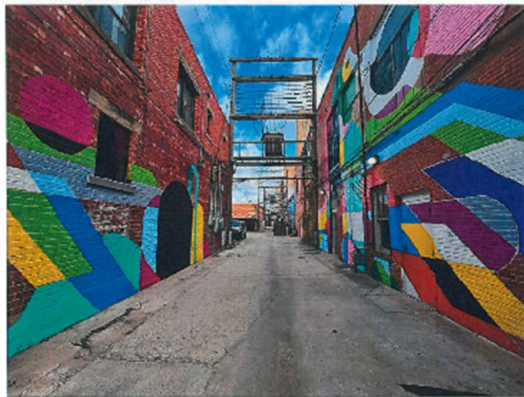
Site Map



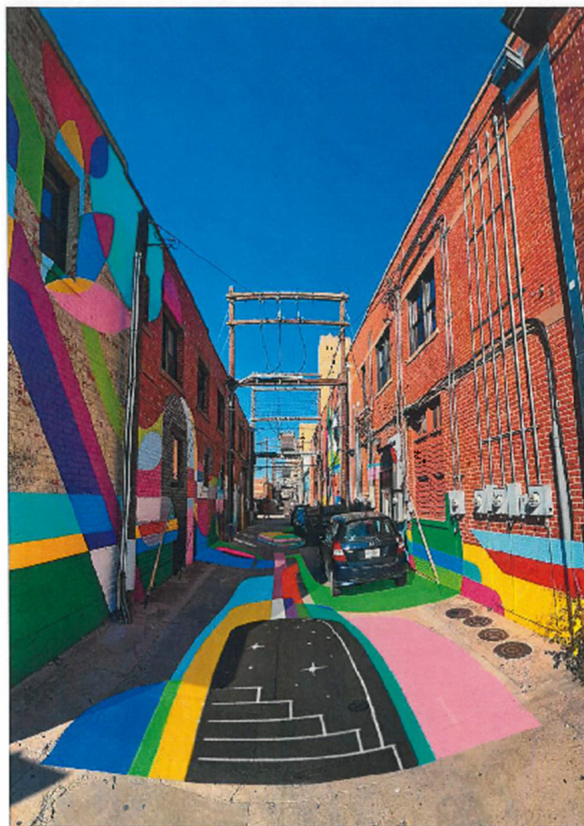


Extended Street Use License – 220 Cypress Alleyway

**CENTER FOR
CONTEMPORARY
ARTS** View Looking North
Request Area



**CENTER FOR
CONTEMPORARY
ARTS** View Looking North
with Design Concept

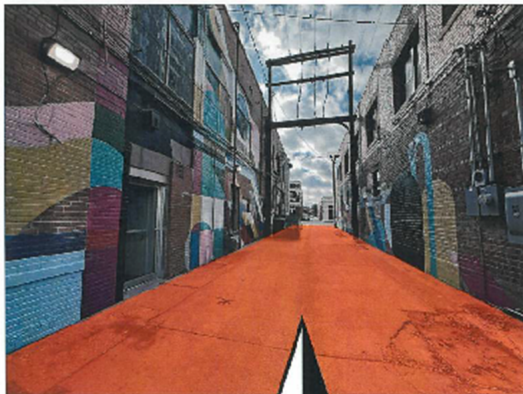
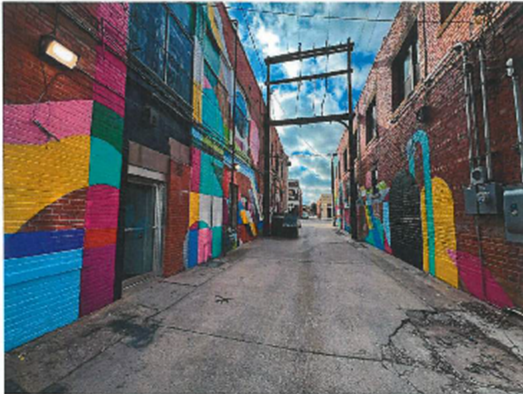


CITY OF
ABILENE
TEXAS

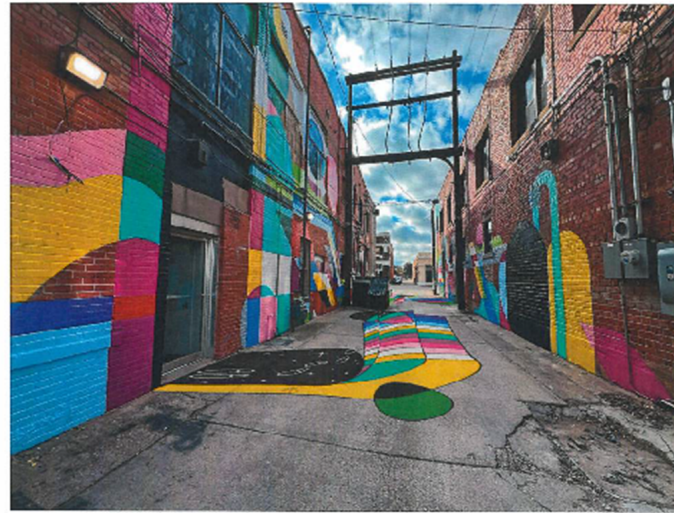


Extended Street Use License – 220 Cypress Alleyway

**CENTER FOR
CONTEMPORARY
ARTS** View Looking South
Request Area



**CENTER FOR
CONTEMPORARY
ARTS** View Looking South
with Design Concept





Extended Street Use License – 4002 Forrest Creek Court

- The Center for Contemporary Arts submitted an application for an Extended Term Street Use License to paint on alley ground as continuation of existing mural on adjacent walls.
- Staff reviewed and found application to be complete
- Staff recommends approval of the Extended Term Street Use License





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 7/10/2025

TO: Emily Crawford, City Manager

FROM: Don Green, Director

SUBJECT: 6. Resolution: Receive a Report, Hold a Discussion and Take Action on the purchase of one (1) 2026 Freightliner M2-106 Ledwell 2000 Gallon Water Truck from Houston Freightliner, Houston TX for Streets Services (Don Green)

GENERAL INFORMATION

Fleet Services seeks to purchase one (1) 2026 Freightliner M2-106 Ledwell 2000 Gallon Water Truck through HGAC contract number HT06-20 from Houston Freightliner, Houston TX for Streets Services, to replace an existing unit that has met the end of its useful life.

SPECIAL CONSIDERATIONS

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

FUNDING/FISCAL IMPACT

The funds for the purchase are to be provided by the Fleet Replacement Fund and total \$140,375.00. The funds for this purchase were planned and included in the FY25 Budget Process. This is \$54,625.00 under budget.

STAFF RECOMMENDATION

Fleet Services and Street Services staff recommend the purchase of (1) 2026 Freightliner M2-106 Ledwell 2000 Gallon Water Truck through HGAC contract number HT06-20 from Houston Freightliner, Houston TX.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. FY25 Water Tank Truck Resolution
2. FY25 Water Tank Truck Pricing Worksheet
3. FY25 Water Truck Budget VS Actual
4. FY25 CO-OP Water Tank Truck Addtl Info
5. FY25 Water Tank Truck Presentation

RESOLUTION NO _____

A RESOLUTION OF THE CITY OF ABILENE, TEXAS

TO PURCHASE ONE 2026 FREIGHTLINER M2-106 CHASSIS WITH LEDWELL 2000 GALLON WATER TANK BODY FROM HOUSTON FREIGHTLINER, HOUSTON TX, THROUGH HGAC CO-OPERATIVE CONTRACT #HT06-20

WHEREAS, City of Abilene has a need for one water tank truck; and

WHEREAS, City of Abilene budgeted for this purchase for Fiscal Year 2025; and

WHEREAS, This unit will be a 2026 Freightliner M2-106 Chassis with Ledwell 2000 Gallon Water Tank Truck; and

WHEREAS, City of Abilene received pricing for one a 2026 Freightliner M2-106 Chassis with Ledwell 2000 Gallon Water Tank Truck through HGAC Co-Operative Contract #HT06-20; and

WHEREAS, **Houston Freightliner** is the HGAC approved vendor for the water tank truck.

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 Houston Freightliner of Houston, Texas in the amount of One Hundred Forty Thousand Three Hundred Seventy Five Dollars and Zero Cents (\$140,375.00) for one 2026 Freightliner M2-106 chassis with Ledwell 2000 Gallon Water Tank Body from Houston Freightliner through HGAC Co-Operative Contract #HT06-20.

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

ADOPTED this 10th day July, 2025

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

HGACBuy		CONTRACT PRICING WORKSHEET For MOTOR VEHICLES Only		Contract No.:	HT06-20	Date Prepared:	6/27/2025
This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents <u>MUST</u> be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.							
Buying Agency:	CITY OF ABILENE			Contractor:	Houston Freightliner		
Contact Person:				Prepared By:	Adam Neuse		
Phone:				Phone:	713-580-8148		
Fax:				Fax:			
Email:				Email:	adam.neuse@houstonfreightliner.com		
Product Code:	D5	Description:	M2-106, Conventional Cab, SBFA, SRA (PRL-20M)				
A. Product Item Base Unit Price Per Contractor's H-GAC Contract:							88483
B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable. (Note: Published Options are options which were submitted and priced in Contractor's bid.)							
Description		Cost	Description		Cost		
B6.7 325 HP 750 LB FT TQ ENGINE		5577	Adjustable Steering Column		359		
3500 RDS AUTOMATIC TRANSMISSION		5033	Back Up Alarm		33		
270" Wheelbase		1228	AM/FM/WB CD/MP3 with Sirius XM		449		
11/32x3-1/2x10-15/16" Frame 120KSI		464					
Battery Disconnect MTD LH of Driver Seat		150					
Air Cab Mounts		91					
Single 14" Air Horn Roof Mtd		81					
Dual West Coast Mirrors w/LH-RH Remote		215					
Premium Cab Insulation		140					
LH/RH Electric Door Locks		74	Special Ledwell 2000 Gallon Water Truck		38355.5		
Basic High Back Air Driver Seat		159	Subtotal From Additional Sheet(s):				
2 Man Passenger Seat		144			Subtotal B:	52552.5	
C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary. (Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)							
Description		Cost	Description		Cost		
			Subtotal From Additional Sheet(s):		0		
					Subtotal C:	0	
Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).			For this transaction the percentage is:			0%	
D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)							
Quantity Ordered:	1	X Subtotal of A + B + C:	141035.5	=	Subtotal D:	141035.5	
E. H-GAC Order Processing Charge (Amount Per Current Policy)						Subtotal E:	1000
F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges							
Description		Cost	Description		Cost		
Freightliner Standard Destination Charge		3375	Discount		-6263.5		
Back Up Camera Installed Locally		1228					
					Subtotal F:	-1660.5	
Delivery Date:			G. Total Purchase Price (D+E+F):			140375	

BUDGET vs ACTUAL COSTS**Water Tank Truck**

Repl For Unit #	Division #	Division Name	Type Equipment	Budgeted Cost	Actual Cost	Budgeted vs Actual Variance
2742	4103	Parks	Water Tank Truck	\$195,000.00	\$140,375.00	(\$54,625.00)
				\$195,000.00	\$140,375.00	(\$54,625.00)

Under Budget

ADDITIONAL INFORMATION FOR COUNCIL MEETING ITEM

Water Tank Truck

Unit #	Assignment	Year	Make	Model	Mileage	Hours	Total Maintenance Costs	Disposal Method	Points	Replacement Reasoning
2742	Streets	1997	International	4700 4X2	93,041		\$99,563.35	Auction	3 of 4	Unit met 3 out of 4 required replacement points

Water Tank Truck





Water Tank Truck

- Replacing unit 2742 for Street Services
- Unit to be a 2026 Freightliner M2-106 chassis with Ledwell 2000 Gallon Water Tank Body
- Recommend award of unit to Houston Freightliner of Houston, Texas





Water Tank Truck





**City Council
Agenda Memo**

City Council Meeting Date: 7/10/2025

TO: Mindy Patterson, Deputy City Manager

FROM: Troy Swanson, IT Director

SUBJECT: 7. Resolution: Receive a Report, Hold a Discussion and Take Action on the Approval of the Acquisition of Dell Server Products and Parts from Dell (Troy Swanson)

GENERAL INFORMATION

The Information Technology (IT) Department, will require products to support the implementation of two Dell server systems from Dell Technology to satisfy the City's server requirements. These services will be acquired via the Texas DIR-CPO-5792 Contract in the amount of \$35,431.41. This is an acquisition from Dell Technologies of additional products acknowledging previous acquisitions that in total exceed the \$50,000 threshold.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

This purchase is part of the City's Cyber Event Response, and is funded from MIP funds that have been encumbered for this project.

STAFF RECOMMENDATION

Approval

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. CoA Council - Resolution - Dell
2. 20250710 - City Council - Dell QUOTE_3000191871023
3. 20250710 - City Council - Dell QUOTE_3000191873486
4. 20250710 - City Council - Presentation - Dell

RESOLUTION NO. 2025-XX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS TO
ACQUIRE DELL SERVER PRODUCTS AND PARTS FROM DELL THROUGH THE TEXAS
DIR-CPO-5792 CONTRACT**

WHEREAS, the City Council of the City of Abilene recognizes the need for products and parts to implement two Dell server systems; and

WHEREAS, the Information Technology Department has identified the availability of the necessary equipment from Dell Technologies through the Texas DIR-CPO-5792 Contract; and

WHEREAS, those products will provide for the implementation of two server systems; and

WHEREAS, this will be accomplished in the amount of \$35,431.41 and these funds will be made available as part of the minor improvement fund; and

WHEREAS, it is the staff's recommendation that the City Council endorses the Information Technology Department's acquisition of products from Dell Technologies; and

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

Part 1: That the City Council approves the acquisition of products from Dell Technologies for the amount of \$35,431.41 in fiscal year 2025

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

ADOPTED this 10th day of July, 2025.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney



A quote for your consideration.

To retrieve this eQuote online, log in to your [Dell Premier Page](#) and search for your eQuote number under “Quotes” in the top menu bar.

Quote No.:	3000191871023
Total (USD):	\$16,580.44
eQuote Name:	New PD server
eQuote Creator:	douglas.futrell@abilenetx.gov
Quoted On:	Jul. 01, 2025
Expires By:	Jul. 31, 2025
Company Name:	CITY OF ABILENE
Customer Number:	4954
Phone:	3256766295
Premier Page Name:	City of Abilene, TX Contract Code...#75AHH...DIR-TSO-3763
Authorized Buyer:	joan.duran@abilenetx.gov
Contract Name:	STATE OF TEXAS DEPARTMENT OF INFORMATION RESOURCES
Contract Code:	C000001269299
Customer Agreement Number:	DIR-CPO-5792
Custom Fields:	
DIR CC: DIR-SDD-890-TX	

Billing Address:
CITY OF ABILENE
PAYABLE ACCOUNTS
ACCOUNTING DIVISION
PO BOX 60
ABILENE , TX 79604-0060

Pricing Summary

	Qty	Unit Price	Discounted Unit Price	Subtotal
PowerEdge R550 Tailor Made	1	\$55,323.45	\$16,580.44	\$16,580.44
Premier discount		- \$38,743.01		
Subtotal:				\$16,580.44
Shipping:				\$0.00
Estimated Tax:				\$0.00
Total (USD):				\$16,580.44

Shipping Address:
CITY OF ABILENE
PAYABLE - ASHLEY BOLM IT ACCOUNTS
555 Walnut St
ROOM B08 - BASEMENT
Abilene , TX 79601

Shipping Method:
FREE Standard Delivery

Product Details

		Qty	Unit Price	Subtotal
	PowerEdge R550 Tailor Made (210-AZEG)	1	\$16,580.44	\$16,580.44
	Order Code: pe_r550_tm			

Module	Description	Product Code	SKU	Qty
Base	PowerEdge R550 Server	G8S6JX7	210-AZEG	1
FRONT STORAGE	Chassis with up to 8x3.5" Drives	G2XH3DI	379-BDSZ	1
BACKPLANE	SAS/SATA Backplane	GK0E3OX	379-BDSS	1
Trusted Platform Module	Trusted Platform Module 2.0 V6	GGX1VDO	461-AAIG	1
Chassis Configuration	3.5" Chassis with up to 8 Hard Drives (SAS/SATA), 2 CPU, V3	GDQ18PO	321-BKJP	1
Processor	Intel® Xeon® Gold 5318Y 2.1G, 24C/48T, 11.2GT/s, 36M Cache, Turbo, HT (165W) DDR4-2933	GOET0S7	338-CBWO	1
Additional Processor	Intel® Xeon® Gold 5318Y 2.1G, 24C/48T, 11.2GT/s, 36M Cache, Turbo, HT (165W) DDR4-2933	GV70J63	338-CBWO,379-BDCO	1
Processor Thermal Configuration	High Performance Heatsink for 2 CPU configuration	GZV7PK2	412-AAVT,412-AAVT	1
Memory Configuration Type	Performance Optimized	GH9QBEI	370-AAIP	1
Memory DIMM Type and Speed	3200MT/s RDIMMs	GR3CFNV	370-AEVR	1
Memory Capacity	(2) 16GB RDIMM, 3200MT/s, Dual Rank	GQ3BSOI	370-AEVQ	2
RAID Configuration	C7, Unconfigured RAID for HDDs or SSDs (Mixed Drive Types Allowed)	GJ45ICY	780-BCDS	1
RAID/Internal Storage Controllers	Front PERC H755 Front Load	GRNB4CX	405-AAZB,750-ACFR	1
Hard Drives	2TB Hard Drive SATA 6Gbps 7.2K 512n 3.5in Hot-Plug	GM489W7	400-BLLI	1
BIOS and Advanced System Configuration Settings	Power Saving Dell Active Power Controller	G06TYXW	750-AABF	1
Advanced System Configurations	UEFI BIOS Boot Mode with GPT Partition	GSFTG4Y	800-BBDM	1

Fans	Standard Fan Cold Swap 2U,V2 x5	G2ZA0YM	750-ADIN	1
Power Supply	Dual, Fully Redundant(1+1), Hot-Plug Power Supply,1100W MM(100-240Vac) Titanium	G7XCUQM	450-AKLF	1
Power Cords	(2) NEMA 5-15P to C13 Wall Plug, 125 Volt, 15 AMP, 10 Feet (3m), Power Cord, North America	G749Q3L	450-AALV	2
PCIe Riser	2 CPU, 3x16 LP+ 1x8(x4 link) LP	GVB6XDL	330-BBVE	1
Motherboard	PowerEdge R550 Motherboard with Broadcom 5720 Dual Port 1Gb On-Board LOM, V4	GJ7BY6F	329-BHNH	1
OCP 3.0		GFU6IJT		1
Network Adapters	No OCP 3.0 mezzanine NIC card, Blank Filler Only		330-BBTI	
Additional Network Cards	Broadcom 57414 Dual Port 10/25GbE SFP28 Adapter, PCIe Low Profile, V2	G7BFQ2Y	540-BDGV	1
Bezel	PowerEdge 2U LCD Bezel	G98L4KP	325-BEBV,350-BCFM	1
Boot Optimized Storage Cards	BOSS-S2 controller card + with 2 M.2 480GB (RAID 1), Hot-Plug, V2	GVPDG0J	403-BCMB,470-BBJK	1
Operating System	Windows Server 2022 Datacenter,16CORE,FI,No MED,UnLTD VMs,NO CALs, Multi Language	G8DWK6Y	634-BYJS	1
OS Media Kits	Windows Server 2022 Datacenter,16CORE,DF Recovery Image, Multi Lang, (Downgrade not included)	G7MP6GV	528-CSCT	1
Licenses	Windows Server 2022/2019 Datacenter Edition,Add License,16CORE,NO MEDIA/KEY	G2JNUH8	634-BYJQ	1
Licenses	(8) Windows Server 2022/2019 Datacenter Edition,Add License,2CORE,NO MEDIA/KEY	G5TMUFA	634-BYJR	8
Client Access Licenses	5-pack of Windows Server 2022/2019 User CALs (Standard or Datacenter)	G0AZVH5	634-BYKL	1
Embedded Systems Management	Dell Connectivity Client - Enabled	G2ML3HR	379-BFXS,634-CYDF	1
Embedded Systems Management	iDRAC9, Enterprise 15G	G4NWS93	385-BBQV	1
Quick Sync	No Quick Sync	GLUIZE1	350-BCER	1
Password	iDRAC,Factory Generated Password	G2T768J	379-BCSF	1
IDRAC Service Module	iDRAC Service Module (ISM), NOT Installed	GX95LG2	379-BCQX	1
Group Manager	iDRAC Group Manager, Disabled	GTVA94K	379-BCQY	1
Rack Rails	ReadyRails Sliding Rails with Cable Management Arm	GIY2BMN	770-BDRQ,770-BECC	1
Internal Optical Drive	No Internal Optical Drive	GZP2ROB	429-AAIQ	1
System Documentation	No Systems Documentation, No OpenManage DVD Kit	GVRYSM7	631-AACK	1
Shipping	PowerEdge R550 Shipping	GDE6JS2	340-CVKM	1
Shipping Material	PowerEdge R550 Shipping Material	GEUHQ4M	343-BBRT	1
Regulatory	PowerEdge 2U CE,CCC and BIS Marking on 3.5" Chassis	G3EC8BK	389-DYMQ,389-DYMS	1
Services: Hardware Support	5 Years ProSupport with Next Business Day Onsite Service	GFGSV43	859-4568,859-4582,859-4602,989-3439	1
Deployment Services	No Installation	NOINSTL	900-9997	1

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CONNECT WITH DELL:



Terms of Sale

This Quote will, if Customer issues a purchase order for the quoted items that is accepted by Supplier, constitute a contract between the entity issuing this Quote ("Supplier") and the entity to whom this Quote was issued ("Customer"). Unless otherwise stated herein, pricing is valid for thirty days from the date of this Quote. All products, pricing, and other information is based on the latest information available and is subject to change for any reason, including but not limited to tariffs imposed by government authorities. Supplier reserves the right to cancel this Quote and Customer purchase orders arising from pricing errors. Taxes and/or freight charges listed on this Quote are only estimates. The final amounts shall be stated on the relevant invoice. Additional freight charges will be applied if Customer requests expedited shipping. Please indicate any tax exemption status on your purchase order and send your tax exemption certificate to Tax_Department@dell.com or ARSalesTax@emc.com, as applicable.

Governing Terms: This Quote is subject to: (a) a separate written agreement between Customer or Customer's affiliate and Supplier or a Supplier's affiliate to the extent that it expressly applies to the products and/or services in this Quote or, to the extent there is no such agreement, to the applicable set of Dell's Terms of Sale (available at www.dell.com/terms or www.dell.com/oemterms), or for cloud/as-a-Service offerings, the applicable cloud terms of service (identified on the Offer Specific Terms referenced below); and (b) the terms referenced herein (collectively, the "Governing Terms"). Different Governing Terms may apply to different products and services on this Quote. The Governing Terms apply to the exclusion of all terms and conditions incorporated in or referred to in any documentation submitted by Customer to Supplier.

Supplier Software Licenses and Services Descriptions: Customer's use of any Supplier software is subject to the license terms accompanying the software, or in the absence of accompanying terms, the applicable terms posted on www.Dell.com/eula. Descriptions and terms for Supplier-branded standard services are stated at www.dell.com/servicecontracts/global or for certain infrastructure products at www.dell.com/en-us/customer-services/product-warranty-and-service-descriptions.htm.

Offer-Specific, Third Party and Program Specific Terms: Customer's use of third-party software is subject to the license terms that accompany the software. Certain Supplier-branded and third-party products and services listed on this Quote are subject to additional, specific terms stated on www.dell.com/offeringspecificterms ("Offer Specific Terms").

In case of Resale only: Should Customer procure any products or services for resale, whether on standalone basis or as part of a solution, Customer shall include the applicable software license terms, services terms, and/or offer-specific terms in a written agreement with the end-user and provide written evidence of doing so upon receipt of request from Supplier.

In case of Financing only: If Customer intends to enter into a financing arrangement ("Financing Agreement") for the products and/or services on this Quote with Dell Financial Services LLC or other funding source pre-approved by Supplier ("FS"), Customer may issue its purchase order to Supplier or to FS. If issued to FS, Supplier will fulfill and invoice FS upon confirmation that: (a) FS intends to enter into a Financing Agreement with Customer for this order; and (b) FS agrees to procure these items from Supplier. Notwithstanding the Financing Agreement, Customer's use (and Customer's resale of and the end-user's use) of these items in the order is subject to the applicable governing agreement between Customer and Supplier, except that title shall transfer from Supplier to FS instead of to Customer. If FS notifies Supplier after shipment that Customer is no longer pursuing a Financing Agreement for these items, or if Customer fails to enter into such Financing Agreement within 120 days after shipment by Supplier, Customer shall promptly pay the Supplier invoice amounts directly to Supplier.

Customer represents that this transaction does not involve: (a) use of U.S. Government funds; (b) use by or resale to the U.S. Government; or (c) maintenance and support of the product(s) listed in this document within classified spaces. Customer further represents that this transaction does not require Supplier's compliance with any statute, regulation or information technology standard applicable to a U.S. Government procurement.

For certain products shipped to end users in California, a State Environmental Fee will be applied to Customer's invoice. Supplier encourages customers to dispose of electronic equipment properly.

Electronically linked terms and descriptions are available in hard copy upon request.

Dell Marketing LP. U.S. only. Dell Marketing LP. is located at One Dell Way, Mail Stop 8129, Round Rock, TX 78682



A quote for your consideration.

To retrieve this eQuote online, log in to your [Dell Premier Page](#) and search for your eQuote number under “Quotes” in the top menu bar.

Quote No.:	3000191873486
Total (USD):	\$18,850.97
eQuote Name:	GIS server
eQuote Creator:	douglas.futrell@abilenetx.gov
Quoted On:	Jul. 01, 2025
Expires By:	Jul. 31, 2025
Company Name:	CITY OF ABILENE
Customer Number:	4954
Phone:	3256766295
Premier Page Name:	City of Abilene, TX Contract Code...#75AHH...DIR-TSO-3763
Contract Name:	STATE OF TEXAS DEPARTMENT OF INFORMATION RESOURCES
Contract Code:	C000001269299
Customer Agreement Number:	DIR-CPO-5792

Custom Fields:

DIR CC: DIR-SDD-890-TX

Billing Address:

CITY OF ABILENE
PAYABLE ACCOUNTS
ACCOUNTING DIVISION
PO BOX 60
ABILENE , TX 79604-0060

Pricing Summary

	Qty	Unit Price	Discounted Unit Price	Subtotal
PowerEdge R550 Tailor Made	1	\$62,899.45	\$18,850.97	\$18,850.97
Premier discount		- \$44,048.48		
Subtotal:				\$18,850.97
Shipping:				\$0.00
Estimated Tax:				\$0.00
Total (USD):				\$18,850.97

Shipping Address:
CITY OF ABILENE
PAYABLE - ASHLEY BOLM IT ACCOUNTS
555 Walnut St
ROOM B08 - BASEMENT
Abilene , TX 79601

Shipping Method:
FREE Standard Delivery

Product Details

		Qty	Unit Price	Subtotal
	PowerEdge R550 Tailor Made (210-AZEG)	1	\$18,850.97	\$18,850.97
	Order Code: pe_r550_tm			

Module	Description	Product Code	SKU	Qty
Base	PowerEdge R550 Server	G8S6JX7	210-AZEG	1
FRONT STORAGE	Chassis with up to 8x3.5" Drives	G2XH3DI	379-BDSZ	1
BACKPLANE	SAS/SATA Backplane	GK0E3OX	379-BDSS	1
Trusted Platform Module	Trusted Platform Module 2.0 V6	GGX1VDO	461-AAIG	1
Chassis Configuration	3.5" Chassis with up to 8 Hard Drives (SAS/SATA), 2 CPU, V3	GDQ18PO	321-BKJP	1
Processor	Intel® Xeon® Gold 5318Y 2.1G, 24C/48T, 11.2GT/s, 36M Cache, Turbo, HT (165W) DDR4-2933	GOET0S7	338-CBWO	1
Additional Processor	Intel® Xeon® Gold 5318Y 2.1G, 24C/48T, 11.2GT/s, 36M Cache, Turbo, HT (165W) DDR4-2933	GV70J63	338-CBWO,379-BDCO	1
Processor Thermal Configuration	High Performance Heatsink for 2 CPU configuration	GZV7PK2	412-AAVT,412-AAVT	1
Memory Configuration Type	Performance Optimized	GH9QBEI	370-AAIP	1
Memory DIMM Type and Speed	3200MT/s RDIMMs	GR3CFNV	370-AEVR	1
Memory Capacity	(2) 16GB RDIMM, 3200MT/s, Dual Rank	GQ3BSOI	370-AEVQ	2
RAID Configuration	C7, Unconfigured RAID for HDDs or SSDs (Mixed Drive Types Allowed)	GJ45ICY	780-BCDS	1
RAID/Internal Storage Controllers	Front PERC H755 Front Load	GRNB4CX	405-AAZB,750-ACFR	1
Hard Drives	2TB 7.2K RPM SATA 6Gbps 512n 3.5in Hot-plug Hard Drive	5103962	400-ASHX	1
BIOS and Advanced System Configuration Settings	Power Saving Dell Active Power Controller	G06TYXW	750-AABF	1
Advanced System Configurations	UEFI BIOS Boot Mode with GPT Partition	GSFTG4Y	800-BBDM	1

Fans	Standard Fan Cold Swap 2U,V2 x5	G2ZA0YM	750-ADIN	1
Power Supply	Dual, Fully Redundant(1+1), Hot-Plug Power Supply,1100W MM(100-240Vac) Titanium	G7XCUQM	450-AKLF	1
Power Cords	(2) NEMA 5-15P to C13 Wall Plug, 125 Volt, 15 AMP, 10 Feet (3m), Power Cord, North America	G749Q3L	450-AALV	2
PCIe Riser	2 CPU, 3x16 LP+ 1x8(x4 link) LP	GVB6XDL	330-BBVE	1
Motherboard	PowerEdge R550 Motherboard with Broadcom 5720 Dual Port 1Gb On-Board LOM, V4	GJ7BY6F	329-BHNNH	1
OCP 3.0		GFU6IJT		1
Network Adapters	No OCP 3.0 mezzanine NIC card, Blank Filler Only		330-BBTI	
Additional Network Cards	Broadcom 57414 Dual Port 10/25GbE SFP28 Adapter, PCIe Low Profile, V2	G7BFQ2Y	540-BDGV	1
Bezel	PowerEdge 2U LCD Bezel	G98L4KP	325-BEBV,350-BCFM	1
Boot Optimized Storage Cards	BOSS-S2 controller card + with 2 M.2 480GB (RAID 1), Hot-Plug, V2	GVPDG0J	403-BCMB,470-BBJK	1
Operating System	Windows Server 2022 Standard,16CORE,FI,No Med,No CAL, Multi Language	GNV0LDG	634-BYJY	1
OS Media Kits	Windows Server 2022 Standard,16CORE,DF Recovery Image, Multi Lang, (Downgrade not included)	G5UNFAX	528-CSCP	1
Licenses	Windows Server 2022 Standard Edition, Add License,16CORE,NO MEDIA/KEY	GHGW9DP	634-BYJV	1
Licenses	(8) Windows Server 2022 Standard Edition, Add License,2CORE,NO MEDIA/KEY	GNW68ER	634-BYJX	8
Microsoft SQL Server	Microsoft SQL Server 2022 Standard, 4 CORE, OEM, NFI with 2019/2017 DWGD Media	GZATF8K	634-BZWR	1
Client Access Licenses	10-pack of Windows Server 2022/2019 User CALs (Standard or Datacenter)	GV7EL9N	634-BYKG	1
Client Access Licenses	(2) Microsoft SQL Server 2022 Standard, Additional 2 CORE, No MEDIA	GB1T4CL	634-BZVX	2
Embedded Systems Management	Dell Connectivity Client - Enabled	G2ML3HR	379-BFXS,634-CYDF	1
Embedded Systems Management	iDRAC9, Enterprise 15G	G4NWS93	385-BBQV	1
Quick Sync	No Quick Sync	GLUIZE1	350-BCER	1
Password	iDRAC,Factory Generated Password	G2T768J	379-BCSF	1
iDRAC Service Module	iDRAC Service Module (ISM), NOT Installed	GX95LG2	379-BCQX	1
Group Manager	iDRAC Group Manager, Disabled	GTVA94K	379-BCQY	1
Rack Rails	ReadyRails Sliding Rails with Cable Management Arm	GIY2BMN	770-BDRQ,770-BECC	1
Internal Optical Drive	No Internal Optical Drive	GZP2ROB	429-AAIQ	1
System Documentation	No Systems Documentation, No OpenManage DVD Kit	GVRYSM7	631-AACK	1
Shipping	PowerEdge R550 Shipping	GDE6JS2	340-CVKM	1
Shipping Material	PowerEdge R550 Shipping Material	GEUHQ4M	343-BBRT	1
Regulatory	PowerEdge 2U CE,CCC and BIS Marking on 3.5" Chassis	G3EC8BK	389-DYMQ,389-DYMS	1
Services: Hardware Support	5 Years ProSupport with Next Business Day Onsite Service	GFGSV43	859-4568,859-4582,859-4602,989-3439	1
Deployment Services	No Installation	NOINSTL	900-9997	1

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CONNECT WITH DELL:



Terms of Sale

This Quote will, if Customer issues a purchase order for the quoted items that is accepted by Supplier, constitute a contract between the entity issuing this Quote ("Supplier") and the entity to whom this Quote was issued ("Customer"). Unless otherwise stated herein, pricing is valid for thirty days from the date of this Quote. All products, pricing, and other information is based on the latest information available and is subject to change for any reason, including but not limited to tariffs imposed by government authorities. Supplier reserves the right to cancel this Quote and Customer purchase orders arising from pricing errors. Taxes and/or freight charges listed on this Quote are only estimates. The final amounts shall be stated on the relevant invoice. Additional freight charges will be applied if Customer requests expedited shipping. Please indicate any tax exemption status on your purchase order and send your tax exemption certificate to Tax_Department@dell.com or ARSalesTax@emc.com, as applicable.

Governing Terms: This Quote is subject to: (a) a separate written agreement between Customer or Customer's affiliate and Supplier or a Supplier's affiliate to the extent that it expressly applies to the products and/or services in this Quote or, to the extent there is no such agreement, to the applicable set of Dell's Terms of Sale (available at www.dell.com/terms or www.dell.com/oemterms), or for cloud/as-a-Service offerings, the applicable cloud terms of service (identified on the Offer Specific Terms referenced below); and (b) the terms referenced herein (collectively, the "Governing Terms"). Different Governing Terms may apply to different products and services on this Quote. The Governing Terms apply to the exclusion of all terms and conditions incorporated in or referred to in any documentation submitted by Customer to Supplier.

Supplier Software Licenses and Services Descriptions: Customer's use of any Supplier software is subject to the license terms accompanying the software, or in the absence of accompanying terms, the applicable terms posted on www.Dell.com/eula. Descriptions and terms for Supplier-branded standard services are stated at www.dell.com/servicecontracts/global or for certain infrastructure products at www.dell.com/en-us/customer-services/product-warranty-and-service-descriptions.htm.

Offer-Specific, Third Party and Program Specific Terms: Customer's use of third-party software is subject to the license terms that accompany the software. Certain Supplier-branded and third-party products and services listed on this Quote are subject to additional, specific terms stated on www.dell.com/offeringspecificterms ("Offer Specific Terms").

In case of Resale only: Should Customer procure any products or services for resale, whether on standalone basis or as part of a solution, Customer shall include the applicable software license terms, services terms, and/or offer-specific terms in a written agreement with the end-user and provide written evidence of doing so upon receipt of request from Supplier.

In case of Financing only: If Customer intends to enter into a financing arrangement ("Financing Agreement") for the products and/or services on this Quote with Dell Financial Services LLC or other funding source pre-approved by Supplier ("FS"), Customer may issue its purchase order to Supplier or to FS. If issued to FS, Supplier will fulfill and invoice FS upon confirmation that: (a) FS intends to enter into a Financing Agreement with Customer for this order; and (b) FS agrees to procure these items from Supplier. Notwithstanding the Financing Agreement, Customer's use (and Customer's resale of and the end-user's use) of these items in the order is subject to the applicable governing agreement between Customer and Supplier, except that title shall transfer from Supplier to FS instead of to Customer. If FS notifies Supplier after shipment that Customer is no longer pursuing a Financing Agreement for these items, or if Customer fails to enter into such Financing Agreement within 120 days after shipment by Supplier, Customer shall promptly pay the Supplier invoice amounts directly to Supplier.

Customer represents that this transaction does not involve: (a) use of U.S. Government funds; (b) use by or resale to the U.S. Government; or (c) maintenance and support of the product(s) listed in this document within classified spaces. Customer further represents that this transaction does not require Supplier's compliance with any statute, regulation or information technology standard applicable to a U.S. Government procurement.

For certain products shipped to end users in California, a State Environmental Fee will be applied to Customer's invoice. Supplier encourages customers to dispose of electronic equipment properly.

Electronically linked terms and descriptions are available in hard copy upon request.

Dell Marketing LP. U.S. only. Dell Marketing LP. is located at One Dell Way, Mail Stop 8129, Round Rock, TX 78682

Dell

Server Systems

July 10, 2025





Dell Server Products

Server Requirement:

- Products and parts are required to implement two Dell server systems
- These server systems provide for and replace end-of-life server devices at the City's two primary sites
- These systems are available the Texas DIR-CPO-5792 Contract in the total amount of \$35,431.41

IT Department Recommendation

- Endorses the requested approval and acquisition of server products required in the amount of \$35,431.41



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 7/10/2025

TO: Emily Crawford, City Manager

FROM: Troy Swanson, IT Director

SUBJECT: 8. **Resolution:** Receive a Report, Hold a Discussion and Take Action on the Approval of the acquisition of recovery services from GuidePoint Security LLC through the City's cyber insurance counsel (*Troy Swanson*)

GENERAL INFORMATION

The Information Technology (IT) Department, will require services to assist in the recovery of desktop and laptop devices. These services will be acquired via the City cybersecurity counsel from GuidePoint Security LLC (GuidePoint) in the amount of \$127,950. It has been confirmed that the restoration SOW provided by GuidePoint for the work on COA workstations has been reviewed and approved under the City's policy. Based on the information provided to date and evaluation of the circumstances, the costs associated with restoring the affected workstations fall within the scope of the City's coverage.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. CoA Council - Resolution - Guidepoint
2. 20250710 - City Council - GuidePoint Approval of Services
3. GPS_Buchanan_Abilene_RESTORE_20250626_SOW
4. 20250710 - City Council - Presentation - Guidepoint

RESOLUTION NO. 2025-XX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS TO
ACQUIRE RECOVERY SERVICES FROM GUIDEPOINT SECURITY LLC THROUGH THE
CITY'S CYBER INSURANCE COUNSEL**

WHEREAS, the City Council of the City of Abilene recognizes the need for recovery services regarding desktops and laptops; and

WHEREAS, the Information Technology Department has identified the opportunity to recover approximately a total of 586 systems; and

WHEREAS, these services are available through the City's cyber insurance counsel and specifically GuidePoint Security LLC and provide for the ability to redeploy these systems for use; and

WHEREAS, this will be accomplished in the amount of approximately \$127,950.00 and these funds will be reimbursed as part of the cybersecurity event claim; and

WHEREAS, these services have been commissioned to begin July7, 2025 as an approved insurance claim and to expedite the return to service of the systems; and

WHEREAS, it is the staff's recommendation that the City Council endorses the Information Technology Department's acquisition of services from GuidePoint Security LLC; and

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

Part 1: That the City Council approves the acquisition of services from GuidePoint Security LLC

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

ADOPTED this 10th day of July, 2025.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

Hello Troy,

I am writing to confirm that the restoration SOW provided by GuidePoint for the work on COA workstations has been reviewed and approved under your policy. Based on the information you have provided to date and our evaluation of the circumstances, the costs associated with restoring the affected workstations fall within the scope of your coverage.

We have also approved the purchase of the 136 hard drives, the reason for this purchase is it will cut down the time needed to wipe and restore some of the devices. You have stated that the cost for these hard drives should not exceed \$6,800, please provide copies of invoices for reimbursement.

Should you have any questions or need further assistance as the restoration work progresses, please feel free to contact me.

Thank you,

Rafael Hernandez

E&S Strategic Claims Director

AmTrust Financial Services, Inc.



GUIDEPOINT

SECURITY

Buchanan Ingersoll & Rooney for City of Abilene

INCIDENT RESPONSE
PROFESSIONAL SERVICES STATEMENT OF WORK
GPS #235559
JUNE 26, 2025



Engagement Information

Points of Contact

GuidePoint Contacts	
Primary	Secondary
Nate Spurrier	Mark Lance
VP, Insurance and Counsel Strategy	VP, DFIR and Threat Intelligence
803.422.6346	877.889.0132
nate.spurrier@guidepointsecurity.com	mark.lance@guidepointsecurity.com

Terms and Conditions

- This Statement of Work (“SOW”) is subject to GuidePoint’s standard terms and conditions available at GuidePoint’s [website \(https://www.guidepointsecurity.com/terms-conditions/\)](https://www.guidepointsecurity.com/terms-conditions/).
- GuidePoint shall comply with the provisions of the Information Security and Privacy Exhibit set forth on GuidePoint’s website (<https://www.guidepointsecurity.com/information-security-and-privacy-exhibit/>)
- Client agrees that cancellation and/or rescheduling within ten (10) business days of the original start date is subject to GuidePoint’s rescheduling and cancellation terms on GuidePoint’s [website \(https://www.guidepointsecurity.com/assessment-agreement/\)](https://www.guidepointsecurity.com/assessment-agreement/).

Proprietary Information

This SOW may contain information that is privileged, confidential, or otherwise protected from disclosure. Dissemination, distribution, or copying of the information herein is prohibited without the prior written permission of GuidePoint Security LLC.

Executive Summary

Engagement Overview

GuidePoint Security LLC (“GuidePoint”) proposes to provide the following Incident Response services to Buchanan Ingersoll & Rooney (“Counsel”) for the benefit of City of Abilene (“Client”).

The objectives of these services are to enable Counsel to investigate a cybersecurity event, gather evidence, and provide legal advice to Client in anticipation of litigation. The services shall include conducting forensic analyses, collecting and preserving digital evidence, and communicating those findings to Counsel. All communications between GuidePoint, Counsel, and Client, as well as any materials generated as part of the forensic investigation, are intended to be confidential and protected under the attorney-client privilege and work product doctrine. This includes, without limitation, the analyses of security events, recommendations for remediation to establish a standard of care, and communications with third-party vendors engaged for the purpose of this investigation. This privilege is supported by the principle established in *Kovel v. United States*, 296 F.2d 918 (2d Cir. 1961), which extends attorney-client privilege to necessary intermediaries who assist attorneys in providing legal advice.

Services Agreement

GuidePoint professionals will be available on a Time and Materials basis to assist with investigation of a potential security incident and conduct technical forensics investigation as to meet the requirements of Counsel for the benefit of Client.

GuidePoint, Counsel, and Client will agree upon the services GuidePoint will perform and determine a date for the completion of these services.

Workstreams and Tasks

Below are the in-scope workstreams and tasks. The scope of each incident will vary, and may or may not include all components in the following list:

Restoration & Recovery Support

Workstation Support

- Provide up to 6 onsite resources for up to 5 days to assist with workstation reimage to “out of the box” Windows 11 Pro image to approximately ~586 workstations
- Provide up to 30 minutes discovery time, following client documentation to look for PII on ~451 non-CJIS endpoints
- Follow CJIS compliance documentation as provided by the client for retention/collection of hard drives on approximately ~135 endpoints, following chain of custody, client responsible for destruction process
- Develop shared inventory tracker document using asset information provided by the client.

Engagement Deliverables

- As defined and agreed with GuidePoint, Counsel, and Client

Project Logistics

Project Management Office

GuidePoint will engage its Project Management Office (PMO) for each engagement, regardless of its size. A Project Manager (PM) will be responsible for the support and management of the engagement, from inception to completion.

Project Oversight

GuidePoint's project oversight responsibilities for this engagement will include the following tasks:

- Schedule and coordinate GuidePoint's resources and logistics;
- Facilitate the Project Kickoff Meeting; and
- Ensure engagement work is completed, as outlined in this SOW.

If requested, GuidePoint can provide full project oversight services, beyond the responsibilities listed above, at an additional cost to be agreed upon prior to the execution of this SOW.

Assumptions and Expectations

The following are GuidePoint's assumptions and expectations for this engagement. Any variations may result in scope changes and additional charges.

- Counsel and Client will each designate one employee to serve as a primary point of contact (POC) for the GuidePoint project team. Client's designated POC will be responsible for, and have authority to schedule Client resources for required meetings, interviews, and other needs deemed necessary to complete the project work within the specified project parameters. On an as-needed basis, GuidePoint may subcontract the Services or a portion of the Services. GuidePoint can provide a list of GuidePoint-approved subcontractors upon request.
- In the event of an incident, Client shall define an Incident Manager who will be the primary POC for the duration of the investigation.
- Client will provide access to physical facilities necessary for the success of this project. Client also will have knowledgeable personnel available to provide necessary information throughout the process.
- Client will provide logical and physical access to any required systems GuidePoint will investigate during the incident response engagement.
- Client will provide access to all proprietary information, applications, and systems necessary for the success of this project.
- Client will gather and submit all requested data in an efficient and prompt manner, within a reasonable amount of time. Client must send the data to GuidePoint within two weeks prior to the project start date. Any delays incurred in acquiring this information may result in the need for a Change Order and rescheduling of the project, at the discretion of GuidePoint.
- During an investigation, GuidePoint may uncover additional items that may require GuidePoint to perform additional hours of work. Additional hours will require an addendum to this Statement of Work and GuidePoint will bill such additional hours at the contracted hourly services rate.



- GuidePoint will not begin to provide any services until Client has returned the signed SOW for services requested.
- Client is responsible for notifying impacted personnel of the investigation and testing activities, as needed, and GuidePoint will conduct testing and investigation with the expressed authority of management.
- No one GuidePoint employee is expected to work more than eight (8) consecutive hours.
- Client understands and agrees that GuidePoint may subcontract all or a portion of the services to a third party; the selected third party or resource(s) may be outside of the United States.
- GuidePoint will perform all work for the project(s) remotely. Onsite requests will be provided at the discretion of GuidePoint and may require a Change Order if additional hours are needed. Additional standard travel costs will apply.
- Client acknowledges and accepts the fact that, should GuidePoint uncover evidence of illegal activity in the course of performing these Services, GuidePoint may be bound legally and ethically to notify the appropriate law enforcement agency.
- GuidePoint reserves the right to stop all Services if any bill goes unpaid for fifteen (15) days, without regard to the status of our services or any related proceedings.
- GuidePoint and Client understand and agree with Counsel that the only entity that will have any obligation for the payment of fees or expenses or compensation pursuant to this SOW will be Client, and that Counsel will have no obligation for any payments to GuidePoint.



Pricing

Detailed Pricing Schedule

Professional Services	Estimated Hours	Hourly Rate	Estimated Price
Restoration & Recovery Support – Workstation Support	360	\$295	\$106,200
Restoration & Recovery Support – Travel	150	\$145	\$21,750
Estimated Total without expenses			\$127,950

Invoicing and Payment Terms

- Invoice monthly on a Time and Materials (“T&M”) basis for actual hours worked.
- All invoices submitted by GuidePoint for services performed hereunder and expenses as set forth herein are due and payable within thirty (30) days of the date of the invoice. If Client fails to pay an invoice within the thirty (30) days, Client shall pay interest on such invoices at the rate of 1.5% per month. All fees are quoted and payable in US dollars and exclusive of taxes.
- Pricing shown in this Time and Materials SOW is a reasonable estimate of total cost, not a fixed price. GuidePoint will make a reasonable attempt to notify Client as soon as practicable if it appears that it will exceed the estimated cost. No GuidePoint resource shall be obligated to, but may continue performance under this SOW, after reaching the estimated cost. GuidePoint may continue to incur charges in excess of the total cost estimated, but not more than twenty percent (20%) in excess, until creating an amendment (change order) to this SOW and receiving Client’s approval, in writing, or until GuidePoint receives a notice of termination. Client will be responsible for all charges up to twenty percent (20%) in excess of the estimated total cost outlined in this SOW.
- This SOW shall expire either upon the earlier of completion of the services or one (1) calendar year from the Effective Date.

Travel and Expenses

If travel is required, GuidePoint will bill actual expenses incurred by GuidePoint, per our standard [Travel and Expense policy \(https://www.guidepointsecurity.com/travel-expenses/\)](https://www.guidepointsecurity.com/travel-expenses/). If Client and GuidePoint have entered into an Agreement with travel policy requirements, GuidePoint will bill for travel and living expenses incurred by GuidePoint, per the terms of the Agreement.



Signatures

Company

Name: GuidePoint Security LLC

By:

DocuSigned by:

Mark Lance

35A9E15892A49C

7/2/2025

Authorized Signature Date

Name: Mark Lance

(Print Name)

Title: VP, DFIR & Threat Intelligence

Client

Name: City of Abilene

By:

DocuSigned by:

Troy Swanson

78E4D1967134485

7/2/2025

Authorized Signature Date

Name: Troy Swanson

(Print Name)

Title: CIO, Director of Information Tech. Dept.

Phone: 325-676-6373

Email: Troy.Swanson@abilenetx.gov

Address: 555 walnut St.

Abilene, TX 79601

Counsel

Name: Michael McLaughlin

By:

DocuSigned by:

Michael McLaughlin

96540FE8AF604F8

7/1/2025

Authorized Signature Date

Name: Michael McLaughlin

(Print Name)

Title: Outside Counsel

Phone: 2023808877

Email: michael.mclaughlin@bipc.com

Address: 1700 K St. NW Ste 300

Washington DC 20006

Billing Information

Attn. Name: Troy Swanson

Email: Troy.Swanson@abilenetx.gov

PO/PR #:

Tax ID:

Accts. Payable Ph.: 325-812-5656

Billing Address: 555 walnut St.

Abilene, TX 79601

GuidePoint Recovery Services

July 10, 2025





GuidePoint Recovery Services

Service Requirement:

- Services are required to recover approx. 586 desktops and laptops
- These services will:
 - Recover any files that have not been compromised
 - Clean and reset the systems
 - Prepare the systems for redeployment
- These services have been approved by the City's insurance counsel

IT Department Recommendation

- Endorses the requested approval of recovery services required in the amount of \$127,950.00



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 7/10/2025

TO: Emily Crawford, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: **9. Ordinance (First Reading) Z-2025-20:** Receive a Report, Hold a Discussion and Take Action on A Request From The Owner, To Amend The Terms And Conditions Of A Planned Development District (PDD-181). Specifically, To Amend The Buffer Area Surrounding The Property. Located At 617 F.M. 2404.
(Tim Littlejohn)

GENERAL INFORMATION

Amend the terms and conditions of PDD-181. Specifically, to modify the buffer on the southwest corner. The proposed buffer amendment is located along Spinks Road on the southwest portion of the most recently added parcels to the Planned Development District.

SPECIAL CONSIDERATIONS

More property was annexed and added to the Planned Development District in April of 2025. The conceptual plan was amended to reflect new buffering requirements along the perimeter of the property.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

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

ATTACHMENTS:

1. Z-2025-20 Ordinance
2. Staff Report
3. Buffer Zone Amendment
4. Application Lancium
5. Presentation

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING THE "LAND DEVELOPMENT CODE" OF THE ABILENE CITY CODE, CONCERNING PDD-181 AND ORDINANCE NO. 25-2023, A PLANNED DEVELOPMENT DISTRICT; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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

PART 1: That Chapter 23 of the Land Development Code of the City of Abilene, is hereby amended by changing Ordinance No. 25-2023, 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 10th day of July, 2025.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the *Abilene Reporter-News*, a daily newspaper of general circulation in the City of Abilene, said publication being on the 15th day of June, 2025, 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 24th day of July, 2025, 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 24th day of July, 2025.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

ZONING CASE

Z-2025-20

STAFF REPORT



Scheduled Hearings

Planning & Zoning Commission: July 1, 2025
City Council 1st Reading: July 10, 2025
City Council 2nd Reading: July 24, 2025

Applicant

Owner: Lancium Abilene LLC

Case Manager

Adam Holland – Planner

Request

Amend the terms and conditions of PDD-181. Specifically, to modify the buffer on the southwest corner.

Location

The proposed buffer amendment is located along Spinks Road on the southwest portion of the most recently added parcels to the Planned Development District.

Background

More property was annexed and added to the Planned Development District in April of 2025. The conceptual plan was not amended to reflect new buffering requirements along the perimeter of the property.

Zoning, Existing and Proposed Land Use

	Zoning	Existing Land Use
North	ETJ(No Zoning)	ETJ
East	ETJ(No Zoning)	ETJ
South	AO	Vacant Lots
West	ETJ(No Zoning)	ETJ

Criteria Assessment

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

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

The proposed use is consistent with the Future Land Use and Development Plan Map.

- (2) **Whether the uses permitted by the proposed change in zoning classification and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified.**

The proposed zoning would be appropriate as it would be consistent with the surrounding uses.

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

This property has been subject to platting and any utilities that may be required will be addressed during that review.

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

None known.

P&Z Commission Recommendation

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

Attachments

- PowerPoint Presentation
- Metes & Bounds
- Project Overview
- Ordinance

Notification

Pursuant to Section 1.2.2.2 of the Land Development Code, City staff mailed personal notices on June 13, 2025, via standard mail to the owners of property within a 200-foot radius of the subject street right of way. The property owners and associated parcel identification numbers are identified below:

PROPERTY OWNER		Legend: O - Opposed, F - In Favor	
OWNER	SITUS Address	PROP_ID	RESPONSE
2G 4D LEGACY LP	142 CR 660	43217	
AEP TEXAS NORTH COMPANY		973980	
AGUIRRE CARLOS & SILVIA ET AL	335 MEADOW VALLEY RD	1063563	
AGUIRRE CARLOS & SILVIA ET AL	295 MEADOW VALLEY RD	1063564	
BAUCUM CHARLES	5613 SPINKS RD	36763	
BUNKLEY GARRY TRUST		47962	
CATON JOSEPH M & MELISSA L	227 MEADOW VALLEY RD	1079643	
CYCHOSZ DENISE M & JOSEPH J	237 LOMA VISTA	70117	
CYCHOSZ JOSEPH & DENISE M		36636	
DAVIS CHERYL ANN		36494	
DONAGHEY CALVIN WAYNE &		43336	
EARLY ROBERT & PAMELA	921 FM 2404	1095328	
GILES KEVANTE J & BRANCH W OLIVIA &	367 MEADOW VALLEY RD	1063326	
KENNEDY REVOCABLE TRUST		67776	
LANCIUM ABILENE LLC		117284	
LANCIUM ABILENE LLC		47960	
LANCIUM ABILENE LLC		1093722	
LANCIUM ABILENE LLC	5502 SPINKS RD	1093721	
LANCIUM ABILENE LLC		1093720	
LANCIUM ABILENE LLC	615 FM 2404	1093719	
LANCIUM ABILENE LLC		1089582	
LANCIUM ABILENE LLC	723 FM 2404	1062111	
LANCIUM ABILENE LLC		1062951	

LANCIUM ABILENE LLC	412 MEADOW VALLEY RD	1083680	
LANCIUM ABILENE LLC	417 MEADOW VALLEY RD	33205	
LANCIUM ABILENE LLC		1061063	
LANCIUM ABILENE LLC	151 LANCUM WY	1093718	
LANCIUM ABILENE LLC	251 LANCUM WY	1093718	
LANCIUM ABILENE LLC	351 LANCUM WY	1093718	
MACIAS JOSE LUIS & PATRICIA A	197 MEADOW VALLEY RD	1079489	
MACIAS JOSE LUIS & PATRICIA A	145 MEADOW VALLEY RD	1079489	
MELCHOR POMPILIO &	393 MEADOW VALLEY RD	1062738	
MENDLER FRED & ARLENE	133 LOMA VISTA	69755	
MENDLER FREDERICK W &	6049 SPINKS RD	69352	
OLD ANSON RESOURCES LLC	815 FM 2404	1062207	
PINE STREET SALVAGE		43093	
PINE STREET SALVAGE		48619	
PINE STREET SALVAGE	150 Y CR 660	48739	
PINE STREET SALVAGE CO		47954	
QUINN KEITH PATRICK		1091661	
RICHARDSON FRANK RAY		70855	
SMITH JUSTIN DARREL &	5501 SPINKS RD	36827	
SMITH STEPHANIE	265 MEADOW VALLEY RD	1063064	
TUCHER CRISTOFOR L & JONNA B		1010474	
TUCHER JOHN M & MARY JANE	5705 SUMMERHILL RD	33072	
WEST TEXAS UTILITIES CO		43815	
WEST TEXAS UTILITIES CO		48087	
WEST TEXAS UTILITIES CO		32676	
WEST TEXAS UTILITIES CO		32811	
WEST TEXAS UTILITIES CO		15281	
WEST TEXAS UTILITIES CO		1086255	
ZUFFELATO GLEN	5992 SPINKS RD	1061731	

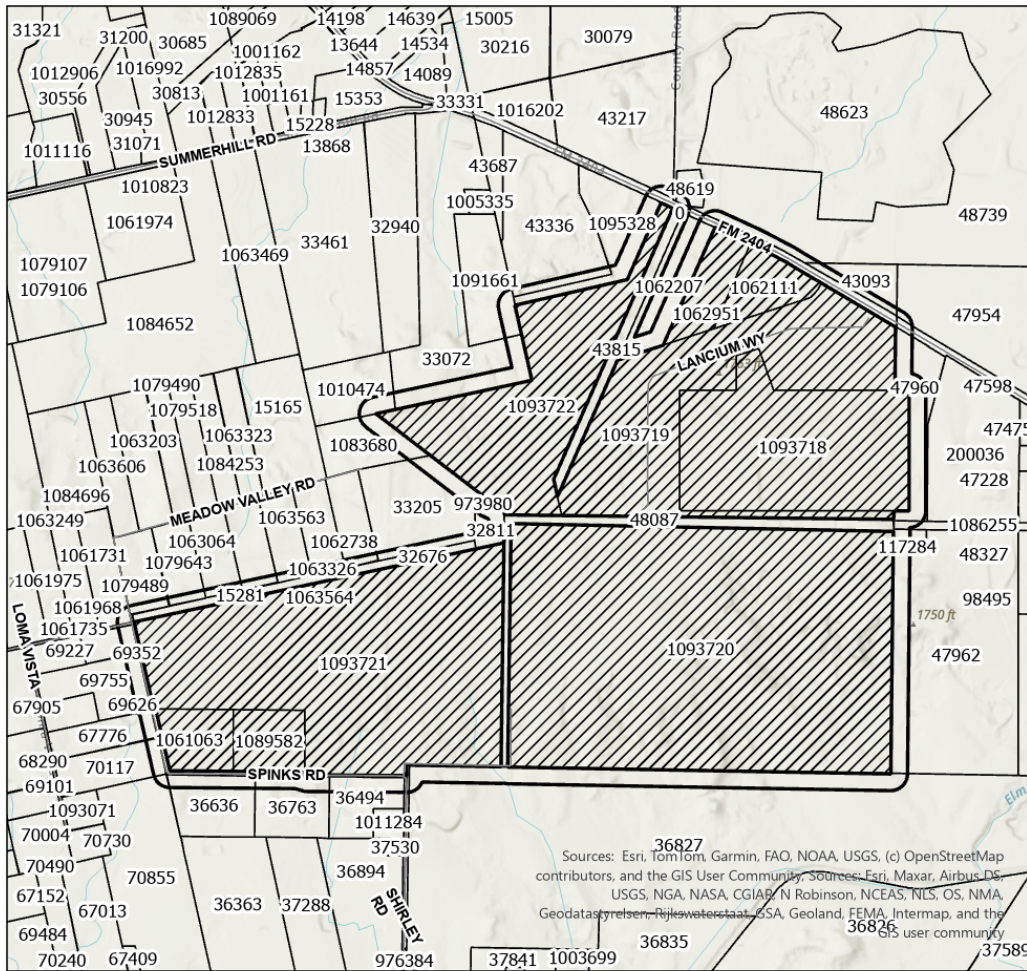
PROPERTY ID

Legend: O - Opposed, F - In Favor

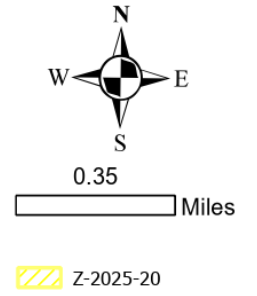
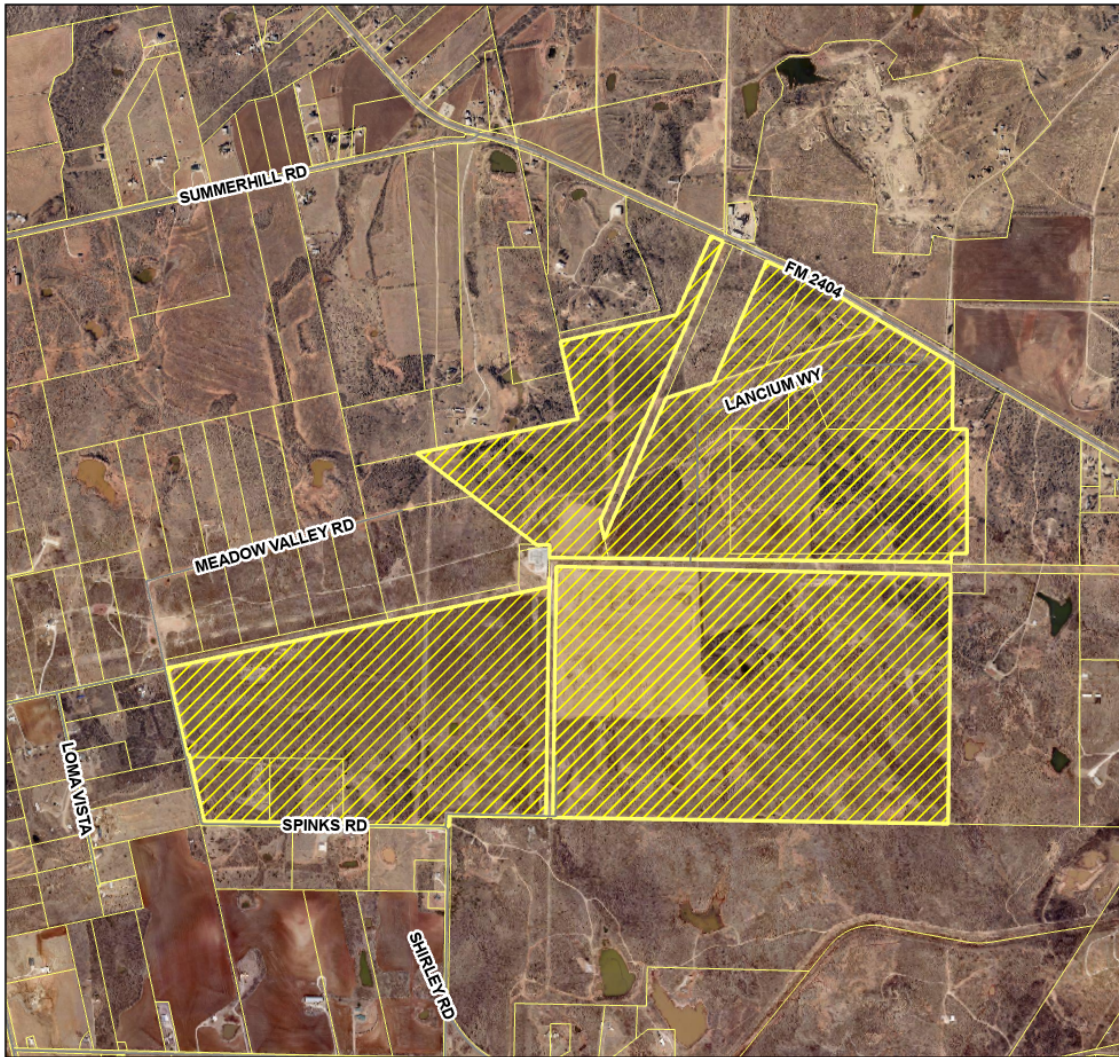
OWNER	SITUS Address	PROP_ID	RESPONSE
WEST TEXAS UTILITIES CO		15281	
WEST TEXAS UTILITIES CO		32676	
WEST TEXAS UTILITIES CO		32811	
TUCHER JOHN M & MARY JANE	5705 SUMMERHILL RD	33072	
LANCIUM ABILENE LLC	417 MEADOW VALLEY RD	33205	
DAVIS CHERYL ANN		36494	
CYCHOSZ JOSEPH & DENISE M		36636	
BAUCUM CHARLES	5613 SPINKS RD	36763	
SMITH JUSTIN DARREL &	5501 SPINKS RD	36827	
PINE STREET SALVAGE		43093	
2G 4D LEGACY LP	142 CR 660	43217	
DONAGHEY CALVIN WAYNE &		43336	
WEST TEXAS UTILITIES CO		43815	
PINE STREET SALVAGE CO		47954	
LANCIUM ABILENE LLC		47960	
BUNKLEY GARRY TRUST		47962	
WEST TEXAS UTILITIES CO		48087	
PINE STREET SALVAGE		48619	

PINE STREET SALVAGE	150 Y CR 660	48739	
KENNEDY REVOCABLE TRUST		67776	
MENDLER FREDERICK W &	6049 SPINKS RD	69352	
MENDLER FRED & ARLENE	133 LOMA VISTA	69755	
CYCHOSZ DENISE M & JOSEPH J	237 LOMA VISTA	70117	
RICHARDSON FRANK RAY		70855	
LANCIUM ABILENE LLC		117284	
AEP TEXAS NORTH COMPANY		973980	
TUCHER CRISTOFOR L & JONNA B		1010474	
LANCIUM ABILENE LLC		1061063	
ZUFFELATO GLEN	5992 SPINKS RD	1061731	
LANCIUM ABILENE LLC	723 FM 2404	1062111	
OLD ANSON RESOURCES LLC	815 FM 2404	1062207	
MELCHOR POMPILIO &	393 MEADOW VALLEY RD	1062738	
LANCIUM ABILENE LLC		1062951	
SMITH STEPHANIE	265 MEADOW VALLEY RD	1063064	
GILES KEVANTE J & BRANCH W OLIVIA &	367 MEADOW VALLEY RD	1063326	
AGUIRRE CARLOS & SILVIA ET AL	335 MEADOW VALLEY RD	1063563	
AGUIRRE CARLOS & SILVIA ET AL	295 MEADOW VALLEY RD	1063564	
MACIAS JOSE LUIS & PATRICIA A	197 MEADOW VALLEY RD	1079489	
MACIAS JOSE LUIS & PATRICIA A	145 MEADOW VALLEY RD	1079489	
CATON JOSEPH M & MELISSA L	227 MEADOW VALLEY RD	1079643	
LANCIUM ABILENE LLC	412 MEADOW VALLEY RD	1083680	
WEST TEXAS UTILITIES CO		1086255	
LANCIUM ABILENE LLC		1089582	
QUINN KEITH PATRICK		1091661	
LANCIUM ABILENE LLC	151 LANCIUM WY	1093718	
LANCIUM ABILENE LLC	251 LANCIUM WY	1093718	
LANCIUM ABILENE LLC	351 LANCIUM WY	1093718	
LANCIUM ABILENE LLC	615 FM 2404	1093719	
LANCIUM ABILENE LLC		1093720	
LANCIUM ABILENE LLC	5502 SPINKS RD	1093721	
LANCIUM ABILENE LLC		1093722	
EARLY ROBERT & PAMELA	921 FM 2404	1095328	

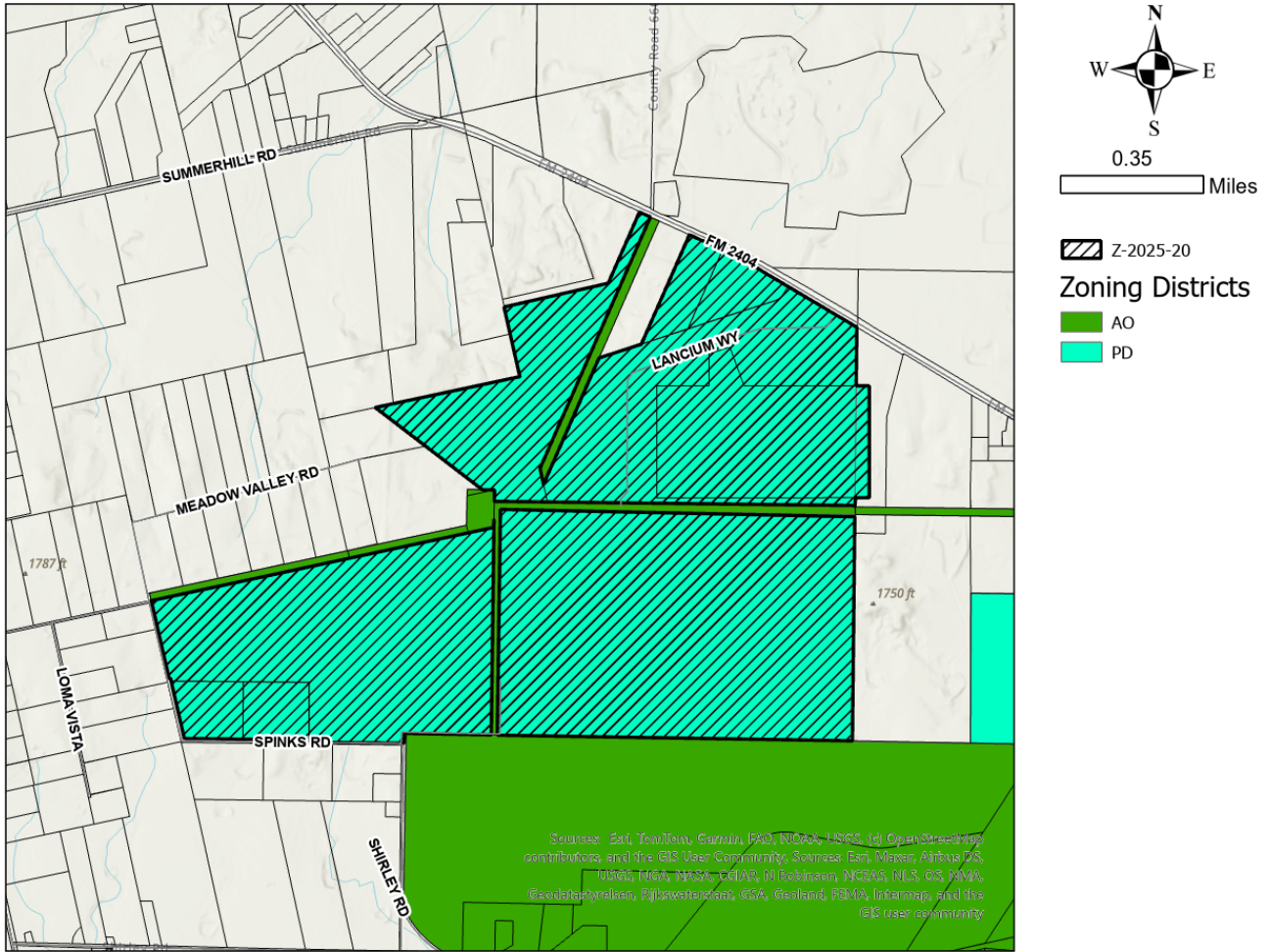
NOTIFICATION MAP



LOCATION MAP



ZONING MAP



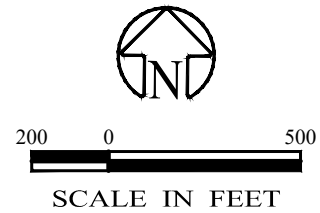
EASEMENT INDICATED BY

- WEST TEXAS UTILITIES COMPANY EASEMENT VOLUME 827, PAGE 87 DEED RECORDS
- 20 FOOT WIDE UTILITY EASEMENT AND ROW FIBERLIGHT INSTRUMENT NUMBER 2023-07908 OFFICIAL PUBLIC RECORDS
- WEST TEXAS UTILITIES COMPANY ELECTRIC EASEMENT (NO WIDTH GIVEN) VOLUME 565, PAGE 557 DEED RECORDS
- 50' UTILITY EASEMENT
- 50' ONEOK PIPELINE EASEMENT
- APPROXIMATE LOCATION OF 16.5' A.T.&T. EASEMENT VOLUME 344, PAGE 176 DEED RECORDS
- TXOK INVESTMENTS LLC 70' ACCESS AND UTILITY EASEMENT DOCUMENT NUMBER 2021-15812 OFFICIAL PUBLIC RECORDS
- WEST TEXAS UTILITIES COMPANY EASEMENT VOLUME 563, PAGE 288 DEED RECORDS
- TXOK INVESTMENTS LLC 70' ACCESS AND UTILITY EASEMENT DOCUMENT NUMBER 2021-15812 DEED RECORDS TAYLOR ELECTRIC COOPERATIVE INC. ELECTRIC EASEMENT (NO WIDTH GIVEN) VOLUME 567, PAGE 301 DEED RECORDS
- TAYLOR ELECTRIC COOPERATIVE INC. ELECTRIC EASEMENT (NO WIDTH GIVEN) VOLUME 567, PAGE 301 DEED RECORDS
- 45' ACCESS EASEMENT
- WEST TEXAS UTILITIES COMPANY 50' ELECTRIC EASEMENT VOLUME 872, PAGE 58 DEED RECORDS
- LONE STAR GAS COMPANY EASEMENT (NO WIDTH GIVEN) VOLUME 468, PAGE 130 DEED RECORDS
- 50' UTILITY EASEMENT DOCUMENT NUMBER 2021-25949 OFFICIAL PUBLIC RECORDS
- WEST TEXAS UTILITIES COMPANY 125' ELECTRIC EASEMENT VOLUME 1211, PAGE 773 DEED RECORDS
- 16.5' A.T.&T. EASEMENT VOLUME 341, PAGE 465 DEED RECORDS
- 20' UTILITY EASEMENT DOCUMENT NUMBER 2020-3218 OFFICIAL PUBLIC RECORDS
- WEST TEXAS UTILITIES COMPANY ELECTRIC EASEMENT (NO WIDTH GIVEN) VOLUME 563, PAGE 246 DEED RECORDS
- VOLUME 546, PAGE 517 OFFICIAL PUBLIC RECORDS
- VOLUME 511, PAGE 371 FIRST TRACT OFFICIAL PUBLIC RECORDS
- VOLUME 511, PAGE 371 SECOND TRACT OFFICIAL PUBLIC RECORDS
- VOLUME 3072, PAGE 223 OFFICIAL PUBLIC RECORDS
- VOLUME 826, PAGE 1 OFFICIAL PUBLIC RECORDS
- HAWLEY WATER SUPPLY CORPORATION 16' WATERLINE EASEMENT VOLUME 815, PAGE 414 DEED RECORDS
- VOLUME 826, PAGE 8 OFFICIAL PUBLIC RECORDS

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	756.26'	S0° 37' 26"W
L2	169.78'	N89° 59' 25"E
L3	1444.47'	S0° 00' 35"E
L4	185.75'	S89° 59' 25"W
L5	100.86'	S0° 37' 26"W
L6	3973.87'	N89° 20' 20"W
L7	233.19'	N12° 27' 55"W
L8	1960.21'	N71° 52' 34"E
L9	420.97'	N72° 35' 24"E
L10	57.15'	N65° 39' 35"E
L11	60.19'	N48° 31' 01"E
L12	68.08'	N36° 49' 01"E
L13	80.74'	N30° 02' 15"E
L14	1032.73'	S59° 22' 51"E

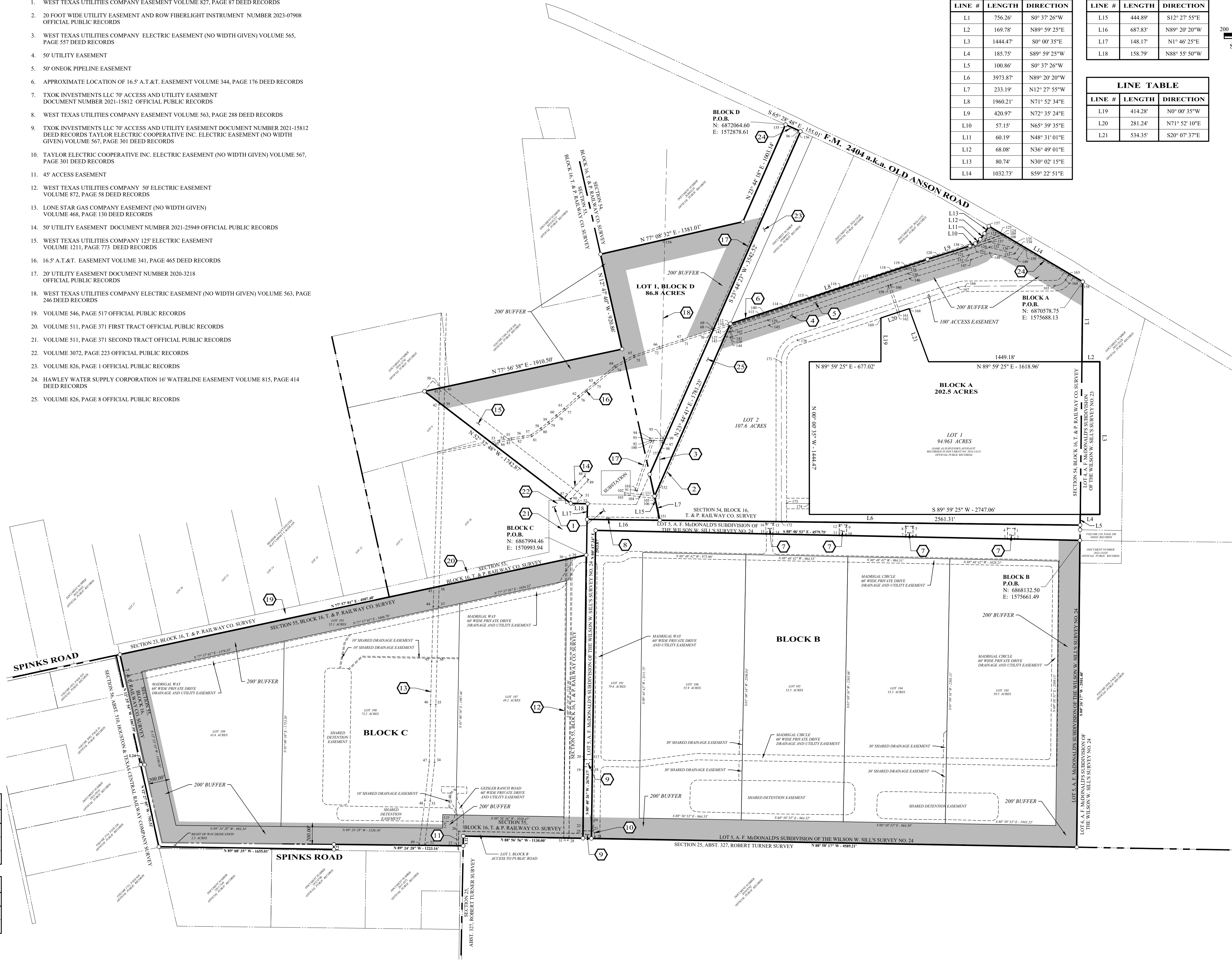
LINE TABLE		
LINE #	LENGTH	DIRECTION
L15	444.89'	S12° 27' 55"E
L16	687.83'	N89° 20' 20"W
L17	148.17'	N1° 46' 25"E
L18	158.79'	N88° 55' 50"W

LINE TABLE		
LINE #	LENGTH	DIRECTION
L19	414.28'	N0° 00' 35"W
L20	281.24'	N71° 52' 10"E
L21	534.35'	S20° 07' 37"E



LINE TABLE		
LINE #	LENGTH	DIRECTION
L22	91.20'	S1° 07' 21"W
L23	47.04'	S0° 00' 24"W
L24	37.33'	S89° 06' 46"E

LINE TABLE		
LINE #	LENGTH	DIRECTION
L25	126.46'	N88° 56' 56"W
L26	128.09'	S1° 07' 21"W



- LEGEND**
- MONUMENTS AS DESCRIBED IN FIELD NOTES
 - SUBDIVISION BOUNDARY
 - ADJACENT BOUNDARY LINES
 - - - EASEMENT LINES
 - - - SECTION LINE
 - BUFFER ZONE

EXHIBIT D - BUFFER ZONE AMENDMENT
PD-181 AMENDMENT REQUEST



ZONING APPLICATION

Zoning Application Page 1 of 3

Planning

- ☐ Conditional Use Permit ☐ Rezoning ☐ Easement Release
☒ PDD Amendment ☐ Street Name Change ☐ Thoroughfare Abandonment

Relief Procedures

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

Project Name: Lancium Abilene, LLC

Address: 5502 Spinks Road, Abilene, Texas

Number of Lots: 5 Parcels

Acreage: 815.86 AC

Legal Description: Lots 1-2, Block A; Lots 101 & 103-106, Block B; Lots 101 & 107-109, Block C

Subdivision Name: Lancium Subdivision

Block: Blocks A - C

Lot: Refer to Legal Desc.

Current Zoning: PDD - 181

Proposed Zoning (if applicable): _____

OWNER AND AUTHORIZATION

Owner Name: Lancium Abilene, LLC

Address: 9002 Six Pines Drive, Suite 134

City, State, Zip: Shenandoah, Texas 77380

Fax: _____

Phone: 832-407-2288

Email: espen.johansen@lancium.com

Agent Name: Enprotec / Hibbs & Todd, Inc (BJ Prichard)

Address: 402 Cedar Street

City, State, Zip: Abilene, Texas 79601

Fax: 325-691-3240

Phone: 325-698-5560

Email: bj.prichard@e-ht.com

I hereby certify that I am the owner of the property and further certify that the information provided on this development application is true and correct. I hereby designate the aforementioned agent to act on my behalf for submittal, processing, representation, and/or presentation of this development application. The designated agent shall be the principal contact person for responding to all requests for information and for resolving all issues of concern relative to this application.

Signature of Owner: _____

Date: 6/9/2025

FOR OFFICE USE ONLY

Received: _____

Fee: \$ _____

Receipt No.: _____

Case No.: _____

Reviewed By: _____

ZONING APPLICATION

Zoning Application Page 2 of 3

Existing Zoning

- | | | | |
|--------------------------------|--|--|-------------------------------|
| ☐ AO | Agricultural Open Space | ☐ GR | General Retail |
| ☐ RR | Rural Residential RR-5 & RR-1 | ☐ MU | Medical Use |
| ☐ RS-12 | Residential Single-Family – 12,000 sq. ft lots | ☐ CB | Central Business |
| ☐ RS-8 | Residential Single-Family – 8,000 sq. ft lots | ☐ MX | Mixed Use |
| ☐ RS-6 | Residential Single-Family – 6,000 sq. ft lots | ☐ GC | General Commercial |
| ☐ PH | Single-Family Residential Patio Home | ☐ HC | Heavy Commercial |
| ☐ TH | Residential Townhouse | ☐ LI | Light Industrial |
| ☐ MD | Residential Medium Density | ☐ HI | Heavy Industrial |
| ☐ MH | Manufactured/Mobile Home | ☒ PD | Planned Development District |
| ☐ CU | College & University | ☐ MF | Multi-Family |
| ☐ NO | Neighborhood Office | ☐ | Neighborhood Empowerment Zone |
| ☐ O | Office | | |
| ☐ NR | Neighborhood Retail | | |

Reason for Zoning Change

Zoning Case Z-2025-07 (for 5614 Spinks Road) resulted in the addition of 31.00 acres of land into Parcel 3 of the original concept plan for PDD-181. Applicant is requesting this additional amendment to the PDD-181 Ordinance in order to specifically re-route of the "Buffer Zone" noted on Exhibit D around the recently incorporated 31-acres. Please refer to "Exhibit D - Buffer Zone Amendment" attached for reference.

Fees

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

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

Fees can be paid online with credit card.



ZONING APPLICATION

Zoning Application Page 3 of 3

Zoning Impact Analysis

Please answer these questions in order to assist staff with the processing of your zoning request.

1. Does the proposed zoning map amendment implement the policies of the adopted Comprehensive Plan, including the land use classification of the property on the Future Land Use Map?

Yes. The proposed amendment is consistent with the current provisions of PDD-181.

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

Yes. The proposed amendment is consistent with the current provisions of PDD-181.

3. Are the proposed changes in agreement with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other public services and utilities to the area?

Yes. The proposed amendment is consistent with the current provisions of PDD-181.

4. Are there other factors that will substantially affect the public health, safety, morals, or general welfare?

No.

Other Required Forms - Disclosure of Interest (See Attached)

EXHIBIT A PD-181 AMENDMENT REQUEST

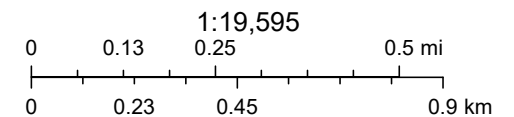
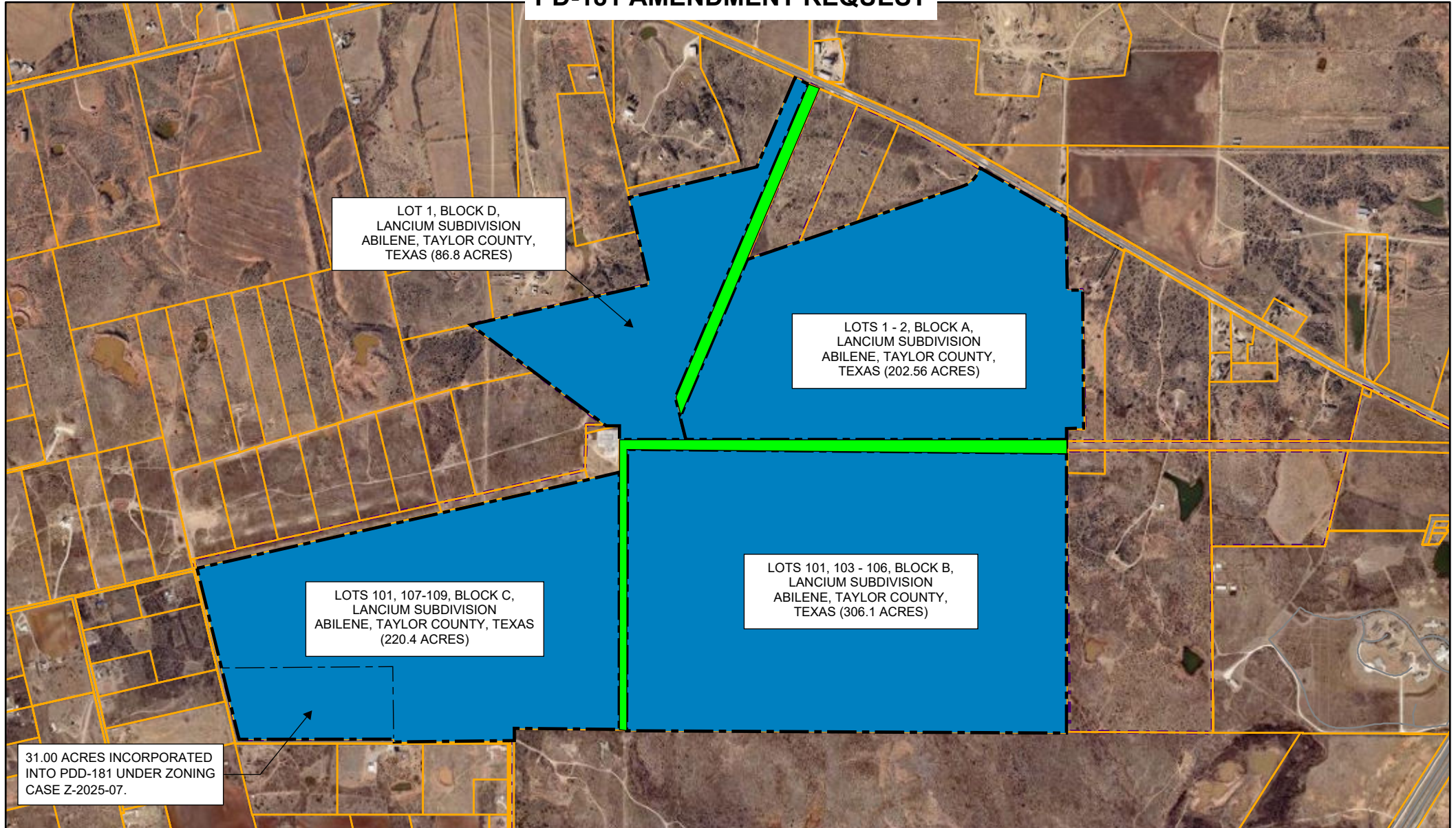
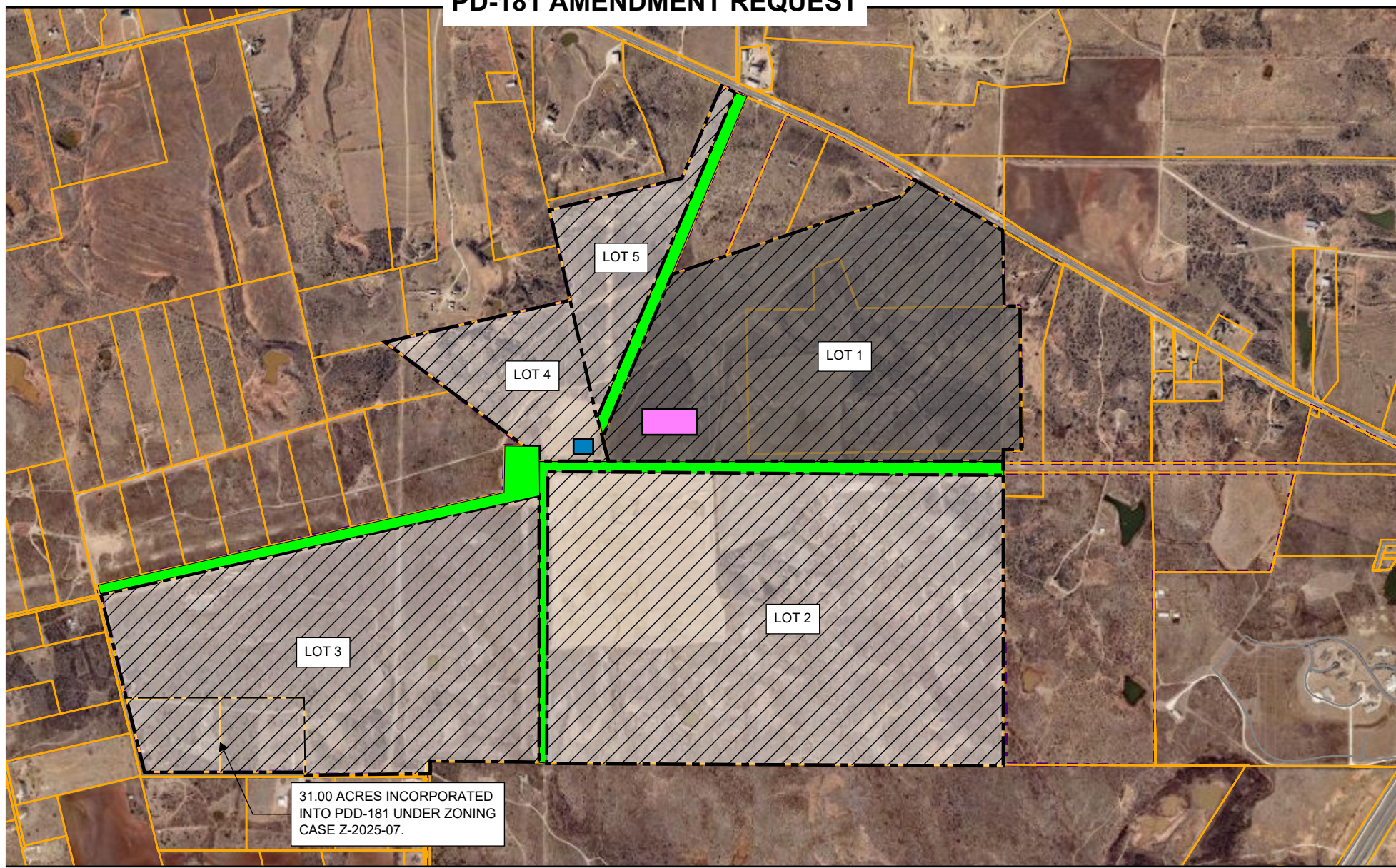


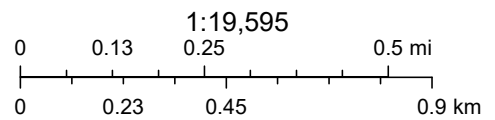
EXHIBIT B
PD-181 AMENDMENT REQUEST



- Courier Parcels
- Road Centerlines
- Municipal Boundaries

- LEGEND**
- Z-2023-09
 - HEAVY INDUSTRIAL USE
 - NOT INCLUDED IN PDD-181, TO REMAIN AO

- SUBSTATION**
- 200 MW
 - 1,000 MW





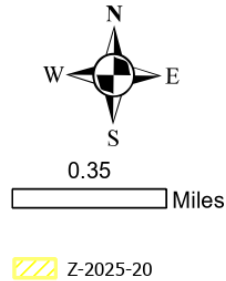
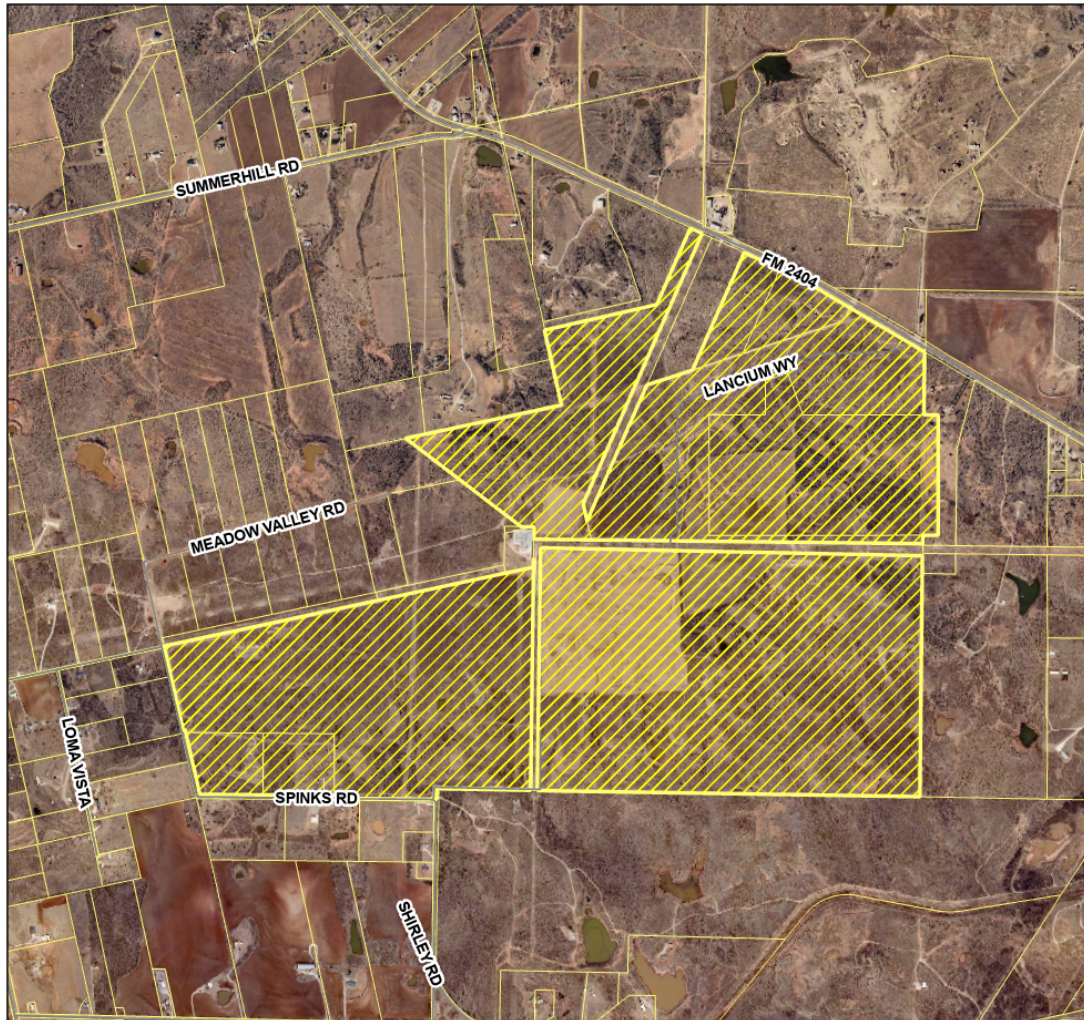
REZONE REQUEST

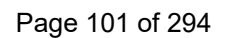
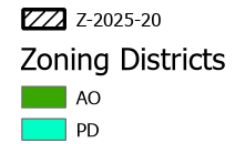
Case:	Z-2025-20
Owner:	Lancium Abilene LLC
Request:	Amend the terms of PDD-181, more specifically the location of the buffer area.
Location:	Located along Spinks Road
Notification:	0 in Favor, 0 in Opposition
Planning & Zoning:	July 1, 2025
Council Hearing:	July 10, 2025 July 24, 2025





AERIAL LOCATION MAP

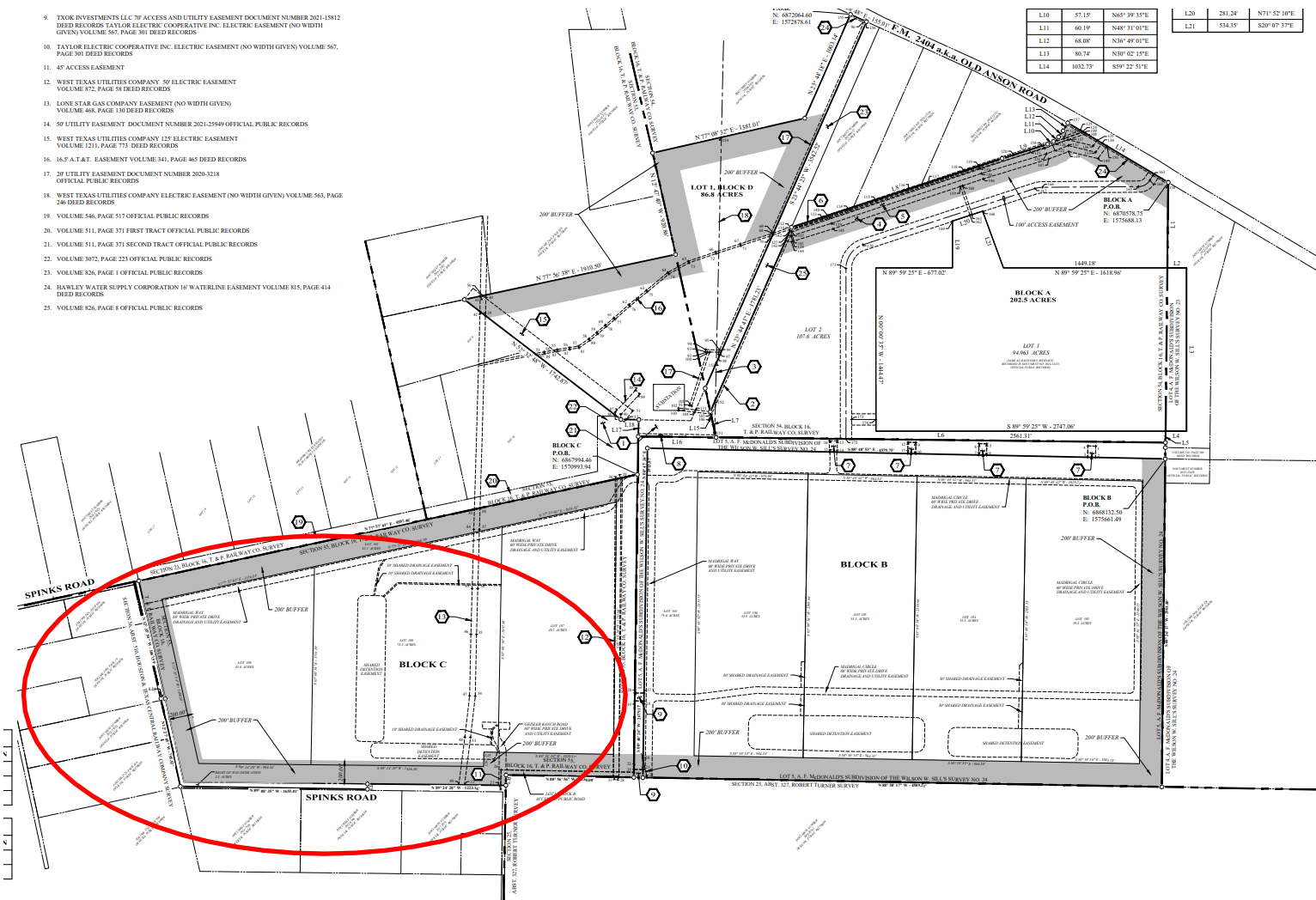






CONCEPTUAL PLAN

9. TXOK INVESTMENTS LLC "W" ACCESS AND UTILITY EASEMENT DOCUMENT NUMBER 2021-15812 DEED RECORDS TAYLOR ELECTRIC COOPERATIVE INC. ELECTRIC EASEMENT (NO WIDTH GIVEN) VOLUME 567, PAGE 301 DEED RECORDS
10. TAYLOR ELECTRIC COOPERATIVE INC. ELECTRIC EASEMENT (NO WIDTH GIVEN) VOLUME 567, PAGE 301 DEED RECORDS
11. 45' ACCESS EASEMENT
12. WEST TEXAS UTILITIES COMPANY "W" ELECTRIC EASEMENT VOLUME 572, PAGE 38 DEED RECORDS
13. LONE STAR GAS COMPANY EASEMENT (NO WIDTH GIVEN) VOLUME 468, PAGE 130 DEED RECORDS
14. "W" UTILITY EASEMENT DOCUMENT NUMBER 2021-25949 OFFICIAL PUBLIC RECORDS
15. WEST TEXAS UTILITIES COMPANY 125' ELECTRIC EASEMENT VOLUME 1211, PAGE 773 DEED RECORDS
16. 16.5' A.T.T. EASEMENT VOLUME 341, PAGE 463 DEED RECORDS
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18. WEST TEXAS UTILITIES COMPANY ELECTRIC EASEMENT (NO WIDTH GIVEN) VOLUME 563, PAGE 246 DEED RECORDS
19. VOLUME 546, PAGE 517 OFFICIAL PUBLIC RECORDS
20. VOLUME 511, PAGE 371 FIRST TRACT OFFICIAL PUBLIC RECORDS
21. VOLUME 511, PAGE 371 SECOND TRACT OFFICIAL PUBLIC RECORDS
22. VOLUME 3072, PAGE 223 OFFICIAL PUBLIC RECORDS
23. VOLUME 626, PAGE 1 OFFICIAL PUBLIC RECORDS
24. BAWLEY WATER SUPPLY CORPORATION 10' WATERLINE EASEMENT VOLUME 815, PAGE 414 DEED RECORDS
25. VOLUME 826, PAGE 8 OFFICIAL PUBLIC RECORDS



L10	57.15	N65° 39' 33"E
L11	60.19	N48° 31' 00"E
L12	68.08	N30° 49' 00"E
L13	80.74	N30° 02' 15"E
L14	102.79	S09° 22' 31"W

L20	281.24	N71° 52' 00"E
L21	554.59	S29° 07' 37"E

Proposed buffer location

EXHIBIT D - BUFFER ZONE AMENDMENT





PROPERTY VIEWS

Subject property



North neighboring property



Subject property



North neighboring property

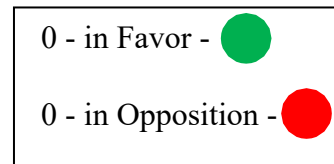
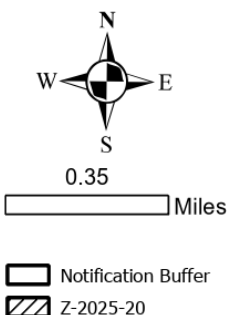
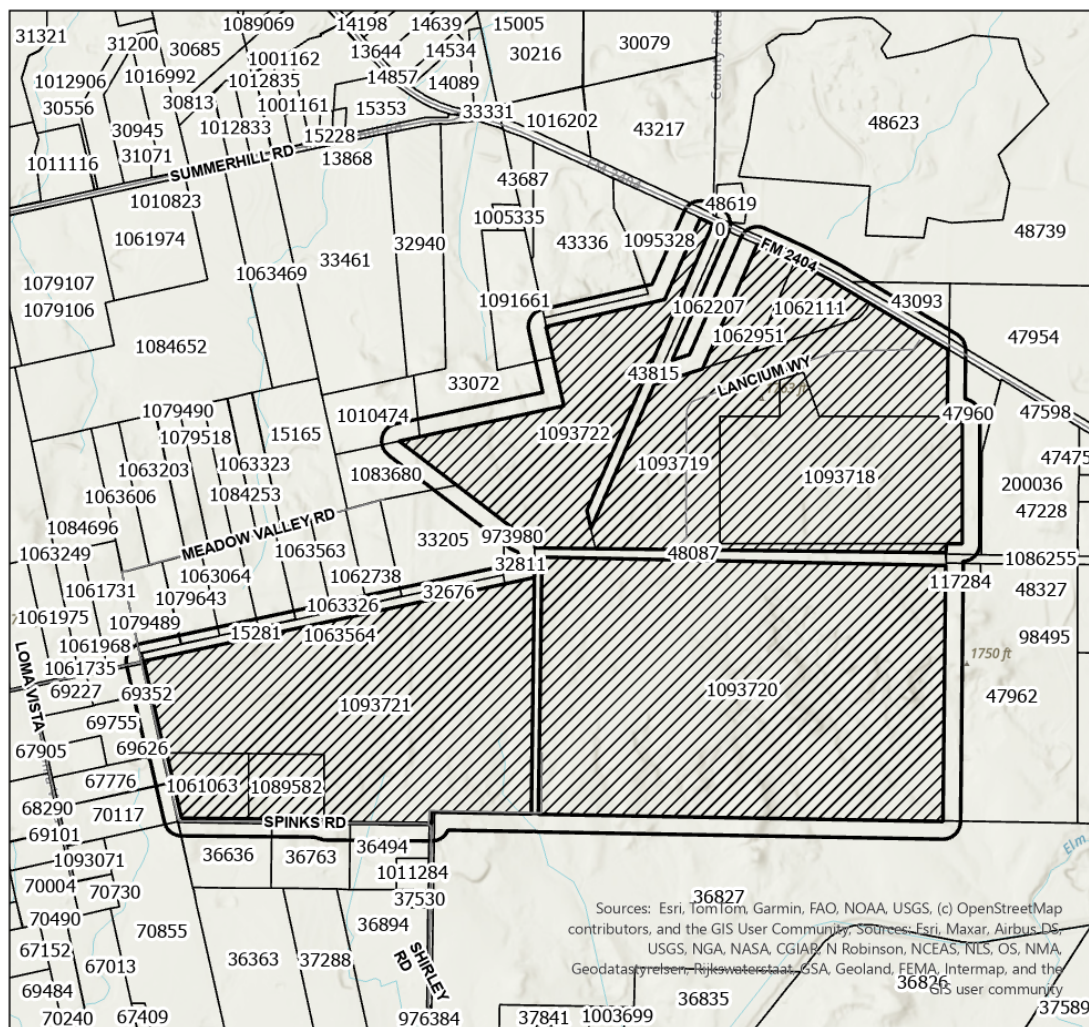


North neighboring property





NOTIFICATION AREA MAP





FINDINGS AND RECOMMENDATIONS

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**





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 7/10/2025

TO: Emily Crawford, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: **10. Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Amending the City of Abilene Pace Program Report (Tim Littlejohn)

GENERAL INFORMATION

On March 12, 2020 the City of Abilene City Council established the City of Abilene PACE program.

The 83rd Regular Session of the Texas Legislature enacted the Property Assessed Clean Energy Act, Texas Local Government Code Chapter 399 (the “PACE Act”), which allows the governing body of a City to designate an area of the territory of the local government as a region within which an authorized representative of a local government and the record owners of commercial, industrial, and large multifamily residential (5 or more dwelling units) real property may enter into written contracts to impose assessments on the property to repay the financing by the owners of permanent improvements fixed to the property intended to decrease energy or water consumption or demand. The installation or modification by property owners of qualified energy or water-saving improvements to commercial, industrial, and large multifamily residential real property in the City of Abilene furthers the goals of energy and water conservation without cost to the public.

When initially established, U.S. Housing and Urban Development (“HUD”) and Federal Housing Administration (“FHA”) multifamily properties could not participate in the PACE program, but now are permitted to, and therefore a change in paperwork submitted by a property owner to participate in the PACE program is required to accommodate newly eligible HUD and FHA properties.

Adoption of this Resolution will serve to update the 2020 report and associated exhibits to reflect the necessary changes for FHA and HUD properties, improve language, and reduce the burden on the County’s Tax Office.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

No Funding/Fiscal Impact.

STAFF RECOMMENDATION

Approval.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. RESOLUTION 40-2020.Intent to Establish PACE Program
2. RESOLUTION 55-2020.Establish PACE Program with Report
3. Professional Services Agreement with Texas PACE
4. Resolution.PACE Program Update.July.10.2025
5. 2025 PACE Amended Report with Updated Map
6. PACE Presentation

RESOLUTION NO. 40-2020

**CITY OF ABILENE CITY COUNCIL
RESOLUTION OF INTENT TO ESTABLISH A CITY OF ABILENE PROPERTY ASSESSED
CLEAN ENERGY (PACE) PROGRAM**

STATE OF TEXAS §
 §
CITY OF ABILENE §

WHEREAS, The 83rd Regular Session of the Texas Legislature enacted the Property Assessed Clean Energy Act, Texas Local Government Code Chapter 399 (the "PACE Act"), which allows the governing body of a local government, including a City, to designate an area of the territory of the local government as a region within which an authorized representative of a local government and the record owners of commercial, industrial, and large multifamily residential (5 or more dwelling units) real property may enter into written contracts to impose assessments on the property to repay the financing by the owners of permanent improvements fixed to the property intended to decrease water or energy consumption or demand; and

WHEREAS, the installation or modification by property owners of qualified energy or water saving improvements to commercial, industrial, and large multifamily residential real property in the City of Abilene will further the goals of energy and water conservation without cost to the public; and

WHEREAS, the City Council finds that financing energy and water conserving projects through contractual assessments ("PACE financing") furthers essential government purposes, including but not limited to, economic development, reducing energy consumption and costs, and conserving water resources; and

WHEREAS, the City Council, subject to the public hearing scheduled as provided below, at which the public may comment on the proposed program and the report issued contemporaneously with this resolution, finds that it is convenient and advantageous to establish a program under the PACE Act and designate the entire geographic area within the City's jurisdiction as a region within which a designated City authorized representative and the record owners of qualified real property may enter into PACE financing arrangements:

THEREFORE, be it resolved by the City Council of the City of Abilene that:

1. The Recitals to this Resolution are true and correct and are incorporated into this Order for all purposes.
2. The City of Abilene hereby adopts this Resolution of Intent and finds that financing qualified projects through contractual assessments pursuant to the PACE Act is a valid public purpose.
3. The City intends to make contractual assessments to repay PACE financing for qualified energy or water conserving projects available to owners of commercial, industrial, and large multifamily residential real property. The program is to be called the City of Abilene Property Assessed Clean Energy Program ("Abilene PACE").
4. The following types of projects are qualified projects for PACE financing that may be subject to such contractual assessments: Projects that (a) involve the installation or modification of a

permanent improvement fixed to privately owned commercial, industrial, or residential real property with five (5) or more dwelling units, and (b) are intended to decrease energy or water consumption or demand, including a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.

An assessment may not be imposed to repay the financing of facilities for undeveloped lots or lots undergoing development at the time of the assessment or the purchase or installation of products or devices not permanently fixed to real property.

5. The boundaries of the entire geographic area within the City's jurisdiction, including its extraterritorial jurisdiction, are the boundaries of the region where PACE financing and assessments can occur.
6. Financing for qualified projects under the PACE program will be provided by qualified third-party lenders chosen by the owners. Such lenders will execute written contracts with City's authorized representative to service the assessments, as required by the PACE Act. The contracts will provide for the lenders to determine the financial ability of owners to fulfill the financial obligations to be repaid through assessments, advance the funds to owners on such terms as are agreed between the lenders and the owners for the installation or modification of qualified projects, and service the debt secured by the assessments, directly or through a servicer, by collecting payments from the owners pursuant to contracts executed between the lenders and the owners. The lender contracts will provide that the City will maintain and continue the assessments for the benefit of such lenders and enforce the assessment lien for the benefit of a lender in the event of a default by an owner. The City of Abilene will not, at this time, provide financing of any sort for the PACE program.
7. The City will contract with a qualified non-profit organization to be the independent third-party Authorized Representative.
8. The City will consult with the County Tax Assessor/Collector for the Counties of Jones and Taylor.
9. The report on the proposed PACE program prepared as provided by Tex. Local Gov't Code Sec. 399.009, is available for public inspection on the City's Internet website and in the office of the City Manager at 555 Walnut Street, Suite 203, Abilene, Texas, and is incorporated in this resolution and made a part hereof for all purposes.
10. The City Council will hold a public hearing on the proposed PACE program and report on **March 12, 2020 at 8:30 a.m. in the City Council Chambers, 555 Walnut Street, Abilene, Texas.**

Adopted this 27 day of February 2020.



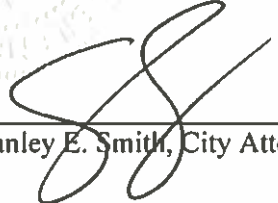
Honorable Anthony Williams, Mayor

ATTEST:



Shawna Atkinson, City Secretary

APPROVED:



Stanley E. Smith, City Attorney

RESOLUTION NO. 55-2020

THE CITY OF ABILENE CITY COUNCIL
RESOLUTION ESTABLISHING THE CITY OF ABILENE PACE PROGRAM

STATE OF TEXAS §
 §
CITY OF ABILENE §

WHEREAS, the 83rd Regular Session of the Texas Legislature enacted the Property Assessed Clean Energy Act, Texas Local Government Code Chapter 399 (the "PACE Act"), which allows the governing body of a local government, including a City, to designate an area of the territory of the local government as a region within which an authorized representative of a local government and the record owners of commercial, industrial, and large multifamily residential (5 or more dwelling units) real property may enter into written contracts to impose assessments on the property to repay the financing by the owners of permanent improvements fixed to the property intended to decrease energy or water consumption or demand;

WHEREAS, the installation or modification by property owners of qualified energy or water saving improvements to commercial, industrial, and large multifamily residential real property in the City of Abilene will further the goals of energy and water conservation without cost to the public;

WHEREAS, the City Council finds that third-party financing of energy and water conserving projects through contractual assessments maintained by the City ("PACE financing") furthers essential government purposes, including but not limited to, economic development, reducing energy consumption and costs, conserving water resources, and reducing greenhouse gas emissions;

WHEREAS, the City Council adopted a Resolution of Intent to establish a PACE program for the City of Abilene on February 27, 2020, including a reference to the report on the proposed program prepared as required by Section 399.009 of the PACE Act and made the report available to the public on the City's website and for inspection in the City Manager's office;

WHEREAS, the City Council finds that the administration of the PACE program by a qualified non-profit organization as an independent third-party Authorized Representative contracted by the City and compensated by application and administration fees paid by the participating property owners, will enable the program to be administered without use of City resources, will assure the objectives of impartiality and confidentiality of owner information, and will be convenient and advantageous to the City of Abilene; and

WHEREAS, the City Council also finds that because no City funds will be expended for PACE financing of the Authorized Representative's services, the selection of such an independent third-party Authorized Representative is not subject to the Professional Services Procurement Act or other City purchasing requirements; and

WHEREAS, the City Council held a public hearing on March 12, 2020 at 8:30 am in the City Council Chambers, 555 Walnut Street, Abilene, Texas, at which the public could comment on the proposed program, including the report available for public inspection as mentioned above and as required by Section 399.008(a)(2):

NOW THEREFORE, be it resolved by the City Council of the City of Abilene that:

1. Recitals. The recitals to this Resolution are true and correct and are incorporated into this resolution for all purposes.
2. Establishment of Program. The City of Abilene hereby adopts this Resolution Establishing the City of Abilene Property Assessed Clean Energy Program ("Abilene PACE"), herein called "the Program," and finds that financing qualified projects through contractual assessments pursuant to the PACE Act is a valid public purpose and is convenient and advantageous to the City and its citizens.
3. Contractual Assessments. The City will, at the property owner's request, impose contractual assessments on the property to repay PACE financing for qualified energy and water conserving projects available to owners of privately owned commercial, industrial, and large multifamily property.
4. Qualified Projects. The following types of projects are qualified projects for PACE financing that may be subject to such contractual assessments:

Projects that (a) involve the installation or modification of a permanent improvement fixed to privately owned commercial, industrial, or residential real property with five (5) or more dwelling units, and (b) are intended to decrease energy or water consumption or demand, including a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.

An assessment may not be imposed to repay the financing of facilities for undeveloped lots or lots undergoing development at the time of the assessment or the purchase or installation of products or devices not permanently fixed to real property.

5. Region. The boundaries of the entire geographic area within City's jurisdiction are included in the boundaries of the region where PACE financing and assessments can occur.
6. Third- Party Financing. Financing for qualified projects under the Program will be provided by qualified third-party lenders chosen by the owners. Such lenders will execute written contracts with the Authorized Representative to service the debt through assessments, as required by the PACE Act. The contracts will provide for the lenders to determine the financial ability of owners to fulfill the financial obligations to be repaid through assessments, advance the funds to owners on such terms as are agreed between the lenders and the owners for the installation or modification of qualified projects, and service the debt secured by the assessments, directly or through a servicer, by collecting payments from the owners pursuant to financing documents executed between the lenders and the owners. The City will maintain and continue the assessments for the benefit of such lenders and will enforce the assessment lien for the benefit of a lender in the event of a default by an owner. The City of Abilene will not, at this time, provide financing of any sort for the City PACE program.
7. Authorized Representative. The City Council will designate a non-profit organization, Texas PACE Authority, to act as the Authorized Representative with authority to enter into written contracts with the record owners of real property in City to impose

assessments pursuant to the PACE Act to repay the financing of qualified projects on the owners' property, to enter into written contracts with the parties that provide third-party financing for such projects to service the debts through assessments, and to file written notice of each contractual assessment in the real property records of the Jones or Taylor County, all on behalf of the City. The Authorized Representative may make technical and conforming updates as necessary so long as the changes are consistent with the resolution to establish the PACE program and the statute. The City Manager or his designee will be the liaison with the Authorized Representative.

8. Enforcement. The City will enforce the collection of past due assessments and may contract with a qualified law firm to assist in collection efforts.
9. Report. The final report on the - PACE program, prepared in accordance with Section 399.009 of the Texas Local Government Code is attached and incorporated into this resolution. The City will post the resolution and report on the City's website.
10. Amendment of Program. The City Council may amend the City of Abilene PACE Program by resolution. However, another public hearing is required before the Program may be amended to provide for City financing of qualified improvements through assessments.

Adopted this 12th day of March, 2020.

ATTEST:


Shawna Atkinson, City Secretary


Honorable Anthony Williams, Mayor

APPROVED:


Stanley Smith, City Attorney

REPORT REQUIRED BY TEXAS LOCAL GOVERNMENT CODE SECTION 399.009

FOR PROPOSED MUNICIPAL

PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM

This Report is adopted by the City Council for the City of Abilene Property Assessed Clean Energy (PACE) Program (**the “Program”**) in accordance with the requirements of the Property Assessed Clean Energy Act (**the “PACE Act”**) as set forth in Texas Local Government Code Chapter 399.

The City and its constituents benefit when older existing buildings are modified with new technology and equipment that increases energy efficiency and reduces water consumption. As described in this Report, the City is establishing the commercial PACE Program to encourage private sector investment in energy efficiency and water conservation. The PACE Program will be offered to property owners on a strictly voluntary basis and will not require the use of any public funds or resources.

Authorized under the PACE Act enacted in 2013, the PACE program is an innovative financing program that enables private sector owners of privately owned commercial, industrial, and multi-family residential properties with five or more dwelling units to obtain low-cost, long-term loans to pay for water conservation, energy-efficiency improvements, and renewable energy retrofits. PACE loans provide up to 100% financing of all project costs, with little or no up-front out-of-pocket cost to the owner. The City has chosen to follow the administrative principles, program processes, and model documents of the uniform Texas PACE in a Box model program.¹

Loans made under the PACE Program will be secured by assessments on the property that are voluntarily imposed by the owner. Assessments may be amortized over the projected life of the improvements. The utility cost savings derived from improvements financed with PACE loans are expected to equal or exceed the amount of the assessment. In turn, these improvements are able to generate positive cash flow upon installation because the debt service will be less than the savings.

PACE assessments are tied to the property and follow title from one owner to the next. Each owner is responsible only for payment of the assessments accruing during its period of ownership. When the property is sold, the payment obligation for the remaining balance of the assessment is transferred automatically to the next owner. As a result, the program will help property owners overcome market barriers that often discourage investment in energy efficiency and water conservation improvements.

1. Eligible Properties

¹ <https://www.keepingpaceintexas.org/pace-in-a-box>

The City PACE program is a strictly voluntary program. All private sector owners of Eligible Properties located within the City PACE region may participate in PACE financing. ***“Eligible Properties”*** include commercial, industrial, and multi-family residential properties with five or more dwelling units. Government, residential², and undeveloped property and property undergoing development at the time of the assessment are not Eligible Properties.

2. Qualified Improvements

PACE financing may be used to pay for Qualified Improvements to Eligible Properties. ***“Qualified Improvements”*** are permanent improvements intended to decrease water or energy consumption or demand, including a product, device, or interacting group of products or devices on the customer’s side of the meter that use energy technology to generate electricity, provide thermal energy, or regulate temperature. Under the PACE Act, products or devices that are not permanently fixed to real property are not considered to be Qualified Improvements.

The following items may constitute Qualified Improvements:

- High efficiency heating, ventilating and air conditioning (“HVAC”) systems
- High efficiency chillers, boilers, and furnaces
- High efficiency water heating systems
- Energy management systems and controls
- Distributed generation systems
- High efficiency lighting system upgrades
- Building enclosure and envelope improvements
- Water conservation and wastewater recovery and reuse systems
- Combustion and burner upgrades
- Heat recovery and steam traps
- Water management systems and controls (indoor and outdoor)
- High efficiency irrigation equipment

3. Benefits of PACE to Property Owners

The PACE program will enable owners of Eligible Properties to overcome traditional barriers to capital investments in energy efficiency and water conservation improvements, such as unattractive returns on investment, split incentives between landlords and tenants, and uncertainty of recouping the investment upon sale of the property.

By financing Qualified Improvements through the program, property owners may achieve utility cost savings that exceed the amount of the assessment and reduce their exposure to utility price volatility. As a result, the value of the property will be enhanced, and the owner will only be obligated to pay the assessment installments that accrue during its period of ownership of the property. Additionally, by investing in energy efficiency and water conservation with PACE financing, property owners may also qualify for various rebate, tax credit, and incentive

² This encompasses single family residential and any multi-family properties with fewer than five units.

programs offered by utility providers and state or federal governmental authorities to encourage these types of investments.

4. Benefits of PACE to the City

Among other things, projects financed through PACE will:

- Enable property owners and occupants to save substantial amounts in utility costs,
- Reduce demand on the electricity grid
- Mitigate greenhouse gas emissions associated with energy generation
- Enhance the value and efficiency of existing buildings
- Boost the local economy by creating new job opportunities and new business opportunities for contractors, engineers, commercial lenders, professionals, and equipment vendors and manufactures
- Increase business retention and expansion in the PACE region by enabling cost effective energy and water saving updates to existing property
- Improve productivity through optimized energy usage
- Support the State's water conservation plan
- Better enable the City to meet its water conservation goals

Finally, through the reduction in energy consumption as a result of the PACE program, there will be a decreased demand for power resulting in lower emissions from power plants. EPA regulations have significant impacts on air quality standards in Texas. For example, the most recent adjustment in the NAAQS to a lower standard increased the difficulty for the City to maintain its attainment status]. Being non-attainment for priority pollutants in the Clean Air Act endangers federal transportation funding.

The PACE program requires minimal support from the City. It is designed to be self-sustaining. Furthermore, because the PACE program is tax neutral, it achieves all of the benefits listed in this Report without imposing a burden on the City's general fund.

The 84th Texas Legislature added a provision that explicitly shields the City and its employees, members of the governing body of a local government, employees of a local government, and board members, executives, employees, and contractors of a third party who enter into a contract with a local government to provide administrative services for a program under this chapter.³

5. The Benefits of PACE to Lenders

PACE loans are attractive to lenders because they are very secure investments. Like a property tax lien, the assessment lien securing the PACE loan has priority over other liens on the property. Therefore, the risk of loss from non-payment of a PACE loan is low compared to most other types of loans. PACE assessments provide lenders with an attractive new product to assist existing and new customers in addressing an almost universal pent-up demand for needed commercial and industrial property equipment modernization. In order to protect the interests of

³ TX. Local Gov't Code §399.019. In the 85th legislature, HB 2654 clarified that the personal immunity provisions apply to all elected officials performing rights and duties under chapter 399 of the Local Government Code.

holders of existing mortgage loans on the property, the PACE Act requires their written consent to the PACE assessment as a condition to obtaining a PACE loan.

6. The Benefits of PACE to Contractors, Engineers, and Manufacturers

PACE loans provide attractive sources of financing for water and energy saving retrofits and upgrades, thereby encouraging property owners to make substantial investments in existing commercial and industrial buildings. As a result, PACE will unlock business opportunities for contractors, engineers, and manufacturers throughout the commercial and industrial sectors.

7. Administration of the City of Abilene PACE Program

Under the PACE Act, the establishment and operation of the program are considered to be governmental functions.⁴ The PACE Act further authorizes the City to enter into a contract with a third party to provide administrative services for the PACE program (the “*Authorized Representative*”). The City of Abilene will delegate administration of the PACE program to Texas PACE Authority, a qualified, non-profit organization that can administer the program at no cost to the City.

The Authorized Representative’s role is to serve as an extension of the local government staff to provide oversight of the program to ensure best practices and consumer protections at the lowest possible cost to the property owner in a transparent and ethical manner and to provide education and outreach.

The Authorized Representative will be funded by administrative fees paid by the property owners establishing a PACE project, charitable grants or other authorized sources of revenue. The Authorized Representative will not receive compensation or reimbursement from the City.

8. Eligible Lenders

The PACE Act does not set criteria for financial institutions or investors to be PACE lenders. The City will follow best practices of other PACE programs and the Texas PACE in a Box model program by recommending that lenders be:

- Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;
- Any insurance company authorized to conduct business in one or more states;
- Any registered investment company, registered business development company, or a Small Business
- Small business investment company;
- Any publicly traded entity; or
- Any private entity that:
 - Has a minimum net worth of \$5 million; and
 - Has at least three years’ experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has

⁴

TX Local Government Code §399.003(b)

- at least three years' experience in business or industrial lending or commercial real estate lending; and
 - Can provide independent certification as to availability of funds; and
- All lenders must have the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

Any lender can participate in the PACE program as long as it is a financially stable entity with the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts. The property owner, not the City or the Authorized Representative, selects the lender.

The Authorized Representative will not guarantee or imply that funding will automatically be provided from a third-party lender, imply or create any endorsement of, or responsibility for, any lender; or create any type of express or implied favoritism for any eligible lender.

9. Components of the PACE Program

As required under Section 399.009 of the PACE Act, the following describes all aspects of the PACE Program:

- a. Map of Region. A map of the boundaries of the region included in the program is attached to this Report as Exhibit 1. The region encompasses the City limits and its extra-territorial jurisdiction.
- b. Form Contract with Owner. A form contract between the City and the record owner of the Eligible Property is attached as Exhibit 2. It specifies the terms of the assessment under the PACE program and the financing to be provided by an Eligible Lender of the property owner's choosing.
- c. Form Contract with Lender. A form contract between City of Abilene and the Eligible Lender chosen by a property owner is attached to this Report as Exhibit 3. It specifies the financing and servicing of the debt through assessments.

Form Notice of Contractual Assessment Lien. A form Notice of Assessment Lien to be filed by the City with the County Clerk is attached to this Report as Exhibit 4.

- d. Qualified Improvement. The following types of projects are qualified improvements that may be subject to contractual assessments under the PACE program:

Projects that (a) involve the installation or modification of a permanent improvement fixed to privately owned commercial, industrial or residential real property with five (5) or more

dwelling units;⁵ and (b) are intended to decrease energy or water consumption or demand by installing a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.⁶

A sample list of potential Qualified Improvements appears in Section 2 above.

The PACE program may not be used to finance improvements to undeveloped lots or lots undergoing development at the time of the assessment, or for the purchase or installation of products or devices not permanently fixed to real property.⁷

- e. Authorized Representative. HB 3187 was signed into law on June 16, 2015. It authorizes the City to delegate administration of the PACE program to a third-party "Authorized Representative." The City may delegate all official administrative responsibilities, such as the execution of individual contracts with property owners and lenders, to an Authorized Representative. This relationship will be monitored and maintained by the City Manager or his/her designee or department.
- f. Project Review. Track and provide a public overview with savings metrics for all PACE projects
- g. Plans for Insuring Sufficient Capital. Lenders will extend loans to finance Qualified Improvements. Financing documents executed between owners and lenders will impose a contractual assessment on Eligible Property to repay the owner's financing of the Qualified Improvements. The lenders will ensure that property owners demonstrate the financial ability to fulfill the financial obligations to be repaid through contractual assessments.
- h. No Use of Bonds or Public Funds. The City of Abilene does not intend to issue bonds or use any other public monies to fund PACE projects. Property owners will obtain all financing from the Eligible Lenders they choose.
- i. Limit on Length of Loan. One of the statutory criteria of a PACE loan is that the assessment payment period cannot exceed the useful life of the Qualified Improvement that is the basis for the loan and assessment. As part of the application process, the property owners will submit an independent third-party review prepared by a licensed engineer showing the water or energy baseline conditions and the projected water or energy savings. This review will aid the

⁵ TX. Local Gov't Code §399.002(5).

⁶ TX. Local Gov't Code §399.002(3).

⁷ TX. Local Gov't Code §399.004.

⁸ The Texas PACE Authority's website (www.texaspaceauthority.org) offers a non-exhaustive list of interested and qualified lenders to assist property owners in funding PACE projects in Texas.

Authorized Representative in making a determination that the period of the requested assessment does not exceed the useful life of the Qualified Improvement.

- j. Application Process. The Authorized Representative will accept applications from property owners seeking to finance Qualified Improvements under the program. Each application must be accompanied by the required application fee and must include:
- (1) A description of the specific Qualified Improvements to be installed or modified on the property,
 - (2) A description of the specific real property to which the Qualified Improvements will be permanently fixed, and
 - (3) The total amount of financing, including any transaction costs, to be repaid through assessments.

Based on this information, the Authorized Representative may issue a preliminary letter indicating that, subject to verification of all requirements at closing, the proposed project appears to meet program requirements. Based on this preliminary letter, the property owner may initiate an independent third-party review of the project and submit the project to Eligible Lenders for approval of financing.

Once the above processes are completed, the property owner will submit the application to the Authorized Representative to obtain preliminary approval. The property owner is expected to produce the following documentation prior to closing on the PACE loan:

- (1) A Report conducted by a qualified, independent third-party reviewer, showing water or energy baseline conditions and the projected water or energy savings, or the amount of renewable energy generated attributable to the project;
 - (2) Such financial information about the owner and the property as the lender chosen by the owner deems necessary to determine that the owner has demonstrated the financial ability to fulfill the financial obligations to be paid through assessments; and
 - (3) All other information required by the Authorized Representative.
- k. Financial Eligibility Requirements. The Authorized Representative will determine whether the owner, the property and the improvements are eligible for financing under the program. The Eligible Lender chosen by the owner will determine whether the owner has demonstrated the financial ability to repay the financial obligations to be collected through contractual assessments. The statutory method⁹ for ensuring such a demonstration of financial ability must be based on appropriate underwriting factors, including the following:
- (1) verification that the person requesting to participate in the program is the legal record owner of the benefitted property,

⁹ TX. Local Gov't Code §399.009(b).

(2) the applicant is current on mortgage and property tax payments,
(3) the applicant is not insolvent or in bankruptcy proceedings,
(4) the title of the benefitted property is not in dispute; and
(5) there is an appropriate ratio of the amount of the assessment to the assessed value of the property. The City determines that a 20% loan to assessed value of the property is appropriate and acknowledges that in some circumstances a variance of this ratio may be appropriate. The Authorized Representative will consider factors in a variance request, including:

- (a) What is the existing debt to assessed value of the property prior to closing the PACE loan?
- (b). What is the estimated fair market value of the property? How was the value determined (e.g., market appraisal, desktop appraisal, insurance valuation, etc.)?
- (c). What is the estimated post-renovation fair market value of the property (including an explanation on how this value was determined)?

The City determines to be eligible for PACE financing, the projected savings derived from the Qualified Improvement must be greater than the cost of the PACE assessment and lien over the life of the assessment (i.e., the Savings to Investment Ratio (SIR) should be greater than one, $SIR > 1$). A third-party lender and a for profit-property owner may request a waiver in writing for a project with an $SIR < 1$ and address the interests of tenants and future property owners. The Authorized Representative may consider factors in a variance request including:

- (a). Are there other environmental benefits such as air or water quality or resiliency that are not captured in the SIR analysis;
- (b) Will the proposed qualifying improvements generate environmental marketable credits that can be monetized?
- (c). What is the SIR calculation for the project (how far below 1)?;
- (d). If the SIR is < 1 over the term of the assessment, is the $SIR > 1$ over the useful life of the equipment?
- (e). What is the impact of a variance request on affected third parties? and
- (f) Other information the owner and lender wish to submit regarding the impact of the qualified improvements on the company and the community.

1. Mortgage Holder Notice and Consent. As a condition to the execution of a written contract between the Authorized Representative and the property owner imposing an assessment under the program, the holder of any mortgage lien on the property must be given notice of the owner's intention to participate in the program on or before the 30th day before the date the contract is executed, and the owner must obtain the written consent of all mortgage holders.¹⁰

¹⁰

TX. Local Gov't Code §399.010.

- m. Imposition of Assessment. The Authorized Representative will enter into a written contract with the property owner, only after:
- (1) The property owner delivers to the Authorized Representative written consent of all mortgage lien holders;
 - (2) The Authorized Representative's determination that the owner and the property are eligible to participate in the program, that the proposed improvements are reasonably likely to decrease energy or water consumption or demand, and that the period of the requested assessment does not exceed the useful life of the Qualified Improvements; and
 - (3) The Eligible Lender notifies the Authorized Representative that the owner has demonstrated the financial ability to fulfill the financial obligations to be repaid through contractual assessments.

The contract will impose a contractual assessment on the owner's Eligible Property to repay the lender's financing of the Qualified Improvements. The Eligible Lender will file "A Notice of Contractual Assessment Lien," in substantially the form in Exhibit 4 in the Official Public Records of Callahan, Jones, Shackelford or Taylor County, depending on where the Eligible Property is located, as notice to the public of the assessment, from the date of filing. The contract and the notice must contain the amount of the assessment, the legal description of the property, the name of the property owner, and a reference to the statutory assessment lien provided under the PACE Act.

- n. Collection of Assessments. The execution of the written contract between the Authorized Representative and the property owner and recording of the Notice of Contractual Assessment Lien incorporate the terms of the financing documents executed between the property owner and with the lender to repay the financing secured by the assessment. The third-party lender will advance financing to the owner, and the terms for repayment will be such terms as are agreed between the lender and the owner. Under the form lender contract attached as Exhibit 3, the lender or a designated servicer will agree to service the debt secured by the assessment.¹¹

With funds from the lender, the property owner can purchase directly the equipment and materials for the Qualified Improvement and contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of the Qualified Improvements. Alternatively, the lender may make progress payments to the property owner as the Qualified Improvement is installed.

The lender will receive the owner's assessment payments to repay the debt and remit to the Authorized Representative any administrative fees. The lender will

¹¹ The servicer will be responsible for maintaining payment records, account balances, and reporting to the Authorized Representative as required.

have the right to assign or transfer the right to receive the installments of the debt secured by the assessment, provided all of the following conditions are met:

- (1) The assignment or transfer is made to an Eligible Lender, as defined above;
 - (2) The property owner and the Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed at least 30 days before the next installment is due according to the schedule for repayment of the debt; and
 - (3) The assignee or transferee, by operation of the financing documents or otherwise, written evidence of which shall be provided, assumes lender's obligations under the lender contract.
- o. Verification Review. After a Qualified Improvement is completed, the Authorized Representative will require the property owner to provide verification by a qualified independent third-party reviewer that the Qualified Improvement was properly completed and is operating as intended.¹² The verification report conclusively establishes that the improvement is a Qualified Improvement and the project is qualified under the PACE program.¹³
- p. Marketing and Education Services. The Program Administrator will provide service provider training workshops for contractors, engineers, property managers and other stakeholders, provide outreach and education for all stakeholders including presentations, conference booths and individual meetings, and provide written and electronic materials such as case studies, flyers, and webinars.
- q. The City may subsequently enter into agreements with one or more other local governments or non-profit organizations that promote energy and water conservation and/or economic development to provide marketing and education services for the PACE program.
- r. Quality Assurance and Antifraud Measures. The Authorized Representative will institute quality assurance and antifraud measures for the Program. The Authorized Representative will review each PACE application for completeness and supporting documents through independent review and verification procedures. The application and required attachments will identify and supply the information necessary to ensure that the property owner, the property itself, and the proposed project all satisfy PACE program underwriting and technical standard requirements. Measures will be put in place to provide safeguards, including a review of the energy and water savings baseline and certification of compliance with the technical standards manual from an independent third-party reviewer (ITPR), who must be a registered professional engineer, before the project can proceed. This review will include a site visit, report, and a letter

12 TX Local Gov't Code §399.011.

13 TX Local Government Code §399.011(a-1)

from the ITPR certifying that he or she has no financial interest in the project and is an independent reviewer. After the construction of the project is complete, an ITPR will conduct a final site inspection and determine whether the project was completed and is operating properly. The reviewer's certification will also include a statement that the reviewer is qualified and has no financial interest in the project.

- s. **Delinquency.** Under the terms of the form lender contract attached as Exhibit 3, if a property owner fails to pay an agreed installment when due on the PACE assessment, the lender will agree to take at least the following steps to collect the delinquent installment:
- (1) Mail to the owner a written notice of delinquency and demand for payment by both certified mail (return receipt requested) and first-class mail, and
 - (2) Mail to the owner a second notice of delinquency and demand for payment by both certified mail (return receipt requested) and first-class mail, at least 30 days after the date of the first notice if the delinquency is continuing.

If the owner fails to cure the delinquency within 30 days after mailing the second notice of delinquency, the lender may notify the Authorized Representative of the owner's default. Pursuant to Texas Local Government Code Section 399.014(c), the Authorized Representative will initiate steps for the City to enforce the assessment lien in the same manner as a property tax lien against real property may be enforced, to the extent the enforcement is consistent with Section 50, Article XVI, of the Texas Constitution. Delinquent installments will incur penalties and interest in the same manner and at the same rate as delinquent property taxes, according to Texas Local Government Code Section 399.014(d), and such statutory penalties and interest will be due to the City to offset the cost of collection.

If the City files suit to enforce collection, the City may also recover costs and expenses, including attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner and at the same rate as in a suit to collect a delinquent property tax. If a delinquent installment of an assessment is collected after the filing of a suit, the City will remit to the lender the net amount of the delinquent installments and contractual interest collected and remit to the Authorized Representative the amount of any administrative fees collected but will retain any statutory penalties, interest, and attorney's fees collected.

EXHIBIT 1

MAP OF CITY OF ABILENE PACE REGION

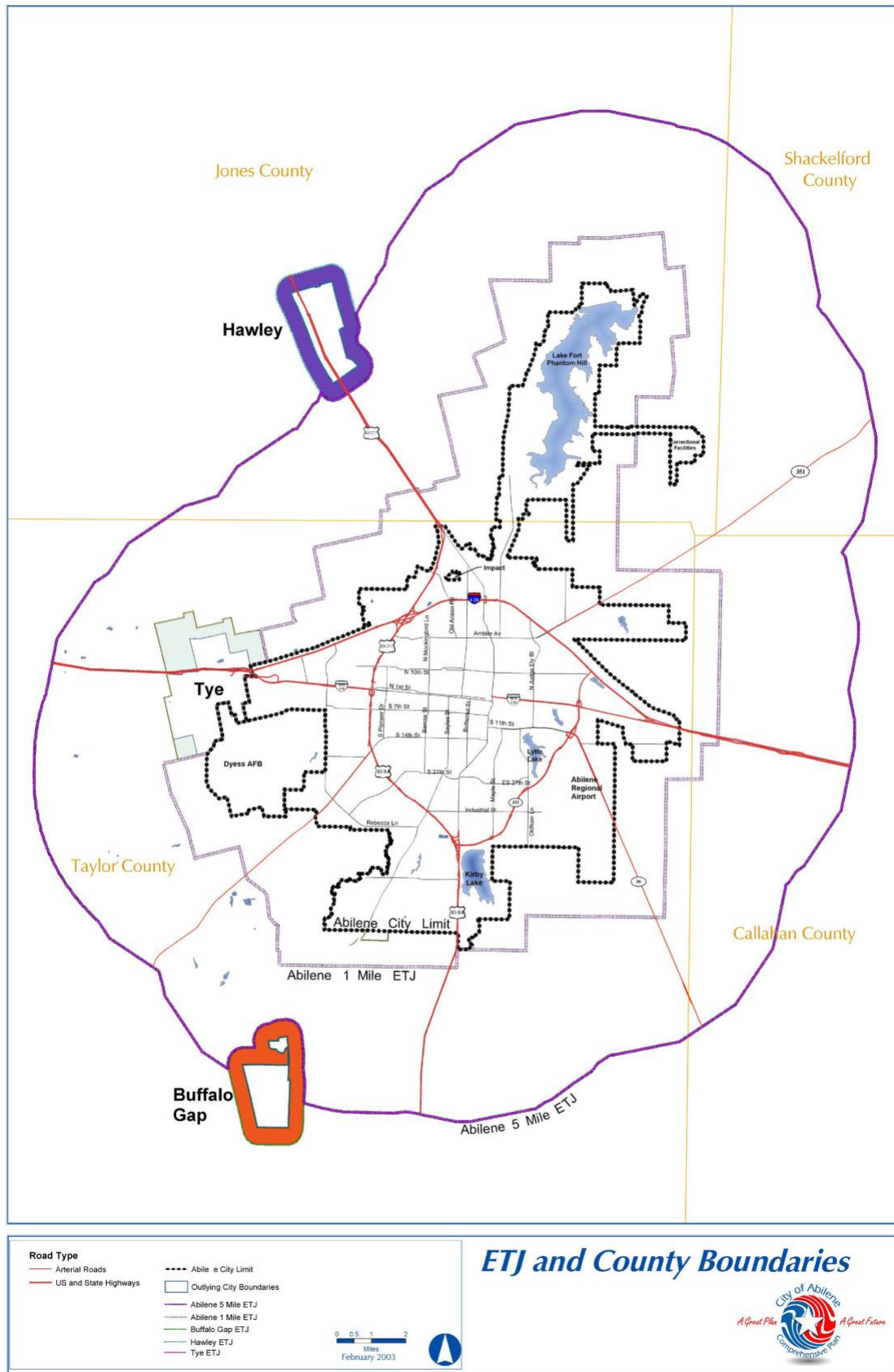


EXHIBIT 2
FORM OWNER CONTRACT

FORM PACE OWNER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“**PACE**”) OWNER CONTRACT including the attached exhibits (“**Owner Contract**”) is made as of the _____ day of _____, _____ (“**Effective Date**”), by and between the City of Abilene, Texas (“**Local Government**”), and _____ (“**Property Owner**”).

RECITALS

A. The Property Assessed Clean Energy Act (“**PACE Act**”), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

B. Local Government has established a program under the PACE Act pursuant to a resolution dated _____, adopted by the City Council (“**PACE Program**”), and has designated Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority as the representative of Local Government (“**Authorized Representative**”) authorized to enter into the written contracts with the owners of such property and the providers of such financing described herein, and has designated the entire territory within the City of Abilene, Texas jurisdiction as a region (**the “Region”**) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owners’ property pursuant to the PACE Program.

C. Property Owner is/are the sole legal and record owner of the qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region located at _____, Abilene, Texas _____ - _____ (the “**Property**”).

D. Pursuant to Application number _____, Property Owner has applied to Local Government to participate in the PACE Program by installing or modifying on the Property certain permanent improvements which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (“**Qualified Improvements**”). The installation or modification of such Qualified Improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”). Property Owner has requested that Local Government enter into this Owner Contract pursuant to the PACE Act and the PACE Program and has requested Local Government to impose an assessment (the “**Assessment**”) on the Property as set forth in the Notice Of Contractual Assessment Lien Pursuant To Property Assessed Clean Energy Act to be filed in the real property records of _____, County, Texas (the “**Notice of Contractual Assessment Lien**”), to repay the financing of such Qualified Improvements. A copy of the Notice

of Contractual Assessment Lien is attached hereto as Exhibit A and made a part hereof. The Property, Qualified Improvements and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing for the Project (“**Financing**”) will be provided to Property Owner by [REDACTED] (“**Lender**”), a qualified lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government as required by Section 399.006(c) of the PACE Act (the “**Lender Contract**”). The financing will include only those costs and fees for which an assessment may be imposed under Section 399.006(e) of the PACE Act. Local Government has agreed to maintain and continue the Assessment for the benefit of Lender until the Financing, all contractual interest due to Lender (“**Contractual Interest**”), any prepayment penalty, and any penalties, interest, fees, and costs due under or authorized by the PACE Act are paid in full and to release the Assessment upon notice from Lender of such payment, or to foreclose the lien securing the Assessment for the benefit of Lender upon notice from Lender of a default in payment by Property Owner.

F. As required by Section 399.010 of the PACE Act, Property Owner has notified the holder(s) of any mortgage liens on the Property at least thirty (30) days prior to the date of this Owner Contract of Property Owner’s intention to participate in the PACE Program. The written consent of each mortgage holder to the Assessment was obtained on or prior to the date of this Owner Contract and is attached hereto as Exhibit B and made a part hereof.

AGREEMENT

The parties agree as follows:

1. Imposition of Assessment. In consideration for the Financing advanced or to be advanced to Property Owner by Lender for the Project under the PACE Program pursuant to the Lender Contract, Property Owner hereby requests and agrees to the imposition by Local Government of the Assessment in the principal amount of \$ [REDACTED], as set forth in the Notice of Contractual Assessment Lien. In the event the actual total of costs and fees for which an assessment may be imposed under the PACE Act is different from the stated amount or any other term requires correction, Local Government, Property Owner, and Lender agree to execute an amended Owner Contract and Lender Contract, and Authorized Representative will record an amended Notice of Contractual Assessment Lien. The Assessment includes the application and administration fees authorized by the PACE Program and Section 399.006(e) of the PACE Act. Property Owner promises and agrees to pay the Assessment, Contractual Interest thereon, any prepayment penalty, and all penalties, interest, fees, and costs due under or authorized by the PACE Act and the financing documents executed between Property Owner and Lender (the “**Financing Documents**”) described in or copies of which are attached as Exhibit C attached hereto and made a part hereof by reference. Property Owner will pay such amount in care of or as directed by Lender, in satisfaction of the Assessment imposed pursuant to this Owner Contract and the PACE Act. Accordingly, Local Government hereby imposes the Assessment on the Property to repay the Financing of the Project, Contractual Interest, any prepayment penalty, and any penalties, interest, fees and costs due under or authorized by the PACE Act and the Financing Documents, in accordance with the requirements of the PACE Program and the provisions of the PACE Act.

2. Maintenance and Enforcement of Assessment. In consideration for Lender's agreement to advance Financing to Property Owner for the Project pursuant to the Financing Documents, Local Government agrees to maintain and continue the Assessment on the Property for the benefit of Lender until the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees, and costs, due under or authorized by the PACE Act and the Financing Documents are paid in full, and to release the Assessment upon notice from Lender of such payment. Local Government agrees to enforce the assessment lien against the Property at the request of Lender in the event of a default in payment by Property Owner, in accordance with the provisions set forth in paragraph 5. Authorized Representative will deliver an annual notice of assessment to Property Owner by electronic mail each year until the Assessment is released. If requested by Property Owner by marking the box below, Local Government agrees to also deliver an annual notice of assessment to Property Owner by first-class mail in the envelope with the tax bill of the Property each year until the Assessment is released.

☐ Property Owner requests an annual notice of assessment from Local Government.

Any failure of Local Government or Authorized Representative to deliver an annual notice of assessment to Property Owner will not affect the Assessment or Property's Owner's obligations under this Owner Contract.

3. Installments. The Assessment and Contractual Interest thereon are due and payable to Lender in installments ("**Installments**"), according to the payment schedule set forth in the Financing Documents attached hereto as Exhibit C. The Assessment includes (1) an application fee paid by Property Owner to Authorized Representative at closing of the Financing, and (2) a recurring administration fee paid by Property Owner to Authorized Representative until the Assessment is released. The recurring administration fee amount will be collected by Lender and paid to Authorized Representative within thirty (30) days of receipt by Lender, unless otherwise agreed to in writing by Authorized Representative. Notwithstanding the foregoing, in the event of a delinquency in the payment of any Installment, Lender will, upon notice to Authorized Representative, withhold payment of any administration fee due to Authorized Representative in connection with such Installment until the Installment is paid. Any such temporary withholding will not reduce the amount of the administration fees included in the Assessment. The amounts due to Authorized Representative are identified in Exhibit C hereto. When the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees and costs due under or authorized by the PACE Act and the Financing Documents, have been paid in full, Local Government's rights under this Owner Contract will cease and terminate. Upon notice from Lender that all amounts due have been paid in full, Authorized Representative will execute a release of the Assessment and this Owner Contract and record the release. As required by Section 399.009(a) (8) of the PACE Act, the period during which such Installments are payable does not exceed the useful life of the Project.

4. Assignment of Right to Receive Installments or Require Enforcement of Lien. Lender will have the right, with or without the consent of Property Owner, to assign or transfer the right to receive the Installments or require Local Government to enforce the assessment lien in the event of a default in payment, together with all corresponding obligations, provided that all of the following conditions are met:

(a) The assignment or transfer is made to a qualified lender as defined in the Lender Contract;

(b) Property Owner and Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future Installments should be mailed at least 30 days before the next Installment is due according to the payment schedule included in the Financing Documents, and

(c) The assignee or transferee executes a written assumption agreement according to the Financing Documents of all of Lender's rights and obligations under the Lender Contract related to the receipt of the Installments or the enforcement of the assessment lien and provides a copy of such assumption to Property Owner and Authorized Representative within 10 days after execution of the agreement.

Lender may assign or transfer the right to receive the Installments or the right to require enforcement of the assessment lien separately. Upon written notice to Property Owner and Authorized Representative of an assignment or transfer that meets all of these conditions, the assignor will be released of all of the rights and obligations of the Lender under such Lender Contract accruing after the date of the assignment that are specified in the assignment or transfer document, and all of such rights and obligations will be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the Installments or require enforcement of the assessment lien that does not meet all of these conditions is void. Lender will retain all of the rights and obligations of Lender under the Lender Contract until such rights and obligations are assigned or transferred according to this paragraph.

5. Lien Priority and Enforcement. Pursuant to Section 399.014 of the PACE Act:

(a) Delinquent Installments will incur penalties and interest on the principal of the Installment in the same manner and in the same amount as delinquent property taxes, that is, a delinquent Installment incurs a penalty of 6% of the principal amount of the Installment for the first calendar month it is delinquent plus 1% for each additional month or portion of a month the Installment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an Installment delinquent on July 1 incurs a total penalty of 12% of the principal amount of the delinquent Installment without regard to the number of months it has been delinquent. A delinquent Installment will also accrue interest on the principal of the Installment at the rate of 1% for each month or portion of a month that the Installment remains unpaid. Subject to paragraph 16 below, penalties, interest, fees, and costs payable under this paragraph will be retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees that become due pursuant to the Financing Documents, may be imposed and retained by Lender.

(b) The Assessment and any interest or penalties thereon,

(1) are a first and prior lien against the Property from the date on

which the Notice of Contractual Assessment Lien is recorded in the real property records of [REDACTED] County, Texas as provided by Section 399.013 of the PACE Act, until the Assessment, interest, or penalty is paid; and

(2) such lien has the same priority status as a lien for any other ad valorem tax.

(c) The lien created by the Assessment runs with the land, and according to Section 399.014(b) of the PACE Act, any portion of the Assessment that has not yet become due will not be eliminated by foreclosure of (i) a property tax lien, or (ii) the lien for a delinquent installment of the Assessment. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will be transferred to the succeeding owner without recourse to Lender, Local Government, or Authorized Representative.

(d) In the event of a default by Property Owner in payment of an Installment called for by the Financing Documents or the filing of a case under the U.S. Bankruptcy Code by or against Property Owner, the lien created by the Assessment will be enforced by Local Government for the benefit of Lender, in the same manner according to Texas Tax Code Secs. 33.41 to 34.23 that a property tax lien against real property may be enforced by a local government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(e) In a suit to collect a delinquent Installment of the Assessment, Local Government will be entitled to recover costs and expenses, including attorney's fees in the amount of 15% of the total principal amount of the delinquent Installment, penalties, and interest due, in the same manner according to Texas Tax Code Sec. 33.48 as in a suit to collect a delinquent property tax. Lender will be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent Installment of the Assessment.

(f) As provided in Section 399.014 (a-1) of the PACE Act, after the Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located, the lien created by the Assessment may not be contested on the basis that the improvement is not a "qualified improvement" or the project is not a "qualified project", as such terms are defined in Section 399.002 of the PACE Act.

6. Written Contract Required by PACE Act. This Owner Contract constitutes a written contract for the Assessment between Property Owner and Local Government as required by Section 399.005 of the PACE Act. The Notice of Contractual Assessment Lien will be recorded in the real property records of [REDACTED] County, Texas as public notice of the contractual Assessment, in accordance with the requirements of Section 399.013 of the PACE Act.

7. Qualified Improvements. Property Owner agrees that all improvements purchased, constructed, or installed through the Financing obtained pursuant to this Owner Contract will be permanently affixed to the Property and will transfer with the Property to the transferee in the event of a sale or transfer of the Property. Property Owner agrees to provide to Authorized

Representative within 30 days after the completion of the Project a verification by an independent third party reviewer (“ITPR”) that the project was properly completed and is operating as intended. Property Owner agrees that Lender may retain the final advance of Financing until such verification is submitted or require Property Owner to pay liquidated damages for a failure to do so, according to paragraph 19 below.

8. Water or Energy Savings. For so long as the Assessment encumbers the Property, Property Owner agrees, on or before January 31st of each year, to report to Authorized Representative the water or energy savings realized through the Project in accordance with the reporting requirements established by Authorized Representative.

9. Construction and Definitions. This Owner Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein and not otherwise defined herein have the meanings ascribed to them in the PACE Program and/or the PACE Act.

10. Binding Effect. This Owner Contract is binding upon and inures to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

11. Notices. Unless otherwise specifically provided herein, all notices and other communications required or permitted by this Owner Contract shall be in writing and delivered by first-class mail or by electronic mail, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

12. Governing Law. This Owner Contract shall in all respects be governed by and construed in accordance with the laws of the State of Texas.

13. Entire Agreement. This Owner Contract constitutes the entire agreement between Local Government and Property Owner with respect to the subject matter hereof and may not be amended or altered in any manner except by a document in writing executed by both parties.

14. Captions. Paragraph and section titles are for convenience of reference only and shall not be of any legal effect.

15. Counterparts. This Owner Contract may be executed in any number of counterparts, and each counterpart may be delivered on paper or by electronic transmission, all of which when taken together will constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

16. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Local Government and Contractual Interest payable to Lender under the Financing Documents, exceed the maximum amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law (the “**usury limit**”). If the total amount of interest payable to Local Government and Contractual Interest payable to Lender exceeds the usury limit, the interest payable to Local Government will be reduced and any interest in excess of the usury limit will be credited to the

amount payable to Local Government or refunded. This provision overrides any conflicting provisions in this Owner Contract.

17. Costs. No provision of this Owner Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

18. Further Assurances. Property Owner further covenants and agrees to do, execute and deliver, or cause to be done, executed, and delivered all such further acts for implementing the intention of this Owner Contract as may be reasonably necessary or required.

19. Construction Terms. The Financing Documents executed by Lender and Property Owner must include a requirement that Lender will withhold [REDACTED] % of the Financing until verification that the Project was properly completed and is operating as intended is provided to Authorized Representative by an Independent Third Party Reviewer ("ITPR), or Property Owner will pay liquidated damages to Lender of \$ [REDACTED] per day for every day after 30 days following completion of the Project that such verification of completion is not provided. If verification of completion is not provided by Property Owner within 30 days after completion of the Project, such verification shall be submitted by Lender. If the Lender Contract includes requirements related to the construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit D attached hereto and incorporated herein by reference. Such requirements may include, among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final project completion.

PROPERTY OWNER:

By:_____

Name: _____

Title: _____

Address: _____

Email address: _____

ACKNOWLEDGEMENT

STATE OF _____ §

COUNTY OF _____ §

This PACE Owner Contract pursuant to Property Assessed Clean Energy Act was
was acknowledged before me on _____, _____ by
_____, _____, on behalf of
_____.

_____(print name)

NOTARY PUBLIC, STATE OF _____

LOCAL GOVERNMENT:

CITY OF ABILENE, TEXAS

By: TEXAS PROPERTY ASSESSED CLEAN ENERGY AUTHORITY
AUTHORIZED REPRESENTATIVE

Pursuant to Tex. Local Gov't Code §399.006(b)

By: _____

Name: CHARLENE HEYDINGER

Title: PRESIDENT, TEXAS PACE AUTHORITY

Address: PO BOX 200368
AUSTIN, TX 78720-0368

Email Address: charlene@texaspaceauthority.org

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF _____ §

This PACE Owner Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on _____, 20____ by Charlene Heydinger, President, Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, a Texas nonprofit corporation, on behalf of said corporation and as Authorized Representative for the Local Government.

_____(print name)

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT A

NOTICE OF CONTRACTUAL ASSESSMENT LIEN
PURSUANT TO
PROPERTY ASSESSED CLEAN ENERGY ACT

EXHIBIT B
MORTGAGE HOLDER(S) CONSENT

EXHIBIT C
FINANCING DOCUMENTS

Assessment Payment Schedule

Assessment Total:
Payment Frequency:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

Financing Documents

Document Title	Parties	Date Executed

EXHIBIT D

CONSTRUCTION TERMS

Retainage or Liquidated Damages:

Lender will retain _____% of the Financing until a report of completion by a qualified Independent Third Party Reviewer (“ITPR”) is provided to Authorized Representative.

OR

Property Owner will pay liquidated damages to Lender of \$_____ per day for every day after 30 days following completion of the Project that such a report of completion is not provided. Lender will then provide the report of completion to Authorized Representative.

Additional Construction Terms

Date	Draw down Amount	Purpose

EXHIBIT 3
FORM LENDER CONTRACT

FORM PACE LENDER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“**PACE**”) LENDER CONTRACT including the attached exhibits (“**Lender Contract**”) is made as of the [REDACTED] day of [REDACTED], [REDACTED], (“**Effective Date**”) by and between the City of Abilene, Texas (“**Local Government**”) and [REDACTED] (“**Lender**”).

RECITALS

A. The Property Assessed Clean Energy Act (“**PACE Act**”), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

B. Local Government has established a program under the PACE Act pursuant to a Resolution dated [REDACTED], adopted by the City Council (“**PACE Program**”), and has designated Texas Property Assessed Clean Energy Authority as the representative of Local Government (“**Authorized Representative**”) authorized to enter into the written contracts with the owners of such property and the providers of such financing described herein, and has designated the entire territory within the City of Abilene, Texas jurisdiction as a region (the “**Region**”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

C. Pursuant to Application number [REDACTED], [REDACTED] (“**Property Owner**”), the sole legal and record owner of the following qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region has/have applied to Local Government to participate in the PACE Program with respect to certain real property located at [REDACTED], Abilene, Texas, [REDACTED] - [REDACTED] (the “**Property**”) by installing or modifying on the Property certain permanent improvements which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (“**Qualified Improvements**”). The installation or modification of such Qualified Improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”).

D. Property Owner and Local Government have entered into a written contract as required by Section 399.005 of the PACE Act, a copy of which is attached hereto as Exhibit A and made a part hereof (the “**Owner Contract**”), in which Property Owner has requested that Local Government impose an assessment (the “**Assessment**”) on the Property as set forth in the Notice

Of Contractual Assessment Lien Pursuant To Property Assessed Clean Energy Act to be filed in the real property records of [REDACTED] County, Texas (the “**Notice of Contractual Assessment Lien**”), to repay the financing of such Qualified Improvements. A copy of the Notice of Contractual Assessment Lien is attached as Exhibit A to the Owner Contract and made a part hereof. The Property, Qualified Improvements, and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing for the Project (“**Financing**”) will be provided to Property Owner by Lender in accordance with financing documents which are described in or copies of which are attached as Exhibit B attached hereto and made a part hereof (the “**Financing Documents**”). Such Financing will include only those costs and fees for which an assessment may be imposed under Section 399.006 (e) of the PACE Act. This Lender Contract is entered into between Local Government and Lender as required by Section 399.006(c) of the PACE Act to provide for repayment of the Financing through the Assessment.

F. As required by Section 399.010 of the PACE Act, Property Owner has notified the holder(s) of any mortgage liens on the Property at least thirty (30) days prior to the date of the Owner Contract of Property Owner’s intention to participate in the PACE Program. The written consent of each mortgage lien holder to the Assessment was obtained on or prior to the date of the Owner Contract, as shown by the copy of such consent(s) attached as Exhibit B to the Owner Contract.

AGREEMENT

The parties agree as follows:

1. Maintenance and Enforcement of Assessment. Lender agrees to provide Financing for the Project in the total principal amount of \$ [REDACTED], according to the terms set out in the Financing Documents attached hereto as Exhibit B. In the event the actual total of costs and fees for which an assessment may be imposed under the PACE Act is different from the stated amount or any other term requires correction, Local Government, Property Owner, and Lender agree to execute an amended Owner Contract and Lender Contract, and Authorized Representative will record an amended Notice of Contractual Assessment Lien. In consideration for the Financing provided or to be provided by Lender for the Project, and subject to the terms and conditions of this Lender Contract, Local Government agrees to maintain and continue the Assessment for the benefit of Lender until the Assessment, all contractual interest due to Lender according to the Financing Documents (“**Contractual Interest**”), any prepayment penalty, and any penalties, interest, fees, or costs due under or authorized by the PACE Act and the Financing Documents are paid in full, and to release the Assessment upon notice from Lender of such payment. Local Government will not release, sell, assign or transfer the Assessment or the lien securing it without the prior written consent of Lender. Local Government agrees to enforce the assessment lien against the Property at the request of Lender in the event of a default in payment by Property Owner in accordance with the provisions set forth in paragraph 6. Local Government shall have no obligation to repurchase the Assessment and no liability to Lender should there be a default in the payment thereof or should there be any other loss or expense suffered by Lender or under any other circumstances.

2. Installments. The Assessment and Contractual Interest thereon are due and payable to Lender in installments (“**Installments**”) according to the payment schedule set forth in the Financing Documents attached hereto as Exhibit B. The Assessment includes (1) an application fee paid by Property Owner to Authorized Representative at closing of the Financing and (2) a recurring administration fee paid by Property Owner to Authorized Representative until the Assessment is released. The recurring administration fee amount will be collected by Lender and paid to Authorized Representative within thirty (30) days of receipt by Lender, unless otherwise agreed to in writing by Authorized Representative. Notwithstanding the foregoing, in the event of delinquency in the payment of any Installment, Lender will, upon notice to Authorized Representative, withhold payment of any amounts due to Authorized Representative in connection with such Installment until the Installment is paid. Any such temporary withholding will not reduce the amount of administration fees included in the Assessment. The amounts due to Authorized Representative are identified in Exhibit B hereto. As required by Section 399.009(a)(8) of the PACE Act, the period during which such Installments are payable does not exceed the useful life of the Project.

3. Assignment of Right to Receive Installments or Require Enforcement of Lien. Lender will have the right, with or without the consent of Property Owner, to assign or transfer the right to receive the Installments or require Local Government to enforce the assessment lien in the event of a default in payment, together with the corresponding obligations, provided that all of the following conditions are met:

(a) The assignment or transfer is made to a qualified lender, which may be one of the following:

(1) Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;

(2) Any insurance company authorized to conduct business in one or more states;

(3) Any registered investment company, registered business development company, or a Small Business Administration small business investment company;

(4) Any publicly traded entity; or

(5) Any private entity that:

(i) Has a minimum net worth of \$5 million;

(ii) Has at least three years’ experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years’ experience in business or industrial lending or commercial real estate lending;

(iii) Can provide independent certification as to availability of funds; and

(iv) Has the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts

(6) A financially stable entity, whether or not from the list above, with the ability to carry out, either directly or through a servicer, the obligations of this Lender Contract related to the receipt and accounting of the Installments or the enforcement of the assessment lien.

(b) Property Owner and Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future Installments should be mailed at least 30 days before the next Installment is due according to the payment schedule included in the Financing Documents; and

(c) The assignee or transferee executes a written assumption agreement according to the Financing Documents of all of Lender's rights and obligations under this Lender Contract related to the receipt of the Installments or enforcement of the assessment lien and provides a copy of such assumption to Property Owner and Authorized Representative within 10 days after execution of the agreement. Lender may assign or transfer the right to receive the Installments or the right to require enforcement of the assessment lien separately. Upon written notice to Property Owner and Authorized Representative of an assignment or transfer that meets all of these conditions, the assignor will be released of all of the rights and obligations of the Lender under this Lender Contract accruing after the date of the assignment that are specified in the assignment or transfer document, and all of such rights and obligations will be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the Installments or to require enforcement of the assessment lien that does not meet all of these conditions is void. Lender will retain all of the rights and obligations of Lender under this Lender Contract until such rights and obligations are assigned or transferred according to this paragraph.

4. Financing Responsibility. Lender assumes full responsibility for

determining the financial ability of the Property Owner to repay the Financing and for advancing the funds as set forth in the Financing Documents and performing Lender's obligations and responsibilities thereunder. In the event the assessment lien on the Property is enforced by foreclosure as provided below, Lender will have no further obligations to Property Owner with respect to the Installments that were the subject of the foreclosure, but Lender will retain the rights to enforcement of the lien for any Installments that are not eliminated by the foreclosure, and the succeeding owner of the Property will be subject to such lien.

5. Lien Priority and Enforcement. As provided in the Owner Contract and Section 399.014 of the PACE Act:

(a) Delinquent Installments will incur penalties and interest on the principal of the Installment in the same manner and in the same amount as delinquent property taxes, that is, a delinquent Installment incurs a penalty of 6% of the principal amount of the Installment for the first calendar month it is delinquent plus 1% for each additional month or portion of a month the Installment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an Installment delinquent on July 1 incurs a total penalty of 12% of the principal amount of the delinquent Installment without regard to the number of months it has been delinquent. A delinquent Installment will also accrue interest on the principal of the Installment at the rate of 1% for each month or portion of a month that the Installment remains unpaid. Subject to paragraph 16 below, penalties, interest, fees, and costs payable under this paragraph will be retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees and charges that become due pursuant to the Financing Documents may be imposed and retained by Lender.

(b) The Assessment and any interest or penalties thereon,

(1) are a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is recorded in the real property records of [REDACTED] County, Texas, as provided by Section 399.013 of the PACE Act, until the Assessment, interest, or penalty is paid; and

(2) such lien has the same priority status as a lien for any other ad valorem tax.

(c) The lien created by the Assessment runs with the land, and according to Section 399.014(b) of the PACE Act, any portion of the Assessment that has not yet become due will not be eliminated by foreclosure of (i) a property tax lien, or (ii) the lien for a delinquent Installment of the Assessment. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will be transferred to the succeeding owner without recourse to Lender, Local Government or Authorized Representative

(d) In the event of a default by Property Owner in payment of an Installment called for by the Financing Documents or the filing of a case under the U.S. Bankruptcy Code by or against Property Owner, the lien created by the Assessment will be enforced by Local Government for the benefit of Lender according to paragraph 6(c) below in the same manner according to Texas Tax Code Secs. 33.41 to 34.23 that a property tax lien against real property may be enforced by a local government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(e) In a suit to collect a delinquent Installment of the Assessment, Local Government will be entitled to recover costs and expenses, including attorney's fees in the amount of 15% of the total principal amount of the delinquent Installment, penalties, and

interest due, in the same manner according to Texas Tax Code Sec. 33.48 as in a suit to collect a delinquent property tax. Lender will be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent Installment of the Assessment.

(f) As provided in Section 399.014(a-1) of the PACE Act, after written notice of the Assessment is recorded in the real property records of the county in which the Property is located, the lien created by the Assessment may not be contested on the basis that the improvement is not a “qualified improvement” or the project is not a “qualified project”, as such terms are defined in Section 399.002 of the PACE Act.

6. Servicing and Enforcement of Assessment.

(a) Servicing. The Installments and other amounts due under the Financing Documents will be billed, collected, received, and disbursed in accordance with the procedures set out in the Financing Documents. Lender or its designee will be responsible for all servicing duties other than those specifically undertaken by Local Government in this Lender Contract. Authorized Representative will deliver an annual notice of assessment to Property Owner by electronic mail each year until the Assessment is released. If requested by Property Owner in the Owner Contract, Local Government agrees to also send an annual notice of assessment to Property Owner by first class mail in the envelope with the tax bill of the Property each year until the Assessment is released. However, any failure of Local Government or Authorized Representative to deliver an annual notice of assessment to Property Owner will not affect the Assessment or Property Owner’s obligations under the Owner Contract.

(b) Remittances. Each of the parties covenants and agrees to promptly remit to the other party any payments incorrectly received by such party with respect to the Assessment after the execution of this Lender Contract.

(c) Default and Enforcement. In the event of a default in payment of any Installment according to the Financing Documents, Lender agrees to take at least the following steps to collect the delinquent Installment:

(1) Mail a written notice of delinquency and demand for payment to the Property Owner by both certified mail, return receipt requested, and first class mail; and

(2) Mail a second notice of delinquency to the Property Owner and the holder of any mortgage lien on the property by both certified mail, return receipt requested, and first-class mail at least 30 days after the date of the first notice if the delinquency is continuing.

The holder of any mortgage lien on the property will have not less than a 30-day right to cure the delinquency by paying the amount of the delinquent installment. If the Property Owner fails to cure the delinquency within 30 days after the mailing of the second notice of delinquency, Lender

or its designee may notify Authorized Representative in writing of a default in payment by Property Owner. Upon receipt of such notice and after doing its own due diligence, including delivering a notice of foreclosure to Freddie Mac not less than 30 days prior to the foreclosure if the mortgage lien is held by Freddie Mac, Authorized Representative will certify the default to Local Government, which will enforce the assessment lien for the benefit of Lender pursuant to Sec. 399.014(c) of the PACE Act, in the same manner as a property tax lien against real property may be enforced, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution. However, if a case under the U.S. Bankruptcy Code is filed by or against Property Owner or if the enforcement of the assessment lien is prevented by the order of a court, Local Government will notify Authorized Representative and will file a proof of claim for the balance of the assessment, accrued interest and penalties, and all costs and expenses, including attorney's fees, as authorized by Section 399.014 of the PACE Act. Authorized Representative will notify Lender of the filing of the proof of claim. Lender will not be required to mail a notice of delinquency to Property Owner or a notice of default to Local Government. Lender will reimburse Local Government for any costs and expenses, including attorney's fees, required to file and present the claim.

(d) Priority. If the assessment lien is enforced by foreclosure or collected through a bankruptcy or similar proceeding, the assessment balance and any interest or penalties on the assessment will have the same priority status as a lien for any other ad valorem tax, pursuant to Sec. 399.014(a)(2) of the PACE Act.

(e) Final Payment and Release. When the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees, or costs due under or authorized by the PACE Act or the Financing Documents have been paid in full, Local Government's rights under the Owner Contract will cease and terminate. Upon notice from Lender that all amounts due have been paid in full, Authorized Representative will execute a release of the Assessment and the Owner Contract and record the release.

(f) Limitations on Local Government's Actions. Without the prior written consent of Lender, Local Government will not enter into any amendment or modification of or deviation from the Owner Contract. Local Government or Authorized Representative will not institute any legal action with respect to the Owner Contract, the Assessment, or the assessment lien without the prior written request of Lender.

(g) Limitations of Local Government's Obligations. Local Government undertakes to perform only such duties as are specifically set forth in this Lender Contract, and no implied duties on the part of Local Government are to be read into this Lender Contract. Local Government will not be deemed to have a fiduciary or other similar relationship with Lender. Local Government may request written instructions for action from Lender and refrain from taking action until it receives satisfactory written instructions. Local Government will have no liability to any person for following such instructions, regardless of whether they are to act or refrain from acting.

(h) Costs. No provisions of this Lender Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

7. Lender's Warranties and Representations. With respect to this Lender Contract, Lender hereby warrants and represents that on the date on which Lender executes this Lender Contract:

(a) Lender is a qualified lender under the PACE Program, as defined in paragraph 3(a) above, and is fully qualified under the PACE Program to enter into this Lender Contract and the Financing Documents;

(b) Lender has independently and without reliance upon Local Government conducted its own credit evaluation, reviewed such information as it has deemed adequate and appropriate, and made its own analysis of the Owner Contract, the Project, and Property Owner's financial ability to perform the financial obligations set out in the Financing Documents; and

(c) Lender has not relied upon any investigation or analysis conducted by, advice or communication from, or any warranty or representation by Local Government, Authorized Representative, or any agent or employee of Local Government, express or implied, concerning the financial condition of the Property Owner or the tax or economic benefits of an investment in the Assessment.

8. Written Contract Required by the PACE Act. This Lender Contract constitutes a written contract between Local Government and Lender, as required under Section 399.006 (c) of the PACE Act.

9. Construction and Definitions. This Lender Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein and not otherwise defined herein have the meanings ascribed to them in the PACE Program, and/or the PACE Act.

10. Binding Effect. This Lender Contract is binding upon and inures to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

11. Notices. Unless otherwise specifically provided herein, all notices and other communications required or permitted hereunder shall be in writing and delivered by first-class mail or by electronic mail, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

12. Governing Law. This Lender Contract shall in all respects be governed by and construed in accordance with the laws of the State of Texas.

13. Entire Agreement. This Lender Contract constitutes the entire agreement between Local Government and Lender with respect to the subject matter hereof and shall not be amended or altered in any manner except by a document in writing executed by both parties.

14. Captions. Paragraph and section titles are for convenience of reference only and shall not be of any legal effect.

15. Counterparts. This Lender Contract may be executed in any number of counterparts, and each counterpart may be delivered on paper or by electronic transmission, all of which when taken together will constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

16. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Local Government and Contractual Interest payable to Lender under the Financing Documents, exceed the maximum amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law (the “**usury limit**”). If the total amount of interest payable to Local Government and Contractual Interest payable to Lender exceeds the usury limit, interest payable to Local Government will be reduced and any interest in excess of the usury limit will be credited to the amount payable to Local Government or refunded. This provision overrides any conflicting provisions in this Lender Contract.

17. Certification. Local Government certifies that the PACE Program has been duly adopted and is in full force and effect on the date of this Lender Contract. Property Owner has represented to Lender and Local Government that the Project is a “qualified project” as defined in the PACE Program and Section 399.002 of the PACE Act. The Assessment has been imposed on the Property as a lien in accordance with the PACE Owner Contract and the PACE Act. Local Government has not assigned or transferred any interest in the Assessment or the PACE Owner Contract.

18. Construction Terms. The Financing Documents executed by Lender and Property Owner must include a requirement that Lender will withhold [REDACTED] % of the Financing until verification that the Project was properly completed and is operating as intended is provided to Authorized Representative by an Independent Third Party Reviewer (“ITPR”), or Property Owner will pay liquidated damages to Lender of \$[REDACTED] per day for every day after 30 days following completion of the Project that such verification of completion is not provided. If verification of completion is not provided by Property Owner within 30 days after completion of the Project, such verification shall be submitted by Lender. If this Lender Contract includes any additional requirements related to construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit C attached hereto and incorporated herein by reference. Such requirements may include, among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final project completion.

LENDER:

By:_____

Name: _____

Title: _____

Address: _____

Email Address: _____

ACKNOWLEDGEMENT

STATE OF _____ §

COUNTY OF _____ §

This PACE Lender Contract pursuant to Property Assessed Clean Energy Act was
acknowledged before me on _____, _____ by _____,
_____, on behalf of _____.

_____(print name)

NOTARY PUBLIC, STATE OF _____

LOCAL GOVERNMENT:

CITY OF ABILENE, TEXAS

By: TEXAS PROPERTY ASSESSED CLEAN ENERGY AUTHORITY,
AUTHORIZED REPRESENTATIVE
Pursuant to Tex. Local Gov't Code §399.006(b)

By: _____

Name: CHARLENE HEYDINGER

Title: PRESIDENT, TEXAS PACE AUTHORITY

Address: PO BOX 200368
AUSTIN, TX 78720-0368

Email Address: charlene@texaspaceauthority.org

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF §

This PACE Lender Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on _____, 20__ by Charlene Heydinger, President, Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, a Texas nonprofit corporation, on behalf of said corporation and as Authorized Representative for the Local Government.

(print name)

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT A
OWNER CONTRACT

EXHIBIT B
FINANCING DOCUMENTS

Assessment Payment Schedule

Assessment Total:
Payment Frequency:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

Financing Documents

Document Title	Parties	Date Executed

EXHIBIT C

CONSTRUCTION TERMS

Retainage or Liquidated Damages:

Lender will retain _____% of the Financing until a report of completion by a qualified Independent Third Party Reviewer (“ITPR”) is provided to Authorized Representative.

OR

Property Owner will pay liquidated damages to Lender of \$_____ per day for every day after 30 days following completion of the Project that such a report of completion is not provided. Lender will then provide the report of completion to Authorized Representative.

Date	Draw down Amount	Purpose

EXHIBIT 4
FORM NOTICE OF CONTRACTUAL ASSESSMENT LIEN
PURSUANT TO PROPERTY ASSESSED CLEAN ENERGY ACT

**FORM NOTICE OF CONTRACTUAL ASSESSMENT LIEN
PURSUANT TO
PROPERTY ASSESSED CLEAN ENERGY ACT**

STATE OF TEXAS §
 §
COUNTY OF [REDACTED] §

RECITALS

A. The Property Assessed Clean Energy Act (“**PACE Act**”), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand. Unless otherwise expressly provided herein, all terms used herein have the same meanings ascribed to them in the PACE Act.

B. Abilene, Texas (“**Local Government**”) has established a program under the PACE Act (“**PACE Program**”) pursuant to a resolution dated [REDACTED], adopted by the City Council, and has designated Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority as the representative of Local Government (“**Authorized Representative**”) authorized to enter into and enforce the written contracts with the owners of such property and the providers of such financing described herein, and has designated the entire territory within the City of Abilene, Texas jurisdiction as a region (the “**Region**”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owners’ property pursuant to the PACE Program.

C. [REDACTED] (“**Property Owner**”) is/are the sole legal and record owner of the qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region located at [REDACTED], Abilene, Texas [REDACTED] - [REDACTED] and more fully described in Exhibit A attached hereto and made a part hereof (the “**Property**”).

D. Property Owner has applied to Local Government to participate in the PACE Program by installing or modifying on the Property certain permanent improvements described in Exhibit B attached hereto and made a part hereof, which are intended to decrease water or energy consumption or demand and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (the “**Qualified Improvements**”). The installation or modification of such Qualified Improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”). Property Owner has entered into a written contract (the “**Owner Contract**”) with Local Government pursuant to the PACE Act and the PACE Program and has requested Local

Government to impose an assessment on the Property to repay the financing of such Qualified Improvements.

E. The financing of such Qualified Improvements will be provided to Property Owner by [REDACTED] (“**Lender**”), a qualified lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government as required by Section 399.006(c) of the PACE Act (the “**Lender Contract**”). Lender will be responsible for all servicing duties other than those specifically undertaken by Local Government in the Lender Contract.

THEREFORE, Local Government hereby gives notice to the public pursuant to Section 399.013 of the PACE Act that it has imposed an assessment on the Property in the principal amount of \$ [REDACTED] (the “**Assessment**”). The Assessment includes only those costs and fees for which an assessment may be imposed under Section 399.006(e) of the PACE Act. In the event that the actual total of costs and fees for which an assessment may be imposed is different from the amount stated or any other term requires correction, Local Government, Property Owner, and Lender will execute an amended Owner Contract and Lender Contract, and Authorized Representative will record an amended Notice of Contractual Assessment Lien.

The Assessment and contractual interest thereon due to the Lender (the “**Contractual Interest**”) are due and payable in installments (“**Installments**”) in accordance with the terms and payment schedule included in the financing documents executed between Property Owner and Lender that are described in or copies of which are attached hereto as Exhibit C (the “**Financing Documents**”).

Pursuant to Section 399.014 of the PACE Act,

1. The Assessment and any interest or penalties thereon,
 - (i) are a first and prior lien against the Property from the date on which this Notice of Contractual Assessment Lien is recorded in the real property records of [REDACTED] County, Texas, until the Assessment, interest, or penalty is paid; and
 - (ii) such lien has the same priority status as a lien for any other ad valorem tax.
2. The lien created by the Assessment runs with the land, and according to Section 399.014(b) of the PACE Act, any portion of the Assessment that has not yet become due will not be eliminated by foreclosure of: (i) a property tax lien, or (ii) the lien for a delinquent Installment of the Assessment. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner’s obligations under the Financing Documents will be transferred to the succeeding owner without recourse to Local Government, or Authorized Representative.

As provided in Section 399.014(a-1) of the PACE Act, after this Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located, the lien created by the Assessment may not be contested on the basis that the improvement is not a “qualified improvement” or the project is not a “qualified project”, as such terms are defined in Section 399.002 of the PACE Act.

EXECUTED on _____, _____.

LOCAL GOVERNMENT:

CITY OF ABILENE, TEXAS

By: TEXAS PROPERTY ASSESSED CLEAN ENERGY AUTHORITY
AUTHORIZED REPRESENTATIVE
Pursuant to Tex. Local Gov't Code §399.006(b)

By: _____

Name: CHARLENE HEYDINGER

Title: PRESIDENT, TEXAS PACE AUTHORITY

Address: PO BOX 200368
AUSTIN, TX 78720-0368

E-mail: charlene@texaspaceauthority.org

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF _____ §

This Notice of Contractual Assessment Lien pursuant to Property Assessed Clean Energy Act was acknowledged before me on _____, 20____ by Charlene Heydinger, President, Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, a Texas nonprofit corporation, on behalf of said corporation and as Authorized Representative for the Local Government.

(print name)

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT B
QUALIFIED IMPROVEMENTS

Assessment Payment Schedule

Payment Frequency:

[illegible]

Financing Documents

Document Title	Parties	Date Executed

INDEXING INSTRUCTION:

Grantor: _____, Property Owner
Grantees: _____, Local Government
 _____, Lender

After recording, return to- Texas PACE Authority
Charlene Heydinger
PO Box 200368
Austin, TX 78720-0368

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN THE CITY OF ABILENE, TEXAS AND
TEXAS PROPERTY ASSESSED CLEAN ENERGY AUTHORITY**

THIS AGREEMENT is made and entered by and between **Abilene, Texas**, hereinafter referred to as "**Local Government**", and **TEXAS PROPERTY ASSESSED CLEAN ENERGY (PACE) AUTHORITY (dba Texas PACE Authority)**, a Texas non-profit business association, hereinafter referred to as "**Services Provider**" to be effective from and after the date as provided herein.

W I T N E S S E T H:

WHEREAS, the City Council of **Local Government** desires to engage the services of a qualified consultant to administer a Texas Property Assessed Clean Energy program for **Local Government** pursuant to the Property Assessed Clean Energy Act ("**PACE Act**"), Texas Local Government Code Chapter 399, and serve as Authorized Representative pursuant to Tex. Local Gov't Code §399.006(b), hereinafter referred to as the "**Program**"; and

WHEREAS, **Services Provider** desires to render such services for **Local Government** upon the terms and conditions provided herein –

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. ENGAGEMENT

Local Government hereby agrees to retain **Services Provider** to serve as administrator of **Local Government's Program** and **Services Provider** agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. SCOPE OF SERVICES

The parties agree that **Services Provider** shall perform such services as are further described in **Exhibit "A"** hereto (collectively "**Scope of Services**"). The parties understand and agree that deviations or modifications in the **Scope of Services** may be authorized from time to time by **Local Government** but said authorization must be made in writing.

III. TERM OF AGREEMENT

The initial term of this Agreement shall commence upon the complete execution of the Agreement by **Local Government** and **Services Provider**. Notwithstanding the termination of this Agreement, **Services Provider** shall be permitted to continue

administration of any third-party agreements under the **Program** commenced prior to termination of this Agreement, and to recover any compensation due **Services Provider** for services performed in accordance with Section IV of this Agreement.

IV. COMPENSATION AND EXPENSES

Services Provider shall be paid for performance of the **Scope of Services** set forth in Exhibit "A", in accordance with the compensation schedule set forth in Exhibit "B" hereto. **Services Provider** is entitled to payment in accordance with Exhibit "B"; however, **Local Government** shall have no obligation to pay **Services Provider** for performance of the **Scope of Services**. All payments to **Services Provider** shall be made by participants in the **Program** in accordance with the PACE Act

V. INSURANCE

Services Provider agrees to meet all insurance requirements, and to require all consultants who perform work for **Services Provider** to meet all insurance requirements, as set forth in Exhibit "C" to this Agreement.

VI. INDEMNIFICATION

SERVICES PROVIDER AGREES TO INDEMNIFY AND HOLD LOCAL GOVERNMENT AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT FROM LOCAL GOVERNMENT ARISING OUT OF OR OCCASIONED BY SERVICES PROVIDER 'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, VIOLATIONS OF LAW BY SERVICES PROVIDER, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE SERVICES PROVIDER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE SERVICES PROVIDER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY TO THE EXTENT RESULTING FROM THE NEGLIGENCE OF LOCAL GOVERNMENT, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. LOCAL GOVERNMENT DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

VII. INDEPENDENT CONTRACTOR

Services Provider covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of **Local Government**; that it shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between **Local Government** and **Services Provider**, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between **Local Government** and **Services Provider**.

VIII. ASSIGNMENT AND SUBLETTING

Services Provider agrees that this Agreement shall not be assigned without the prior written consent of **Local Government**, except to an Affiliate of **Services Provider**. Affiliate shall mean (1) any corporation or other entity controlling, controlled by, or under common control with (directly or indirectly) **Services Provider**, including, without limitation, any parent corporation controlling **Services Provider** or any subsidiary that **Services Provider** controls; (2) the surviving corporation resulting from the merger or consolidation of **Services Provider**; or (3) any person or entity which acquires all of the assets of **Services Provider** as a going concern. **Services Provider** shall be permitted to enter into subcontracts for performance of portions of the **Scope of Services**; however, **Services Provider** shall not subcontract the entirety of the **Scope of Services** to a single subcontractor without **Local Government's** consent. **Services Provider** further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the **Services Provider** from its full obligations to **Local Government** as provided by this Agreement.

IX. AUDITS AND RECORDS

Services Provider agrees that **Local Government** or its duly authorized representatives shall, until the expiration of three (3) years after termination under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of **Services Provider** which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. **Services Provider** agrees that **Local Government** shall have access during normal working hours to all necessary **Services Provider's** facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. **Local Government** shall give **Services Provider** reasonable advance notice of intended audits.

X. CONTRACT TERMINATION

The parties agree that **Local Government** and **Services Provider** shall have the right to terminate this Agreement with cause upon thirty (30) days written notice to **Services Provider**. In the event of such termination, **Services Provider** shall deliver to **Local Government** all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by **Services Provider** in connection with this Agreement. In the event of termination by **Local Government**, **Services Provider** shall be compensated in accordance with Section III of this Agreement with respect to any third party agreements under administration by **Services Provider** at the time of termination.

XI. COMPLETE AGREEMENT

This Agreement, including the Exhibits lettered "A" through "C", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

XII. AMENDMENTS (Added)

Amendments to this agreement may be made at any time upon agreement by **Local Government** and **Services Provider**.

XIII. MAILING OF NOTICES

Unless instructed otherwise in writing, **Services Provider** agrees that all notices or communications to **Local Government** permitted or required under this Agreement shall be addressed to **Local Government** at the following address:

Abilene, Texas
Attn: City Manager
555 Walnut Street
Suite 203
Abilene, TX 79601

Local Government agrees that all notices or communications to **Services Provider** permitted or required under this Agreement shall be addressed to **Services Provider** at the following address:

Texas Property Assessed Clean Energy Authority
Attn: Charlene Heydinger
PO Box 200368
Austin TX 78720-0368

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XIV. AUTHORITY TO SIGN

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

XV. MISCELLANEOUS

A. This is a contract for the purchase of personal or professional services and is therefore exempt from any competitive bidding requirements of **Local Government**.

B. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

C. Agreement Interpretation:

This is a negotiated Agreement, should any part be in dispute, the parties agree that the terms of the Agreement shall not be construed more favorably for either party.

D. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Travis County Texas. Exclusive venue shall lie in Travis County, Texas.

E. Successors and Assigns:

Local Government and **Services Provider** and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

F. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

G. Effective Date:

This Agreement shall be effective from and after the date of execution by the last signatory hereto as evidenced below.

SIGNED on the date indicated below.

**TEXAS PROPERTY ASSESSED
CLEAN ENERGY AUTHORITY**

DATE: March 13, 2020

BY: Charlene Heydinger
Name: Charlene Heydinger
Title: president

CITY OF ABILENE, TEXAS

DATE: _____

BY: Robert Hanna
Name:

Title:

APPROVED AS TO FORM:



Stanley Smith, City
Attorney

Exhibit "A" **Scope of Services**

The **Services Provider** will perform the following services in the administration of the **Program**:

Community Outreach

Maintain a website and database;

Respond to inquiries from property owners, vendors, contractors, consultants, and the general public;

Publish the Technical Standards Manual on the **Program** website;

List interested, qualified lenders on the **Program** website or link to another neutral non-profit directory of lenders to enable property owners to identify potential sources of private third-party financing;

Arrange for training of contractors and independent third-party reviewers on how to apply for PACE financing and comply with the PACE-in-a-Box Technical Standards Manual; and

Establish quality assurance measures.

Maintain uniform documents. Periodic updates to the standard form documents will be necessary as the program evolves, incorporating best practices and standardizing the PACE documents across various PACE programs. The Authorized Representative will be tasked with maintaining the form documents and making technical and conforming updates as necessary so long as the changes are consistent with the resolution to establish the PACE program and the Texas PACE Act.

Application and Approval Process

Publish a Project Application Form based on PACE-in-a-Box model application form on the **Program** website;

Review submitted Application forms for administrative completeness and notify the applicants of any missing information;

Maintain the confidentiality of confidential owner information;

Maintain the PACE application process, including:

- Draft and distribute the PACE application, as well as accept and review the property owner's completed application;
- If the project meets eligibility requirements, provide written indication that the project meets PACE standards at this stage (subject to verification of all requirements at closing).

- Inform the property owner of his or her responsibilities in the process, including hiring a third-party reviewer, obtaining a lender, determining final project scope and completing and submitting a closing verification package.
- Conduct a Pre-Closing Verification, which will confirm the statutorily required eligibility requirements of the owner including that the property owner:
 - Is the legal property owner of the benefited property;
 - Is current on mortgage and tax payments;
 - Is not insolvent or the subject of bankruptcy proceedings;
 - Holds a title to the property to be subject to a PACE assessment that is not in dispute; and
 - Has consent of any pre-existing mortgagee to the proposed PACE assessment through a written contract.

Require independent third-party verification of expected energy or water savings resulting from a project (provided by engineer or consultant retained by applicant), according to the PACE-in-a-Box Technical Standards Manual. This review will include a:

- Site visit,
- Report stating the savings (energy, demand, and/or water) and expected project life are reasonable and in compliance with PACE in a Box program guidelines; and
- Letter from the ITPR certifying that he/she has no financial interest in the project and is an independent reviewer.

Require independent third-party verification, according to the PACE-in-a-Box Technical Services Manual, that the period of an assessment does not exceed the expected life of the improvements or thoroughly review waiver application and justification (provided by engineer or consultant retained by applicant);

Require lender to confirm in writing its determination, based on underwriting factors established by the lender, that the owner has demonstrated the financial ability to repay the financial obligations to be repaid through assessment.

Require the owner to notify the holder of any mortgage lien on the property of the owner's intention to participate in the **Program** and obtain the lienholder's written consent prior to the imposition of the PACE assessment;

Review and finalize the terms of every Owner Contract and Lender Contract prior to execution; The Contract must contain:

- Amount of the assessment;
- The legal description of the property;
- The name of the property owner; and
- A reference to the statutory assessment lien provided under the PACE Act.

Collect and retain owner application fees as compensation for administrative services;

Perform closing verification reviews and schedule assessment transaction closings when all requirements are met. Such closing verification must include:

- The report conducted by a qualified independent third-party reviewer of water or energy baseline conditions and the projected water or energy savings attributable to the project;
- Such financial information about the owner and the property as the lender chosen by the owner deems necessary to determine that the owner has demonstrated the financial ability to fulfill the financial obligations to be paid through assessments; and
- All other information required by the **Services Provider**.

Coordinate and take part in assessment transaction closings.

Execute contracts under the **Program** as authorized on behalf of **Local Government**.

Arrange for recordation of a Notice of Contractual Assessment Lien for each approved project in the Official Public Records of the county where the project is located; The Notice must contain:

- Amount of the assessment;
- The legal description of the property;
- The name of the property owner; and
- A reference to the statutory assessment lien provided under the PACE Act.

Require independent post-closing third-party verification (by engineer or consultant retained by Applicant) that each project was properly completed and is operating as intended; and

Collect and retain administration fees collected by lenders from owners that receive PACE financing.

Management and Reporting

Manage communications with lenders regarding assessment servicing, payment, and default;

Upon notification by a lender of an owner's default in payment of an assessment and the lender's compliance with the requirements of the Lender Contract on collection after default, notify the **Local Government** to enforce the assessment lien in accordance with law and the agreements between the parties;

Receive and store owner reports on energy and water savings;

Maintain the form contracts and make technical and conforming updates as necessary so long as the changes are consistent with the resolution to establish the PACE program and the statute.

At the request of property owners, prepare annual notices of assessment to be issued by **Local Government** to the owners, stating the total amount of the payments due on each

assessment in the coming calendar year according to the owner contract and the financing documents;

Determine the amounts of the application and administration fees to be paid by owners;

Produce annual report on Texas PACE financing usage and the resulting energy and water savings enabled through PACE Assessments.

Exhibit "B"
Compensation and Fees

Service Provider shall determine the amounts of the uniform application and administration fees to be paid by property Owners participating in the **Program**. Such fees will not exceed the fees below:

- An application fee of the greater of:
 - \$2,000.00; or
 - Amounting to
 - 1% of the total project cost of the first \$5 million
 - plus 0.5% of the marginal amount above \$5 million and \$20 million, and
 - 0.25% of the marginal amount above \$20 millionto be paid as follows:
 - \$500.00 per project at the time of application submittal;
 - the balance of the full remaining application fee at closing; and
- A recurring administration fee of 0.08% of the outstanding principal balance, which amount shall be collected by lender and paid to the **Services Provider** as provided in the Owner Contract and the financing documents. This fee can also be capitalized and paid at closing. If paid under a negotiated regular schedule to the lender by the property owner, the lender shall pay this fee to **Services Provider** at the time of each payment by the property owner in accordance with the financing documents.
- No amounts shall be due by **Local Government** to **Services Provider**.

Exhibit "C"
Insurance Requirements

COVERAGE	LIMIT OF LIABILITY
Employer's Liability	\$500,000 per occurrence
General Liability	Bodily Injury and Property Damage, Combined Limits of \$500,000 each Occurrence, and \$1,000,000 aggregate

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AMENDING
THE CITY OF ABILENE PACE PROGRAM REPORT**

WHEREAS, On March 12, 2020 the City of Abilene City Council established the City of Abilene PACE program; and,

WHEREAS, the 83rd Regular Session of the Texas Legislature enacted the Property Assessed Clean Energy Act, Texas Local Government Code Chapter 399 (the “PACE Act”), which allows the governing body of a City to designate an area of the territory of the local government as a region within which an authorized representative of a local government and the record owners of commercial, industrial, and large multifamily residential (5 or more dwelling units) real property may enter into written contracts to impose assessments on the property to repay the financing by the owners of permanent improvements fixed to the property intended to decrease energy or water consumption or demand; and,

WHEREAS, the installation or modification by property owners of qualified energy or water saving improvements to commercial, industrial, and large multifamily residential real property in the City of Abilene furthers the goals of energy and water conservation without cost to the public; and,

WHEREAS, when initially established, U.S. Housing and Urban Development (“HUD”) and Federal Housing Administration (“FHA”) multifamily properties could not participate in the PACE program, but now are permitted to, and therefore a change in paperwork submitted by a property owner to participate in the PACE program is required to accommodate newly eligible HUD and FHA properties; and

WHEREAS, adoption of this Resolution will serve to update the 2020 report and associated exhibits to reflect the necessary changes for FHA and HUD properties, improve language, and reduce the burden on the County’s Tax Office.

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

- PART 1: The recitals to this Resolution are true and correct and are incorporated into this resolution for all purposes.
- PART 2: The City of Abilene hereby adopts this Resolution to amend the report required by Texas Local Government Code Section 399.009 for the City of Abilene Property Assessed Clean Energy Program (PACE) Program.

ADOPTED this 10th day of July, 2025.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

**AMENDED REPORT REQUIRED BY TEXAS LOCAL GOVERNMENT CODE
SECTION 399.009**

FOR A PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM

This Report is adopted by the City Council for the City of Abilene, Texas (“**Local Government**”) Property Assessed Clean Energy (PACE) Program (**the “Program”**) in accordance with the requirements of the Property Assessed Clean Energy Act (**the “PACE Act”**) as set forth in Texas Local Government Code Chapter 399.

The Local Government and its constituents benefit when older existing buildings are modified, and new facilities constructed with new technology and equipment that increases energy efficiency and reduces water consumption. As described in this Report, the Local Government is establishing the commercial PACE Program to encourage private sector investment in energy efficiency and water conservation. The PACE Program will be offered to property owners on a strictly voluntary basis and will not require the use of any public funds or resources.

Authorized under the PACE Act enacted in 2013, the PACE program is an innovative financing program that enables private sector owners of privately owned commercial, industrial, and multi-family residential properties with five or more dwelling units to obtain low-cost, long-term loans to pay for water conservation, energy-efficiency improvements, and distributed generation. PACE loans provide up to 100% financing of all eligible project costs, with little or no up-front out-of-pocket cost to the owner. The Local Government has chosen to follow the administrative principles, program processes, and model documents of the uniform Texas PACE in a Box model program, as amended from time-to-time.¹

Loans made under the PACE Program will be secured by assessments on the property that are voluntarily imposed by the owner. Assessments may be amortized over the projected life of the improvements. The utility cost savings derived from improvements financed with PACE loans are expected to equal or exceed the amount of the assessment. In turn, these improvements are able to generate positive cash flow upon installation because the debt service will be less than the savings.

PACE assessments are tied to the property and follow title from one owner to the next. Each owner is responsible only for payment of the assessments accruing during its period of ownership. When the property is sold, the payment obligation for the remaining balance of the assessment is transferred automatically to the next owner. As a result, the program will help property owners overcome market barriers that often discourage investment in energy efficiency and water conservation improvements.

1. Eligible Properties

The Local Government’s PACE program is a strictly voluntary program. All private sector owners of Eligible Properties located within the Local Government’s PACE region may participate in PACE financing. “*Eligible Properties*” include commercial, industrial, and multi-

¹ <https://www.keepingpaceintexas.org/pace-in-a-box>

family residential properties with five or more dwelling units. Government, residential², and undeveloped property and property undergoing development at the time of the assessment are not Eligible Properties.

2. Qualified Improvements

PACE financing may be used to pay for Qualified Improvements to Eligible Properties.

“Qualified Improvements” are permanent improvements intended to decrease water or energy consumption or demand, including a product, device, or interacting group of products or devices on the customer’s side of the meter that use energy technology to generate electricity, provide thermal energy, or regulate temperature. Under the PACE Act, products or devices that are not permanently fixed to real property are not considered to be Qualified Improvements.

The following items may constitute Qualified Improvements:

- High efficiency heating, ventilating and air conditioning (“HVAC”) systems
- High efficiency chillers, boilers, and furnaces
- High efficiency water heating systems
- Energy management systems and controls
- Distributed generation systems
- High efficiency lighting system upgrades
- Building enclosure and envelope improvements
- Water conservation and wastewater recovery and reuse systems
- Combustion and burner upgrades
- Heat recovery and steam traps
- Water management systems and controls (indoor and outdoor)
- High efficiency irrigation equipment

3. Benefits of PACE to Property Owners

The PACE program will enable owners of Eligible Properties to overcome traditional barriers to capital investments in energy efficiency and water conservation improvements, such as unattractive returns on investment, split incentives between landlords and tenants, and uncertainty of recouping the investment upon sale of the property.

By financing Qualified Improvements through the program, property owners may achieve utility cost savings that exceed the amount of the assessment and reduce their exposure to utility price volatility. As a result, the value of the property will be enhanced, and the owner will only be obligated to pay the assessment installments that accrue during its period of ownership of the property. Additionally, by investing in energy efficiency and water conservation with PACE financing, property owners may also qualify for various rebate, tax credit, and incentive programs offered by utility providers and state or federal governmental authorities to encourage these types of investments.

² This encompasses single family residential and any multi-family properties with fewer than five units.

4. Benefits of PACE to the Local Government

Among other things, projects financed through PACE will:

- Enable property owners and occupants to save substantial amounts in utility costs;
- Reduce demand on the electricity grid;
- Mitigate greenhouse gas emissions associated with energy generation;
- Enhance the value and efficiency of existing buildings;
- Boost the local economy by creating new job opportunities and new business opportunities for contractors, engineers, commercial lenders, professionals, and equipment vendors and manufacturers;
- Increase business retention and expansion in the PACE region by enabling cost effective energy and water saving updates to existing property;
- Improve productivity through optimized energy usage;
- Support the State's water conservation plan; and
- Better enable the Local Government to meet its water conservation goals.

Finally, through the reduction in energy consumption as a result of the PACE program, there will be a decreased demand for power resulting in lower emissions from power plants. EPA regulations have significant impacts on air quality standards in Texas.

The PACE program requires minimal support from the Local Government. It is designed to be self-sustaining. Furthermore, because the PACE program is tax neutral, it achieves all of the benefits listed in this Report without imposing a burden on the Local Government's general fund.

The 84th Texas Legislature added an immunity provision that explicitly shields the Local Government and its employees, members of the governing body of a local government, employees of a local government, and board members, executives, employees, and contractors of a third party who enter into a contract with a local government to provide administrative services for a program under this chapter from liability.³

5. The Benefits of PACE to Lenders

PACE loans are attractive to lenders because they are very secure investments. Like a property tax lien, the assessment lien securing the PACE loan has priority over other liens on the property. Therefore, the risk of loss from non-payment of a PACE loan is low compared to most other types of loans. PACE assessments provide lenders with an attractive new product to assist existing and new customers in addressing an almost universal pent-up demand for needed commercial and industrial property equipment modernization. In order to protect the interests of holders of existing mortgage loans on the property, the PACE Act requires their written consent to the PACE assessment as a condition to obtaining a PACE loan.

³ TX. Local Gov't Code §399.019. In the 85th legislature, HB 2654 clarified that the personal immunity provisions apply to all elected officials performing rights and duties under chapter 399 of the Local Government Code.

6. The Benefits of PACE to Contractors, Engineers, and Manufacturers

PACE loans provide attractive sources of financing for water and energy saving retrofits and new construction upgrades, thereby encouraging property owners to make substantial investments in new and existing commercial and industrial buildings. As a result, PACE will unlock business opportunities for contractors, engineers, and manufacturers throughout the commercial and industrial sectors.

7. Administration of the Local Government PACE Program

Under the PACE Act, the establishment and operation of the program are governmental functions.⁴ The PACE Act further authorizes the Local Government to enter into a contract with a third party to provide administrative services for the PACE program (the “**Authorized Representative**”). The Local Government will delegate administration of the PACE program to Texas PACE Authority, a qualified, non-profit organization that can administer the program at no cost to the Local Government.

The Authorized Representative’s role is to serve as an extension of the local government staff to provide oversight of the program to ensure best practices and consumer protections at the lowest possible cost to the property owner in a transparent and ethical manner and to provide education and outreach.

The Authorized Representative will be funded by administrative fees paid by the property owners establishing a PACE project, charitable grants or other authorized sources of revenue. The Authorized Representative will not receive compensation or reimbursement from the Local Government.

8. Eligible Lenders

The PACE Act does not set criteria for financial institutions or investors to be PACE lenders. The Local Government will follow best practices of other PACE programs and the Texas PACE in a Box model program by recommending that lenders be:

- Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;
- Any insurance company authorized to conduct business in one or more states;
- Any registered investment company, registered business development company, or a Small Business Administration small business investment company;
- Any publicly traded entity; or
- Any private entity that:
 - Has a minimum net worth of \$5 million;
 - Has at least three years’ experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years’ experience in business or industrial lending or commercial real estate lending; and
 - Can provide independent certification as to availability of funds.

⁴ TX Local Government Code §399.003(b)

- All lenders must have the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

Any lender can participate in the PACE program as long as it is a financially stable entity with the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts. The property owner, not the Local Government or the Authorized Representative, selects the lender.

The Authorized Representative will not guarantee or imply that funding will automatically be provided from a third-party lender, imply or create any endorsement of, or responsibility for, any lender; or create any type of express or implied favoritism for any eligible lender.

9. Components of the PACE Program

As required under Section 399.009 of the PACE Act, the following describes all aspects of the PACE Program:

- a. Map of Region. A map of the boundaries of the region included in the program is attached to this Report as Exhibit 1. The region encompasses the entire geographic area within the Local Government's jurisdictional boundaries, including Local Government's extraterritorial jurisdiction.
- b. Form Contract with Owner. A form contract between the Local Government and the record owner of the Eligible Property is attached as Exhibit 2. It specifies the terms of the assessment under the PACE program and the financing to be provided by an Eligible Lender of the property owner's choosing.
- c. Form Contract with Lender. A form contract between the Local Government and the Eligible Lender chosen by a property owner is attached to this Report as Exhibit 3. It specifies the financing and servicing of the debt through assessments.
- d. Form Notice of Contractual Assessment Lien. A form Notice of Assessment Lien to be filed by the Local Government with the County Clerk is attached to this Report as Exhibit 4.
- e. Qualified Improvement. The following types of projects are qualified improvements that may be subject to contractual assessments under the PACE program:
 - (1) Projects that involve the installation or modification of a permanent improvement fixed to privately owned commercial, industrial or residential real property with five (5) or more dwelling units;⁵ and
 - (2) Projects that are intended to decrease energy or water consumption or demand by installing a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.⁶

A sample list of potential Qualified Improvements appears in Section 2 above.

⁵ TX. Local Gov't Code §399.002(5).

⁶ TX. Local Gov't Code §399.002(3).

The PACE program may not be used to finance improvements to undeveloped lots or lots undergoing development at the time of the assessment, or for the purchase or installation of products or devices not permanently fixed to real property.⁷

- f. Authorized Representative. HB 3187 was signed into law on June 16, 2015. It authorizes the Local Government to delegate administration of the PACE program to a third-party “Authorized Representative.” The Local Government may delegate all official administrative responsibilities, such as the execution of individual contracts with property owners and lenders, to an Authorized Representative. This relationship will be monitored and maintained by the City Manager or her designee.
- g. Project Review. Track and provide a public overview with savings metrics for all PACE projects
- h. Plans for Ensuring Sufficient Capital.⁸ Lenders will extend loans to finance Qualified Improvements. Financing documents executed between owners and lenders will impose a contractual assessment on Eligible Property to repay the owner’s financing of the Qualified Improvements. The lenders will ensure that property owners demonstrate the financial ability to fulfill the financial obligations to be repaid through contractual assessments.
- i. No Use of Bonds or Public Funds. The Local Government does not intend to issue bonds or use any other public monies to fund PACE projects. Property owners will obtain all financing from the Eligible Lenders they choose.
- j. Limit on Length of Loan. One of the statutory criteria of a PACE loan is that the assessment payment period cannot exceed the useful life of the Qualified Improvement that is the basis for the loan and assessment. As part of the application process, the property owners will submit an independent third-party review prepared by a licensed engineer showing the water or energy baseline conditions and the projected water or energy savings. This review will aid the Authorized Representative in making a determination that the period of the requested assessment does not exceed the useful life of the Qualified Improvement.
- k. Application Process. The Authorized Representative will accept applications from property owners seeking to finance Qualified Improvements under the program. Each application must be accompanied by the required application fee and must include:
 - (1) A description of the specific Qualified Improvements to be installed or modified on the property;
 - (2) A description of the specific real property to which the Qualified Improvements will be permanently fixed, and
 - (3) The total amount of financing, including any transaction costs, to be repaid through assessments.

⁷ TX. Local Gov’t Code §399.004.

⁸ The Texas PACE Authority’s website (www.texaspaceauthority.org) offers a non-exhaustive list of interested and qualified lenders to assist property owners in funding PACE projects in Texas.

Based on this information, the Authorized Representative may issue a preliminary letter indicating that, subject to verification of all requirements at closing, the proposed project appears to meet program requirements. Based on this preliminary letter, the property owner may initiate an independent third-party review of the project and submit the project to Eligible Lenders for approval of financing.

Once the above processes are completed, the property owner will submit the application to the Authorized Representative to obtain preliminary approval. The property owner is expected to produce the following documentation prior to closing on the PACE loan:

- (1) A Report conducted by a qualified, independent third-party reviewer, showing water or energy baseline conditions and the projected water or energy savings, or the amount of renewable energy generated attributable to the project;
 - (2) Such financial information about the owner and the property as the lender chosen by the owner deems necessary to determine that the owner has demonstrated the financial ability to fulfill the financial obligations to be paid through assessments; and
 - (3) All other information required by the Authorized Representative.
- l. Financial Eligibility Requirements. The Authorized Representative will determine whether the owner, the property and the improvements are eligible for financing under the program. The Eligible Lender chosen by the owner will determine whether the owner has demonstrated the financial ability to repay the financial obligations to be collected through contractual assessments. The statutory method⁹ for ensuring such a demonstration of financial ability must be based on appropriate underwriting factors, including the following:
- (1) verification that the person requesting to participate in the program is the legal record owner of the benefitted property,
 - (2) the applicant is current on mortgage and property tax payments,
 - (3) the applicant is not insolvent or in bankruptcy proceedings,
 - (4) the title of the benefitted property is not in dispute,
 - (5) there is a method for determining an appropriate ratio of the amount of the assessment to the assessed value of the property in accordance with the most current Texas PACE in a Box model program, and
 - (6) the Local Government determines that to be eligible for PACE financing, the project's projected savings derived from the Qualified Improvement must be greater than the cost of the PACE assessment and lien over the life of the assessment (i.e., the Savings to Investment Ratio (SIR) should be greater than one, $SIR > 1$), subject to the most current PACE in a Box requirements.
- m. Mortgage Holder Notice and Consent. As a condition to the execution of a written contract between the Authorized Representative and the property owner imposing an assessment under the program, the holder of any mortgage lien on the property must be

⁹ TX. Local Gov't Code §399.009(b).

given notice of the owner's intention to participate in the program on or before the 30th day before the date the contract is executed, and the owner must obtain the written consent of all mortgage holders.¹⁰

- n. Imposition of Assessment. The Authorized Representative will enter into a written contract with the property owner, only after:
- (1) The property owner delivers to the Authorized Representative written consent of all mortgage lien holders;
 - (2) The Authorized Representative's determination that the owner and the property are eligible to participate in the program, that the proposed improvements are reasonably likely to decrease energy or water consumption or demand, and that the period of the requested assessment does not exceed the useful life of the Qualified Improvements; and
 - (3) The Eligible Lender notifies the Authorized Representative that the owner has demonstrated the financial ability to fulfill the financial obligations to be repaid through contractual assessments.

The contract will impose a contractual assessment on the owner's Eligible Property to repay the lender's financing of the Qualified Improvements. The Authorized Representative will file "A Notice of Contractual Assessment Lien," in substantially the form in Exhibit 4 in the Official Public Records of the County in which the property is located, to serve as notice to the public of the assessment, from the date of filing. The contract and the notice must contain the amount of the assessment, the legal description of the property, the name of the property owner, and a reference to the statutory assessment lien provided under the PACE Act.

- o. Collection of Assessments. The execution of the written contract between the Local Government and the property owner and recording of the Notice of Contractual Assessment Lien incorporate the terms of the financing documents executed between the property owner and the lender to repay the financing secured by the assessment. The third-party lender will advance financing to the owner, and the terms for repayment will be such terms as are agreed between the lender and the owner. Under the form lender contract attached as Exhibit 3, the lender or a designated servicer will agree to service the debt secured by the assessment.

With funds from the lender, the property owner can purchase directly the equipment and materials for the Qualified Improvement and contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of the Qualified Improvements. Alternatively, the lender may make progress payments to the property owner as the Qualified Improvement is installed.

The lender will receive the owner's assessment payments to repay the debt and remit to the Authorized Representative any administrative fees. The lender will have the right to assign or transfer the right to receive the installments of the debt secured by the assessment, provided all of the following conditions are met:

¹⁰ TX. Local Gov't Code §399.010.

- (1) The assignment or transfer is made to an Eligible Lender, as defined above;
 - (2) The property owner and the Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed at least 30 days before the next installment is due according to the schedule for repayment of the debt; and
 - (3) The assignee or transferee, by operation of the financing documents or otherwise, written evidence of which shall be provided, assumes lender's obligations under the lender contract.
- p. Verification Review. After a Qualified Improvement is completed, the Authorized Representative will require the property owner to provide verification by a qualified independent third-party reviewer that the Qualified Improvement was properly completed and is operating as intended.¹¹ The verification report conclusively establishes that the improvement is a Qualified Improvement and the project is qualified under the PACE program.¹²
- q. Marketing and Education Services. The Program Administrator will provide online service provider training for contractors, engineers, property managers and other stakeholders, provide outreach and education for all stakeholders including presentations, conference booths and individual meetings, and provide written and electronic materials such as case studies, flyers, and webinars.
- r. The Local Government may subsequently enter into agreements with one or more other local governments or non-profit organizations that promote energy and water conservation and/or economic development to provide marketing and education services for the PACE program.
- s. Quality Assurance and Anti-Fraud Measures. The Authorized Representative will institute quality assurance and anti-fraud measures for the Program. The Authorized Representative will review each PACE application for completeness and supporting documents through independent review and verification procedures. The application and required attachments will identify and supply the information necessary to ensure that the property owner, the property itself, and the proposed project all satisfy PACE program underwriting and technical standard requirements. Measures will be put in place to provide safeguards, including a review of the energy and water savings baseline and certification of compliance with the technical standards manual from an independent third-party reviewer (ITPR), who must be a registered professional engineer, before the project can proceed. This review will include a site visit, report, and a letter from the ITPR certifying that he or she has no financial interest in the project and is an independent reviewer. After the construction of the project is complete, an ITPR will conduct a final site inspection and determine whether the project was completed and is operating properly. The reviewer's certification will also include a statement that the reviewer is qualified and has no financial interest in the project.

¹¹ TX Local Gov't Code §399.011.

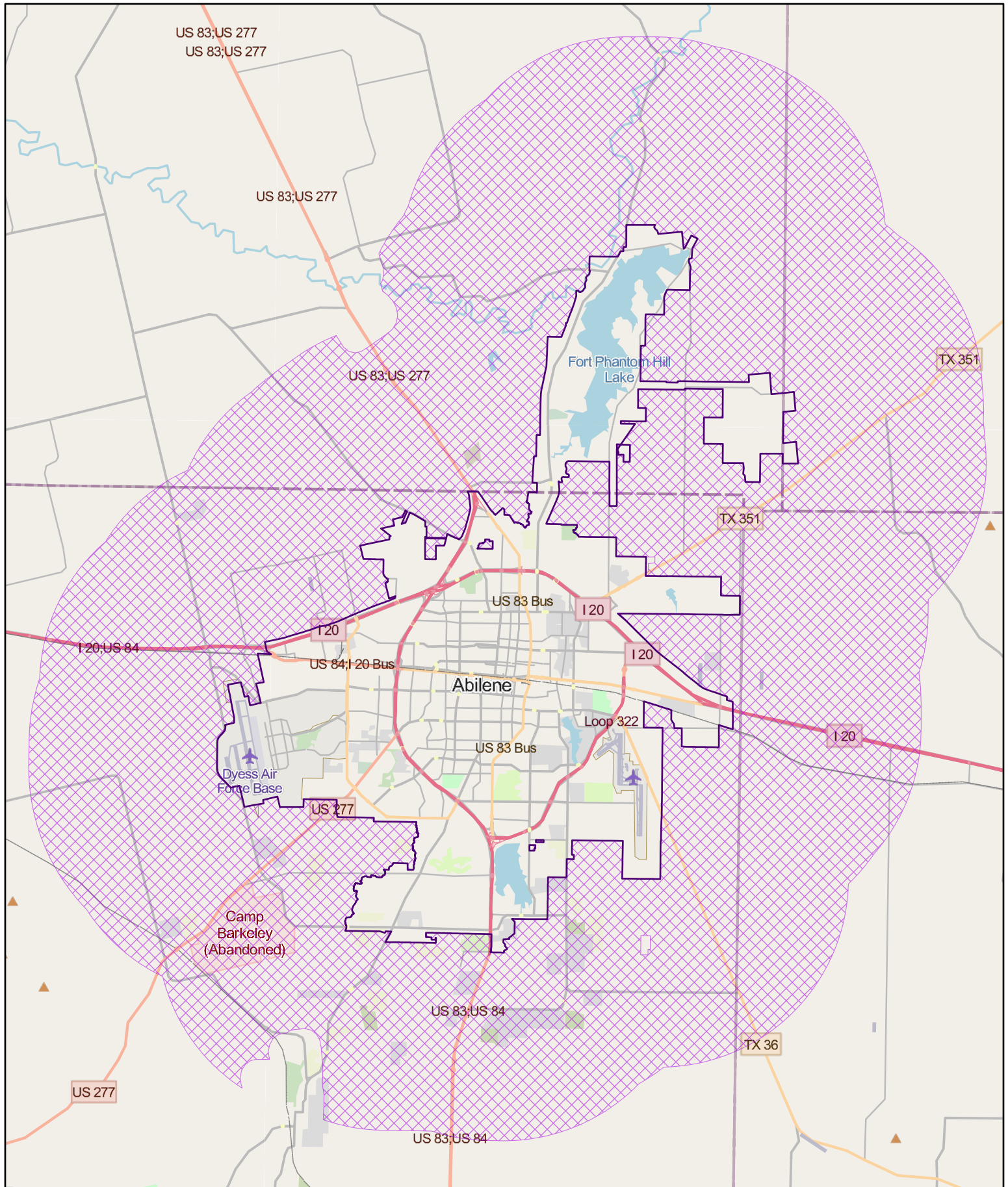
¹² TX Local Government Code §399.011(a-1)

- t. Delinquency. Under the terms of the form lender contract attached as Exhibit 3, if a property owner fails to pay an agreed installment when due on the PACE assessment, the lender agrees to take at least the following steps to collect the delinquent Installment:

- (1) Mail a written notice of delinquency and demand for payment to the property owner. Lender shall mail a copy of the first notice of delinquency to the holder(s) of any mortgage lien on the Property, to HUD if this is a HUD assisted or FHA insured Project; and to Freddie Mac if the lien is held by Freddie Mac.
- (2) Mail a second notice of delinquency and demand for payment to the property owner at least 30 days after the date of the first notice if the delinquency is continuing; and lender shall also mail a copy of the second notice of delinquency to the holder(s) of any mortgage lien on the Property, to HUD if this is a HUD assisted or FHA insured Project, and to Freddie Mac if the lien is held by Freddie Mac.

The holder(s) of any mortgage lien on the property, HUD, if this is a HUD assisted or FHA insured Project, and Freddie Mac if the mortgage lien is held by Freddie Mac, shall have not less than a 60-day notice and right to cure the delinquency by paying the amount of the delinquent Installment.

If Property Owner or other parties with the right to cure under this contract fails to cure the delinquency on or before the 30th day after the mailing of the second notice of delinquency, lender or its designee may notify Authorized Representative in writing of a default in payment by Property Owner. Upon receipt of such notice and after doing its own due diligence, Authorized Representative shall certify the default to Local Government, which shall then enforce the assessment lien for the benefit of lender pursuant to Sec. 399.014(c) of the PACE Act, in the same manner as a property tax lien against real property may be enforced. However, if a case under the U.S. Bankruptcy Code is filed by or against Property Owner or if the enforcement of the assessment lien is prevented by the order of a court, Local Government shall notify Authorized Representative and shall file a proof of claim for the balance of the Assessment, accrued interest and penalties, and all costs and expenses, including attorney's fees, as authorized by Section 399.014 of the PACE Act. Lender shall reimburse Local Government for any costs and expenses, including attorney's fees, required to file and present the claim.



Legend

-  Abilene Municipal Boundary
-  City of Abilene: 5 Mile ETJ

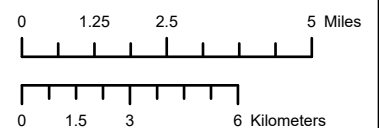


EXHIBIT 2

FORM OWNER CONTRACT

FORM PACE OWNER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“PACE”) OWNER CONTRACT including the attached exhibits (“**PACE Owner Contract**”) is made as of the _____ day of _____, _____ (“**Effective Date**”), by and between The City of Abilene, Texas (“**Local Government**”), and _____ (“**Property Owner**”). Local Government and Property Owner are hereafter referred to collectively as “the parties” or individually as “party.”

RECITALS

A. The Property Assessed Clean Energy Act (“**PACE Act**”), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

B. Local Government has established a program under the PACE Act pursuant to a resolution dated March 12, 2020, adopted by the Commissioners Court (“**PACE Program**”), and has designated Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority as the representative of Local Government (“**Authorized Representative**”) authorized to enter into the written contracts with the owners of such property and the providers of such financing described herein, and has designated the entire territory within the boundaries of the City of Abilene, Texas jurisdiction, including its extraterritorial jurisdiction as a region (the “**Region**”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

C. Property Owner is the sole legal and record owner of the qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region located at _____, _____, Texas _____ - _____ (the “**Property**”) (the Property being more particularly described in the Notice of Contractual Assessment Lien, attached hereto as Exhibit A).

D. Pursuant to Project Application Number _____, Property Owner has applied to Local Government to participate in the PACE Program by installing or modifying on the Property certain permanent improvements which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (“**Qualified Improvements**”). The installation or modification of such Qualified Improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”). Property Owner has requested that Local Government enter into this PACE Owner Contract pursuant to the PACE Act and the PACE Program and has requested Local Government to impose an assessment

(the “**Assessment**”) on the Property as set forth in the Notice Of Contractual Assessment Lien Pursuant To Property Assessed Clean Energy Act to be filed in the real property records of the county in which the Property is located (the “**Notice of Contractual Assessment Lien**”), to repay the financing of such Qualified Improvements. A copy of the Notice of Contractual Assessment Lien is attached hereto as Exhibit A and made a part hereof. The Property, Qualified Improvements and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing for the Project (“**Financing**”) shall be provided to Property Owner by _____ (“**Lender**”), a qualified lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government as required by Section 399.006(c) of the PACE Act (the “**PACE Lender Contract**”). The financing includes only those costs and fees for which an assessment may be imposed under Section 399.006(e) of the PACE Act. Local Government has agreed to maintain and continue the Assessment for the benefit of Lender until the Financing, all contractual interest due to Lender (“**Contractual Interest**”), any prepayment penalty, and any penalties, interest, fees, and costs due under or authorized by the PACE Act are paid in full and to release the Assessment upon notice from Lender of such payment, or to foreclose the lien securing the Assessment for the benefit of Lender upon notice from Lender of a default in payment by Property Owner.

F. As required by Section 399.010 of the PACE Act, Property Owner represents and warrants that it has notified the holder(s) of any mortgage lien on the Property at least thirty (30) days prior to the Effective Date of this PACE Owner Contract of Property Owner’s intention to participate in the PACE Program. The written consent of each mortgage holder to the Assessment was obtained on or prior to the Effective Date of this PACE Owner Contract and is attached hereto as Exhibit B and made a part hereof (“**Lender Consent(s)**”).

AGREEMENT

The parties agree as follows:

1. Imposition of Assessment. In consideration for the Financing advanced or to be advanced to Property Owner by Lender for the Project under the PACE Program pursuant to the PACE Lender Contract, Property Owner hereby requests and agrees to the imposition by Local Government of the Assessment in the principal amount of \$_____, as set forth in the Notice of Contractual Assessment Lien. In the event the actual total of costs and fees for which an assessment may be imposed under the PACE Act is different from the stated amount or any other term requires correction, Authorized Representative on behalf of Local Government, Property Owner, and Lender agree to execute an amended Owner Contract and Lender Contract, and thereafter Authorized Representative shall record an amended Notice of Contractual Assessment Lien. The Assessment includes the application and administration fees authorized by the PACE Program and Section 399.006(e) of the PACE Act. Property Owner promises and agrees to pay the Assessment, Contractual Interest thereon, any prepayment penalty, and all penalties, interest, fees, attorney’s fees, and costs due under or authorized by the PACE Act and the financing documents executed between Property Owner and Lender (the “**Financing Documents**”) described in or copies of which are attached as Exhibit C attached hereto and made a part hereof by reference. Property Owner shall pay such amount in care of or as directed by Lender, in

satisfaction of the Assessment imposed pursuant to this PACE Owner Contract and the PACE Act. Accordingly, Local Government hereby imposes the Assessment on the Property to pay the Financing of the Project, Contractual Interest, any prepayment penalty, and any penalties, interest, fees and costs due under or authorized by the PACE Act and the Financing Documents, in accordance with the requirements of the PACE Program and the provisions of the PACE Act.

2. Maintenance and Enforcement of Assessment. In consideration for Lender's agreement to advance Financing to Property Owner for the Project pursuant to the Financing Documents, Local Government agrees to maintain and continue the Assessment on the Property for the benefit of Lender until the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees, attorney's fees, and costs, due under or authorized by the PACE Act, PACE Program, and the Financing Documents are paid in full, and to release the Assessment upon notice from Lender of such payment. Upon written request of Lender, and with the written consent of Property Owner, Authorized Representative on behalf of Local Government may execute a partial release of the assessment lien and record the partial release. Local Government agrees to enforce the assessment lien against the Property at the request of Lender in the event of a default in payment by Property Owner, in accordance with the provisions set forth in paragraph 5. Authorized Representative shall deliver an annual notice of assessment to Property Owner by first-class mail or electronic mail each year until the Assessment is released. Any failure of Local Government or Authorized Representative to deliver an annual notice of assessment to Property Owner shall not affect the Assessment or Property's Owner's obligations under this PACE Owner Contract.

3. Installments. The Assessment and Contractual Interest thereon are due and payable to Lender in installments ("**Installments**"), according to the payment schedule set forth in the Financing Documents attached hereto as Exhibit C. The Assessment includes (1) an application fee paid by Property Owner to Authorized Representative at closing of the Financing, and (2) a recurring administration fee paid by Property Owner to Authorized Representative until the Assessment is released. The recurring administration fee amount shall be collected by Lender and paid to Authorized Representative not later than thirty (30) days after receipt by Lender, unless otherwise agreed to in writing by Authorized Representative.

(a) Notwithstanding the foregoing, in the event of a delinquency in the payment of any Installment, Lender shall, upon notice to Authorized Representative, withhold payment of any administration fee due to Authorized Representative in connection with such Installment until the Installment is paid. Property Owner agrees that any such temporary withholding shall not reduce the amount of the administration fees included in the Assessment or due to Authorized Representative. The amounts due to Authorized Representative are identified in Exhibit C hereto.

(b) If this is a US Department of Housing and Urban Development ("**HUD**") assisted or a Federal Housing Administration ("**FHA**") insured Project, then the Financing Documents shall provide for Installments to be escrowed in a manner acceptable to HUD or FHA lender and paid to Lender.

(c) When the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees and costs due under or authorized by the PACE Act and the Financing Documents, have been paid in full, Local Government's rights under this PACE Owner Contract shall cease and terminate, except for rights under Sections 18, 20, 21 and 22. Upon notice from Lender that all amounts due have been paid in full, Authorized Representative on behalf of Local Government, shall execute a release of the Assessment and this PACE Owner Contract and record the release. As required by Section 399.009(a)(8) of the PACE Act, the period during which such Installments are payable does not exceed the useful life of the Project.

4. Assignment of Right to Receive Installments or Require Enforcement of Lien. Property Owner acknowledges that Lender has the right, without the consent of Property Owner, to assign or transfer the right to receive the Installments or require Local Government to enforce the assessment lien in the event of a default in payment, together with all corresponding obligations, provided that all of the following conditions are met:

(a) The assignment or transfer is made to a qualified lender as defined in the PACE Lender Contract;

(b) Property Owner, Authorized Representative, the holder(s) of any mortgage lien on the Property, and HUD, if this is a HUD assisted or FHA insured Project are notified in writing of the assignment or transfer and the address to which payment of the future Installments should be mailed not less than 30 days before the next Installment is due according to the payment schedule included in the Financing Documents, and

(c) The assignee or transferee executes a written assumption agreement according to the Financing Documents of all of Lender's rights and obligations under the PACE Lender Contract related to the receipt of the Installments or the enforcement of the assessment lien and provides a copy of such assumption to Property Owner and Authorized Representative not later than 10 days after execution of the agreement.

Lender may assign or transfer the right to receive the Installments or the right to require enforcement of the assessment lien separately. Upon written notice of an assignment or transfer that complies with all of the foregoing conditions, the assignor shall be released of all of the rights and obligations of the Lender under such PACE Lender Contract accruing after the effective date of the assignment that are specified in the assignment or transfer document, and all of such rights and obligations shall be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the Installments or require enforcement of the Assessment lien that does not comply with all of the foregoing conditions is void. Lender shall retain all of the rights and obligations of Lender under the PACE Lender Contract until such rights and obligations are assigned or transferred according to this section.

5. Lien Priority and Enforcement. Pursuant to Sections 399.014 and 399.015 of the PACE Act:

(a) Delinquent Installments shall incur penalties and interest on the principal of the Installment in the same manner and in the same amount as delinquent property taxes, pursuant to the statutes in effect at the time of default. Under current statutes, a delinquent Installment incurs a penalty of 6% of the principal amount of the Installment for the first calendar month it is delinquent plus 1% for each additional month or portion of a month the Installment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an Installment delinquent on July 1 incurs a total penalty of 12% of the principal amount of the delinquent Installment without regard to the number of months it has been delinquent. A delinquent Installment shall also accrue interest on the principal of the Installment at the rate of 1% for each month or portion of a month that the Installment remains unpaid. Subject to paragraph 16 below, penalties, interest, fees, and costs payable under this paragraph shall be retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees that become due pursuant to the Financing Documents, may be imposed and retained by Lender.

(b) The Assessment and any interest and penalties thereon,

(1) are a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located as provided by Section 399.013 of the PACE Act, until the Assessment, interest, and penalty is paid; and

(2) such lien has the same priority status as a lien for any other ad valorem tax, pursuant to Section 399.014(a)(2) of the PACE Act.

(c) Pursuant to Section 399.014(b) of the PACE Act, the lien created by the Assessment runs with the land, and any portion of the Assessment that has not yet become due shall not be eliminated by sale or transfer of the Property, or by foreclosure of (i) a property tax lien, or (ii) the lien for a delinquent Installment of the Assessment. Accordingly, Installments may not be accelerated in the event of default. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents shall be transferred to the succeeding owner without recourse to Lender, Local Government, or Authorized Representative.

(d) In the event of a default by Property Owner in payment of an Installment called for by the Financing Documents or the filing of a case under the U.S. Bankruptcy Code by or against Property Owner, the lien created by the Assessment shall be enforced by Local Government for the benefit of Lender, in the same manner according to Texas Tax Code Secs. 33.41 to 34.23 that a property tax lien against real property may be enforced by a local government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(e) In a suit to collect a delinquent Installment of the Assessment, Local Government shall be entitled to recover costs and expenses, including attorney's fees in the

amount of 15% of the total principal amount of the delinquent Installment, penalties, and interest due, in the same manner according to Texas Tax Code Sec. 33.48, as amended from time-to-time, as in a suit to collect a delinquent property tax. Lender shall be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent Installment of the Assessment.

(f) As provided in Section 399.014(a-1) of the PACE Act, after the Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located, the lien created by the Assessment may not be contested on the basis that the improvement is not a “qualified improvement” or the Project is not a “qualified project”, as such terms are defined in Section 399.002 of the PACE Act.

6. Written Contract Required by PACE Act. This PACE Owner Contract constitutes a written contract for the Assessment between Property Owner and Local Government as required by Section 399.005 of the PACE Act. The Notice of Contractual Assessment Lien shall be recorded in the real property records of the county in which the Property is located as public notice of the contractual Assessment, in accordance with the requirements of Section 399.013 of the PACE Act.

7. Qualified Improvements. Property Owner agrees and warrants that all improvements purchased, constructed, or installed through the Financing obtained pursuant to this PACE Owner Contract shall be permanently affixed to the Property and shall transfer with the Property to the transferee in the event of a sale or transfer of the Property. Property Owner agrees to provide to Authorized Representative within 30 days after the completion of the Project a verification by an Independent Third Party Reviewer (“ITPR”) that the Project was properly completed and is operating as intended. Property Owner agrees that Lender may retain the final advance of Financing until such verification is submitted or require Property Owner to pay liquidated damages for a failure to do so, according to paragraph 23 below.

8. Water or Energy Savings. For so long as the Assessment encumbers the Property, Property Owner agrees, on or before January 31st of each year, to report to Authorized Representative the water or energy savings realized through the Project in accordance with the reporting requirements established by Authorized Representative.

9. Construction and Definitions. This PACE Owner Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the PACE Program or the PACE Act.

10. Binding Effect. This PACE Owner Contract is binding upon and inures to the benefit of the parties hereto and their respective heirs, representatives, agents, successors, and assigns.

11. Notices. Unless otherwise specifically provided herein, all notices and other communications required or permitted by this PACE Owner Contract shall be in writing and delivered by first-class mail or by electronic mail with written confirmation of receipt, addressed to the other party at the address stated below the signature of such party or at such other address

as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

12. Governing Law and Venue. This PACE Owner Contract shall in all respects be governed by and construed in accordance with the laws of the State of Texas without regard to Texas' choice of law provisions. Venue for any disputes or suits between the parties arising from or related to this PACE Owner Contract shall be in a state court located in the Region, and the parties consent to the personal and subject matter jurisdiction of such state court.

13. Entire Agreement. This PACE Owner Contract, including its exhibits, constitutes the entire agreement between Local Government and Property Owner with respect to the subject matter hereof and may not be amended or altered in any manner except by a document in writing executed by both parties. If this is a HUD assisted or FHA insured Project, then HUD or FHA must also consent in writing to any amendment or alteration of this PACE Owner Contract, for as long as the Project remains HUD assisted or FHA insured.

14. Captions. Paragraph and section titles are for convenience of reference only and shall not be of any legal effect.

15. Counterparts. This PACE Owner Contract may be executed in any number of counterparts, and each counterpart may be delivered on paper or by electronic transmission, all of which when taken together shall constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

16. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Local Government and Contractual Interest payable to Lender under the Financing Documents, exceed the maximum amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law ("**Usury Limit**"). If the total amount of interest payable to Local Government and Contractual Interest payable to Lender exceeds the Usury Limit, the interest payable to Local Government shall be reduced and any interest in excess of the Usury Limit shall be credited to the amount payable to Local Government or refunded. This provision overrides any conflicting provisions in this PACE Owner Contract.

17. Costs. No provision of this PACE Owner Contract shall require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

18. Inspection and Audits. Local Government's representatives may perform, or have performed, (a) audits of Property Owner's documents, books and records, and (b) inspections of all places where Qualified Improvements are undertaken in connection with this PACE Owner Contract. Property Owner shall keep its documents, books and records available for this purpose for at least three (3) years after this PACE Owner Contract terminates. This provision does not affect the applicable statute of limitations.

19. Further Assurances. Property Owner further covenants and agrees to do, execute and deliver, or cause to be done, executed, and delivered all such further acts for implementing the intention of this PACE Owner Contract as may be reasonably necessary or required.

20. Release. PROPERTY OWNER AGREES TO AND SHALL RELEASE THE LOCAL GOVERNMENT, ITS AUTHORIZED REPRESENTATIVES, AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “RELEASED PERSONS”) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS PACE OWNER CONTRACT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE RELEASED PERSON’S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE RELEASED PERSON’S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, AND EVEN IF THE INJURY, DEATH, DAMAGE OR LOSS IS CAUSED BY THE RELEASED PERSON’S WRONGFUL ACTION OR INACTION.

21. Indemnification. TO THE MAXIMUM EXTENT ALLOWED BY LAW, PROPERTY OWNER SHALL INDEMNIFY AND HOLD LOCAL GOVERNMENT, ITS AUTHORIZED REPRESENTATIVES, AND THEIR RESPECTIVE AFFILIATES, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS (EACH SUCH PERSON HEREIN REFERRED TO AS AN “INDEMNITEE”) ABSOLUTELY HARMLESS FROM AND AGAINST ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, OBLIGATIONS OR RELATED EXPENSES INCURRED BY OR IMPOSED UPON OR ALLEGED TO BE DUE OF INDEMNITEE IN CONNECTION WITH THE EXECUTION OR DELIVERY OF THIS PACE OWNER CONTRACT, THE NOTICE OF CONTRACTUAL ASSESSMENT LIEN, THE FINANCING DOCUMENTS, AND ANY OTHER DOCUMENT OR ANY OTHER AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, THE PERFORMANCE BY THE PARTIES HERETO OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THEREUNDER, THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR, IN THE CASE OF ANY INDEMNITEE, THE ADMINISTRATION OF THIS PACE OWNER CONTRACT AND ANY OTHER AGREEMENTS RELATED TO THE PROJECT. However, If HUD later acquires title to all or any portion of Property pursuant to a foreclosure, deed in lieu of foreclosure, or otherwise, then notwithstanding anything in this PACE Owner Contract to the contrary, HUD shall not be obligated to indemnify any Indemnatee or entity or be liable for, or to carry out, any indemnity.

22. No Personal Liability. Pursuant to Section 399.019 of the PACE Act, the Property Owner acknowledges that the members of the governing body and employees of the Local Government, and board members, executives, employees, and contractors of the Authorized Representative are not personally liable as a result of exercising any rights or responsibilities under the PACE Program or any agreement in furtherance of the PACE Program.

23. Construction Terms. The Financing Documents executed by Lender and Property Owner must include a requirement that Lender shall withhold _____% of the Financing until verification that the Project was properly completed and is operating as intended is provided to Authorized Representative by an ITPR or Property Owner shall pay liquidated damages to Lender

of \$_____ per day for every day after 30 days following completion of the Project that such verification of completion is not provided. If verification of completion is not provided by Property Owner within 30 days after completion of the Project, such verification shall be submitted by Lender. If the PACE Lender Contract includes requirements related to the construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit D attached hereto and incorporated herein by reference. Such requirements may include, among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final Project completion.

PROPERTY OWNER:

By: _____

Name: _____

Title: _____

Address: _____

Email Address: _____

ACKNOWLEDGEMENT

STATE OF _____ §

COUNTY OF _____ §

This PACE Owner Contract pursuant to Property Assessed Clean Energy Act was
acknowledged before me on _____, _____ by _____,
_____, on behalf of _____.

_____ (print name)

NOTARY PUBLIC, STATE OF _____

PACE OWNER CONTRACT EXHIBIT A
NOTICE OF CONTRACTUAL ASSESSMENT LIEN
PURSUANT TO
PROPERTY ASSESSED CLEAN ENERGY ACT

PACE OWNER CONTRACT EXHIBIT B

LENDER CONSENT(S)

PACE OWNER CONTRACT EXHIBIT C

FINANCING DOCUMENTS

Assessment Payment Schedule

Assessment Total:

Payment Frequency:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

Financing Documents

Document Title	Parties	Date Executed

PACE OWNER CONTRACT EXHIBIT D

CONSTRUCTION TERMS

Retainage or Liquidated Damages:

Lender shall retain _____% of the Financing until a report of completion by a qualified Independent Third Party Reviewer (“ITPR”) is provided to Authorized Representative.

OR

Property Owner shall pay liquidated damages to Lender of \$_____ per day for every day after 30 days following completion of the Project that such a report of completion is not provided. Lender shall then provide the report of completion to Authorized Representative.

Additional Construction Terms

Date	Draw down Amount	Purpose

EXHIBIT 3

FORM LENDER CONTRACT

FORM PACE LENDER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“PACE”) LENDER CONTRACT including the attached exhibit (“**PACE Lender Contract**”) is made as of the _____ day of _____, _____, (“**Effective Date**”) by and between the City of Abilene, Texas (“**Local Government**”) and _____ (“**Lender**”). Local Government and Lender are hereafter referred to collectively as “the parties” or individually as “party.”

RECITALS

A. The Property Assessed Clean Energy Act (“**PACE Act**”), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

B. Local Government has established a program under the PACE Act pursuant to a resolution dated March 12, 2020, adopted by the City Council (“**PACE Program**”), and has designated Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority as the representative of Local Government (“**Authorized Representative**”) authorized to enter into the written contracts with the owners of such property and the providers of such financing described herein, and has designated the entire territory within the boundaries of Abilene, Texas jurisdiction, including its extraterritorial jurisdiction, as a region (the “**Region**”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

C. Pursuant to Project Application Number _____, _____ (“**Property Owner**”), the sole legal and record owner of the following qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region has applied to Local Government to participate in the PACE Program with respect to certain real property located at _____, _____, Texas, _____ - _____ (the “**Property**”) (the Property being more particularly described in the Notice of Contractual Assessment Lien, attached hereto as Exhibit A to the PACE Owner Contract which appears below as Exhibit A to this PACE Lender Contract) by installing or modifying on the Property certain permanent improvements which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (“**Qualified Improvements**”). The installation or modification of such Qualified Improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”).

D. Property Owner and Local Government have entered into a written contract as required by Section 399.005 of the PACE Act, a copy of which is attached hereto as Exhibit A and

made a part hereof (the “**PACE Owner Contract**”), in which Property Owner has requested that Local Government impose an assessment (the “**Assessment**”) on the Property as set forth in the Notice Of Contractual Assessment Lien Pursuant To Property Assessed Clean Energy Act to be filed in the real property records of the county in which the Property is located (the “**Notice of Contractual Assessment Lien**”), to repay the financing of such Qualified Improvements. A copy of the Notice of Contractual Assessment Lien is attached as Exhibit A to the PACE Owner Contract which appears below as Exhibit A to this PACE Lender Contract and made a part hereof. The Property, Qualified Improvements, and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing for the Project (“**Financing**”) shall be provided to Property Owner by Lender in accordance with financing documents which are described in or copies of which are attached as Exhibit C to the PACE Owner Contract attached hereto as Exhibit A and made a part hereof (“**Financing Documents**”). Such Financing includes only those costs and fees for which an assessment may be imposed under Section 399.006(e) of the PACE Act. This PACE Lender Contract is entered into between Local Government and Lender as required by Section 399.006(c) of the PACE Act to provide for repayment of the Financing secured by the Assessment.

F. As required by Section 399.010 of the PACE Act, Property Owner has notified the holder(s) of any mortgage lien on the Property at least thirty (30) days prior to the effective date of the PACE Owner Contract of Property Owner’s intention to participate in the PACE Program. The written consent of each mortgage lien holder to the Assessment was obtained on or prior to the effective date of the PACE Owner Contract, as shown by the copy of such consent(s) attached as Exhibit B to the PACE Owner Contract which appears below as Exhibit A to this PACE Lender Contract (“**Lender Consent(s)**”).

AGREEMENT

The parties agree as follows:

1. Maintenance and Enforcement of Assessment. Lender agrees to provide Financing for the Project in the total principal amount of \$ _____, according to the terms set out in the Financing Documents attached hereto as Exhibit C to the PACE Owner Contract attached as Exhibit A. In the event the actual total of costs and fees for which an assessment may be imposed under the PACE Act is different from the stated amount or any other term requires correction, Authorized Representative on behalf of Local Government, Property Owner, and Lender agree to execute an amended Owner Contract and Lender Contract, and thereafter Authorized Representative shall record an amended Notice of Contractual Assessment Lien. In consideration for the Financing provided or to be provided by Lender for the Project, and subject to the terms and conditions of this PACE Lender Contract, Local Government agrees to maintain and continue the Assessment for the benefit of Lender until the Assessment, all contractual interest due to Lender according to the Financing Documents (“**Contractual Interest**”), any prepayment penalty, and any penalties, interest, fees, attorney’s fees, and costs due under or authorized by the PACE Act and the Financing Documents are paid in full, and to release the Assessment upon notice from Lender of such payment in full. Local Government shall not release, sell, assign or transfer the Assessment or the lien securing it without the prior written consent of Lender. Upon written request

of Lender, and with the written consent of Property Owner, Authorized Representative on behalf of Local Government may execute a partial release of the assessment lien and record the partial release. Local Government agrees to enforce the assessment lien against the Property at the request of Lender in the event of a default in payment by Property Owner in accordance with the provisions set forth in paragraph 6 below. Local Government shall have no obligation to repurchase the Assessment and no liability to Lender should there be a default in the payment thereof or should there be any other loss or expense suffered by Lender or under any other circumstances.

2. Installments. The Assessment and Contractual Interest thereon are due and payable to Lender in installments (“**Installments**”) according to the payment schedule set forth in the Financing Documents attached hereto as Exhibit C to the PACE Owner Contract attached as Exhibit A. The Assessment includes (1) an application fee paid by Property Owner to Authorized Representative at closing of the Financing and (2) a recurring administration fee paid by Property Owner to Authorized Representative until the Assessment is released. The recurring administration fee amount shall be collected by Lender and paid to Authorized Representative not later than thirty (30) days after receipt by Lender, unless otherwise agreed to in writing by Authorized Representative. Notwithstanding the foregoing, in the event of delinquency in the payment of any Installment, Lender shall, upon notice to Authorized Representative, withhold payment of any amounts due to Authorized Representative in connection with such Installment until the Installment is paid. Lender agrees that any such temporary withholding shall not reduce the amount of administration fees included in the Assessment or due to Authorized Representative. The amounts due to Authorized Representative are identified in Exhibit C to the PACE Owner Contract attached hereto as Exhibit A. As required by Section 399.009(a)(8) of the PACE Act, the period during which such Installments are payable does not exceed the useful life of the Project.

3. Assignment of Right to Receive Installments or Require Enforcement of Lien. Lender has the right, without the consent of Property Owner, to assign or transfer the right to receive the Installments or require Local Government to enforce the assessment lien in the event of a default in payment, together with the corresponding obligations, provided that all of the following conditions are met:

(a) The assignment or transfer is made to a qualified lender, which may be one of the following:

(1) Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;

(2) Any insurance company authorized to conduct business in one or more states;

(3) Any registered investment company, registered business development company, or a Small Business Administration small business investment company;

(4) Any publicly traded entity; or

(5) Any private entity that:

(i) Has a minimum net worth of \$5 million;

(ii) Has at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending;

(iii) Can provide independent certification as to availability of funds; and

(iv) Has the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

(6) A financially stable entity, whether or not from the list above, with the ability to carry out, either directly or through a servicer, the obligations of this PACE Lender Contract related to the receipt and accounting of the Installments or the enforcement of the assessment lien.

(b) Lender shall notify Property Owner and Authorized Representative in writing of the assignment or transfer and the address to which payment of the future Installments should be mailed not less than 30 days before the next Installment is due according to the payment schedule included in the Financing Documents. The Lender shall also notify the holder(s) of any mortgage lien at the mailing address in the Lender Consent(s), or a subsequent address provided by any mortgage lien holder and, if this is a US Department of Housing and Urban Development ("HUD") assisted or a Federal Housing Administration ("FHA") insured Project, at the address below or a subsequent address provided by HUD.

US Department of Housing and Urban Development
Fort Worth Regional Office
307 W. 7th St., Suite 1000
Fort Worth, Texas 76102

(c) The assignee or transferee shall execute a written assumption agreement according to the Financing Documents of all of Lender's rights and obligations under this PACE Lender Contract related to the receipt of the Installments or enforcement of the assessment lien and provide a copy of such assumption to Property Owner and Authorized Representative not later than 10 days after execution of the agreement. Lender may assign or transfer the right to receive the Installments or the right to require enforcement of the assessment lien separately.

Upon written notice of an assignment or transfer that complies with all of the foregoing conditions, the assignor shall be released of all of the rights and obligations of the Lender under this PACE Lender Contract accruing after the effective date of the assignment that are specified in the

assignment or transfer document, and all of such rights and obligations shall be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the Installments or to require enforcement of the assessment lien that does not comply with all of the foregoing conditions is void. Lender shall retain all of the rights and obligations of Lender under this PACE Lender Contract until such rights and obligations are assigned or transferred according to this section.

4. Financing Responsibility. Lender assumes full responsibility for determining the financial ability of the Property Owner to repay the Financing, advancing the funds as set forth in the Financing Documents and performing Lender's obligations and responsibilities thereunder. In the event the assessment lien on the Property is enforced by foreclosure as provided below, Lender shall have no further obligations to Property Owner with respect to the Installments that were the subject of the foreclosure, but Lender shall retain the rights to enforcement of the lien for any Installments that are not eliminated by the foreclosure, and the succeeding owner of the Property shall be subject to such lien.

5. Lien Priority and Enforcement. As provided in the PACE Owner Contract and Sections 399.014 and 399.015 of the PACE Act:

(a) Delinquent Installments shall incur penalties and interest on the principal of the Installment in the same manner and in the same amount as delinquent property taxes, pursuant to the statutes in effect at the time of default. Under the current statutes a delinquent Installment incurs a penalty of 6% of the principal amount of the Installment for the first calendar month it is delinquent plus 1% for each additional month or portion of a month the Installment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an Installment delinquent on July 1 incurs a total penalty of 12% of the principal amount of the delinquent Installment without regard to the number of months it has been delinquent. A delinquent Installment shall also accrue interest on the principal of the Installment at the rate of 1% for each month or portion of a month that the Installment remains unpaid. Subject to paragraph 17 below, penalties, interest, fees, and costs payable under this paragraph shall be retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees and charges that become due pursuant to the Financing Documents may be imposed and retained by Lender.

(b) The Assessment and any interest and penalties thereon,

(1) are a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located, as provided by Section 399.013 of the PACE Act, until the Assessment, interest, and penalty is paid; and

(2) such lien has the same priority status as a lien for any other ad valorem tax, pursuant to Section 399.014(a)(2) of the PACE Act.

(c) Pursuant to Section 399.014(b) of the PACE Act, the lien created by the Assessment runs with the land, and any portion of the Assessment that has not yet become due shall not be eliminated by foreclosure of (i) a property tax lien, or (ii) the lien for a delinquent Installment of the Assessment. Accordingly, Installments may not be accelerated in the event of default. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents shall be transferred to the succeeding owner without recourse to Lender, Local Government or Authorized Representative.

(d) In the event of a default by Property Owner in payment of an Installment called for by the Financing Documents or the filing of a case under the U.S. Bankruptcy Code by or against Property Owner, the lien created by the Assessment shall be enforced by Local Government for the benefit of Lender according to paragraph 6(c) below in the same manner according to Texas Tax Code Secs. 33.41 to 34.23 that a property tax lien against real property may be enforced by a local government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(e) In a suit to collect a delinquent Installment of the Assessment, Local Government shall be entitled to recover costs and expenses, including attorney's fees in the amount of 15% of the total principal amount of the delinquent Installment, penalties, and interest due, in the same manner according to Texas Tax Code Sec. 33.48 as in a suit to collect a delinquent property tax. Lender shall be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent Installment of the Assessment.

(f) As provided in Section 399.014(a-1) of the PACE Act, after written notice of the Assessment is recorded in the real property records of the county in which the Property is located, the lien created by the Assessment may not be contested on the basis that the improvement is not a "qualified improvement" or the Project is not a "qualified project", as such terms are defined in Section 399.002 of the PACE Act.

6. Servicing and Enforcement of Assessment.

(a) Servicing. The Installments and other amounts due under the Financing Documents shall be billed, collected, received, and disbursed in accordance with the procedures set out in the Financing Documents. Lender or its designee shall be responsible for all servicing duties other than those specifically undertaken by Local Government in this PACE Lender Contract. If this is a HUD assisted or FHA insured Project, then the Financing Documents (i) shall provide for Installments to be escrowed in a manner acceptable to HUD or FHA lender and paid to Lender, and (ii) not make Installments more frequent than semi-annually. Authorized Representative shall deliver an annual notice of assessment to Property Owner by first-class mail or electronic mail each year until the Assessment is released. Any failure of Local Government or Authorized Representative to deliver an annual notice of assessment to Property Owner shall not affect the Assessment or Property Owner's obligations under the PACE Owner Contract.

(b) Remittances. Each of the parties covenants and agrees to promptly remit to the other party any payments incorrectly received by such party with respect to the Assessment after the execution of this PACE Lender Contract.

(c) Default and Enforcement. In the event of a default in payment of any Installment according to the Financing Documents, Lender agrees to take at least the following steps to collect the delinquent Installment:

(1) Mail a written notice of delinquency and demand for payment to the Property Owner by both certified mail, return receipt requested, and first-class mail. Lender shall mail a copy of the first notice of delinquency to the holder(s) of any mortgage lien on the Property, to HUD if this is a HUD assisted or FHA insured Project; and to Freddie Mac if the lien is held by Freddie Mac.

(2) Mail a second notice of delinquency and demand for payment to the Property Owner by both certified mail, return receipt requested, and first-class mail at least 30 days after the date of the first notice if the delinquency is continuing; and Lender shall also mail a copy of the second notice of delinquency to the holder(s) of any mortgage lien on the Property, to HUD if this is a HUD assisted or FHA insured Project, and to Freddie Mac if the lien is held by Freddie Mac.

The holder(s) of any mortgage lien on the Property, HUD, if this is a HUD assisted or FHA insured Project, and Freddie Mac if the mortgage lien is held by Freddie Mac, shall have not less than a 60-day notice and right to cure the delinquency by paying the amount of the delinquent Installment.

If Property Owner or other parties with the right to cure under this contract fails to cure the delinquency on or before the 30th day after the mailing of the second notice of delinquency, Lender or its designee may notify Authorized Representative in writing of a default in payment by Property Owner. Upon receipt of such notice and after doing its own due diligence, Authorized Representative shall certify the default to Local Government, which shall then enforce the assessment lien for the benefit of Lender pursuant to Sec. 399.014(c) of the PACE Act, in the same manner as a property tax lien against real property may be enforced, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution. However, if a case under the U.S. Bankruptcy Code is filed by or against Property Owner or if the enforcement of the assessment lien is prevented by the order of a court, Local Government shall notify Authorized Representative and shall file a proof of claim for the balance of the Assessment, accrued interest and penalties, and all costs and expenses, including attorney's fees, as authorized by Section 399.014 of the PACE Act. Authorized Representative shall notify Lender of the filing of the proof of claim. Lender shall not be required to mail a notice of delinquency to Property Owner or a notice of default to Local Government. Lender shall reimburse Local Government for any costs and expenses, including attorney's fees, required to file and present the claim.

(d) Priority. Pursuant to Sec. 399.014(a)(2) of the PACE Act, if the assessment lien is enforced by foreclosure or collected through a bankruptcy or similar proceeding, the delinquent Installment(s) and any interest, costs, and penalties on them shall have the same priority status as a secured claim for any other ad valorem tax. The

parties understand that the assessment lien is a statutory tax lien under Sec. 399.014 of the PACE Act.

(e) Final Payment and Release. When the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees, attorney fees, and costs due under or authorized by the PACE Act or the Financing Documents have been paid in full, Local Government's rights under the PACE Owner Contract shall cease and terminate. Upon notice from Lender that all amounts due have been paid in full, Authorized Representative on behalf of Local Government, shall execute a release of the Assessment and the PACE Owner Contract and record the release.

(f) Limitations on Local Government's Actions. Local Government shall not enter into any amendment or modification of or deviation from the PACE Owner Contract without the prior written consent of Lender. Local Government or Authorized Representative shall not institute any legal action with respect to the PACE Owner Contract, the Assessment, or the assessment lien without the prior written request of Lender.

(g) Limitations of Local Government's Obligations. Local Government undertakes to perform only such duties as are specifically set forth in this PACE Lender Contract, and no implied duties on the part of Local Government are to be read into this PACE Lender Contract. Local Government shall not be deemed to have a fiduciary or other similar relationship with Lender. Local Government may request written instructions for action from Lender and refrain from taking action until it receives satisfactory written instructions. Local Government shall have no liability to any person for following such instructions, regardless of whether they are to act or refrain from acting.

(h) Costs. No provisions of this PACE Lender Contract shall require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

7. Lender's Warranties and Representations. With respect to this PACE Lender Contract, Lender hereby warrants and represents that on the Effective Date of this PACE Lender Contract:

(a) Lender is a qualified lender under the PACE Program, as defined in paragraph 3(a) above, and is fully qualified under the PACE Program to enter into this PACE Lender Contract and the Financing Documents;

(b) Lender has independently and without reliance upon Local Government conducted its own credit evaluation, reviewed such information as it has deemed adequate and appropriate, and made its own analysis of the PACE Owner Contract, the Project, and Property Owner's financial ability to perform the financial obligations set out in the Financing Documents; and

(c) Lender has not relied upon any investigation or analysis conducted by, advice or communication from, or any warranty or representation by Local Government, Authorized Representative, or any agent or employee of Local Government or Authorized Representative, express or implied, concerning the financial condition of the Property Owner or the tax or economic benefits of an investment in the Assessment.

8. Written Contract Required by the PACE Act. This PACE Lender Contract constitutes a written contract between Local Government and Lender, as required under Section 399.006(c) of the PACE Act.

9. Construction and Definitions. This PACE Lender Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the PACE Program, or the PACE Act.

10. Binding Effect. This PACE Lender Contract is binding upon and inures to the benefit of the parties hereto and their respective representatives, agents, successors, and assigns.

11. Notices. Unless otherwise specifically provided herein, all notices and other communications required or permitted hereunder shall be in writing and delivered by first-class mail or by electronic mail with written confirmation of receipt, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

12. Governing Law and Venue. This PACE Lender Contract shall in all respects be governed by and construed in accordance with the laws of the State of Texas without regard to Texas' choice of law provisions. Venue for any disputes or suits between the parties arising from or related to this PACE Lender Contract shall be in a state court located in the Region, and the parties consent to the personal and subject matter jurisdiction of such state court.

13. Entire Agreement. This PACE Lender Contract, including its exhibit, constitutes the entire agreement between Local Government and Lender with respect to the subject matter hereof and shall not be amended or altered in any manner except by a document in writing executed by both parties. If this is a HUD assisted or FHA insured Project, then HUD or FHA must also consent in writing to any amendment or alteration of this PACE Lender Contract, for as long as the Project remains HUD assisted or FHA insured.

14. Further Assurances. Lender further covenants and agrees to do, execute and deliver, or cause to be done, executed, and delivered all such further acts for implementing the intention of this PACE Lender Contract as may be reasonably necessary or required.

15. Captions. Paragraph and section titles are for convenience of reference only and shall not be of any legal effect.

16. Counterparts. This PACE Lender Contract may be executed in any number of counterparts, and each counterpart may be delivered on paper or by electronic transmission, all of

which when taken together shall constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

17. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Local Government and Contractual Interest payable to Lender under the Financing Documents, exceed the maximum amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law (the “**Usury Limit**”). If the total amount of interest payable to Local Government and Contractual Interest payable to Lender exceeds the Usury Limit, interest payable to Local Government shall be reduced and any interest in excess of the Usury Limit shall be credited to the amount payable to Local Government or refunded. This provision overrides any conflicting provisions in this PACE Lender Contract.

18. Certification. Local Government certifies that the PACE Program has been duly adopted and is in full force and effect on the Effective Date of this PACE Lender Contract. Property Owner has represented to Lender and Local Government that the Project is a “qualified project” as defined in the PACE Program and Section 399.002 of the PACE Act. The Assessment has been imposed on the Property as a lien in accordance with the PACE Owner Contract and the PACE Act. Local Government has not assigned or transferred any interest in the Assessment or the PACE Owner Contract.

19. Inspection and Audits. Local Government’s representatives may perform, or have performed, audits of Lender’s documents, books and records. Lender shall keep its documents, books and records available for this purpose for at least three (3) years after this PACE Lender Contract terminates. This provision does not affect the applicable statute of limitations.

20. No Personal Liability. Pursuant to Section 399.019 of the PACE Act, the Lender acknowledges that the members of the governing body and employees of the Local Government, and board members, executives, employees, and contractors of the Authorized Representative are not personally liable as a result of exercising any rights or responsibilities under the PACE Program or any agreement in furtherance of the PACE Program.

21. Construction Terms. The Financing Documents executed by Lender and Property Owner must include a requirement that Lender shall withhold _____% of the Financing until verification is provided to Authorized Representative by an Independent Third Party Reviewer (“ITPR”) that the Project was properly completed and is operating as intended, or Property Owner shall pay liquidated damages to Lender of \$_____ per day for every day after 30 days following completion of the Project that such verification of completion is not provided. If verification of completion is not provided by Property Owner on or before the 30th day after completion of the Project, such verification shall be submitted by Lender. If this PACE Lender Contract includes any additional requirements related to construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit D of the PACE Owner Contract attached hereto as Exhibit A and incorporated herein by reference. Such requirements may include, among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final Project completion.

LENDER:

By: _____

Name: _____

Title: _____

Address: _____

Email Address: _____

ACKNOWLEDGEMENT

STATE OF _____ §

COUNTY OF _____ §

This PACE Lender Contract pursuant to Property Assessed Clean Energy Act was
acknowledged before me on _____, _____ by _____,
_____, on behalf of _____.

_____(print name)

NOTARY PUBLIC, STATE OF _____

CITY OF ABILENE, TEXAS

By: TEXAS PROPERTY ASSESSED CLEAN ENERGY AUTHORITY
dba TEXAS PACE AUTHORITY
AUTHORIZED REPRESENTATIVE
Pursuant to Tex. Local Gov't Code §399.006(b)

By: _____

Name: CHARLENE HEYDINGER

Title: PRESIDENT

Address: PO BOX 200368
AUSTIN, TX 78720-0368

Email Address: admin@texaspaceauthority.org

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF _____ §

This PACE Lender Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on _____, 20__ by Charlene Heydinger, President, Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, a Texas nonprofit corporation, on behalf of said corporation and as Authorized Representative for the Local Government.

(print name)

NOTARY PUBLIC, STATE OF TEXAS

PACE LENDER CONTRACT EXHIBIT A

PACE OWNER CONTRACT

EXHIBIT 4

FORM NOTICE OF CONTRACTUAL ASSESSMENT LIEN
PURSUANT TO PROPERTY ASSESSED CLEAN ENERGY ACT

**FORM NOTICE OF CONTRACTUAL ASSESSMENT LIEN
PURSUANT TO
PROPERTY ASSESSED CLEAN ENERGY ACT**

STATE OF TEXAS §
 §
COUNTY OF _____ §

RECITALS

A. The Property Assessed Clean Energy Act (“**PACE Act**”), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand. Unless otherwise expressly provided herein, all terms used herein have the same meanings ascribed to them in the PACE Act.

B. Abilene, Texas (“**Local Government**”) has established a program under the PACE Act pursuant to a resolution dated March 12, 2020, adopted by the Commissioners Court (“**PACE Program**”), and has designated Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, as the representative of Local Government (“**Authorized Representative**”) authorized to enter into the written contracts with the owners of such property and the providers of such financing described herein, and has designated the entire territory within the boundaries of Abilene, Texas jurisdiction, including its extraterritorial jurisdiction, as a region (the “**Region**”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

C. _____ (“**Property Owner**”) is the sole legal and record owner of the qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region located at _____, _____, Texas _____ - _____ and more fully described in Exhibit A attached hereto and made a part hereof (the “**Property**”).

D. Property Owner has applied to Local Government to participate in the PACE Program by installing or modifying on the Property certain permanent improvements described in Exhibit B attached hereto and made a part hereof, which are intended to decrease water or energy consumption or demand and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (“**Qualified Improvements**”). The installation or modification of such Qualified Improvements on the Property will be a

“qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”). Property Owner has entered into a written contract (the “**PACE Owner Contract**”) with Local Government pursuant to the PACE Act and the PACE Program and has requested Local Government to impose an assessment on the Property to repay the financing of such Qualified Improvements.

E. The financing of such Qualified Improvements shall be provided to Property Owner by _____ (“**Lender**”), a qualified lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government as required by the PACE Program and Section 399.006(c) of the PACE Act (the “**PACE Lender Contract**”). Lender shall be responsible for all servicing duties other than those specifically undertaken by Local Government in the PACE Lender Contract.

THEREFORE, Local Government hereby gives notice to the public pursuant to Section 399.013 of the PACE Act that it has imposed an assessment on the Property in the principal amount of \$_____ (the “**Assessment**”). The Assessment includes only those costs and fees for which an assessment may be imposed under Section 399.006(e) of the PACE Act. In the event that the actual total of costs and fees for which an assessment may be imposed is different from the amount stated or any other term requires correction, Authorized Representative on behalf of Local Government, Property Owner, and Lender agree to execute an amended Owner Contract and Lender Contract, and thereafter Authorized Representative shall record an amended Notice of Contractual Assessment Lien.

The Assessment and contractual interest thereon due to the Lender (“**Contractual Interest**”) are due and payable in installments (“**Installments**”) in accordance with the terms and payment schedule included in the financing documents executed between Property Owner and Lender that are described in or copies of which are attached hereto as Exhibit C (the “**Financing Documents**”).

Pursuant to Section 399.014 of the PACE Act,

1. The Assessment, including any interest, costs, fees, attorney fees, and penalties accrued thereon,
 - (i) are a first and prior lien against the Property from the date on which this Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located, until the Assessment, interest, and penalty is paid; and
 - (ii) such lien, if enforced by foreclosure or collected through bankruptcy or similar proceeding, has the same priority status as a lien for any other ad valorem tax, pursuant to Section 399.014(a)(2) of the PACE Act.
2. Pursuant to Section 399.014(b) of the PACE Act, the lien created by the Assessment runs with the land, and any portion of the Assessment that has not yet become due shall not be eliminated by foreclosure of: (i) a property tax lien, or (ii) the lien for a delinquent Installment of the Assessment. Accordingly, Installments may not be accelerated in the event of default. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner’s obligations under the Financing

Documents shall be transferred to the succeeding owner without recourse to Local Government, or Authorized Representative.

3. As provided in Section 399.014(a-1) of the PACE Act, after this Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located, the lien created by the Assessment may not be contested on the basis that the improvement is not a “qualified improvement” or the Project is not a “qualified project”, as such terms are defined in Section 399.002 of the PACE Act.

EXECUTED on _____, _____

LOCAL GOVERNMENT:

CITY OF ABILENE, TEXAS

By: TEXAS PROPERTY ASSESSED CLEAN ENERGY AUTHORITY
dba TEXAS PACE AUTHORITY
AUTHORIZED REPRESENTATIVE
Pursuant to Tex. Local Gov't Code §399.006(b)

By: _____

Name: CHARLENE HEYDINGER

Title: PRESIDENT

Address: PO BOX 200368
AUSTIN, TX 78720-0368

Email Address: admin@texaspaceauthority.org

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF _____ §

This Notice of Contractual Assessment Lien pursuant to Property Assessed Clean Energy Act was acknowledged before me on _____, 20__ by Charlene Heydinger, President, Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, a Texas nonprofit corporation, on behalf of said corporation and as Authorized Representative for the Local Government.

(print name)

NOTARY PUBLIC, STATE OF TEXAS

PACE NOTICE OF LIEN EXHIBIT A

PROPERTY DESCRIPTION

PACE NOTICE OF LIEN EXHIBIT B
QUALIFIED IMPROVEMENTS

PACE NOTICE OF LIEN EXHIBIT C

FINANCING DOCUMENTS

Assessment Payment Schedule

Assessment Total:

Payment Frequency:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

Financing Documents

Document Title	Parties	Date Executed

INDEXING INSTRUCTION:

Grantor: _____, Property Owner
Grantees: _____, Local Government
_____, Lender

After recording, return to: Texas PACE Authority
Charlene Heydinger
PO Box 200368
Austin, TX 78720-0368

PACE PROGRAM

07/10/2025





- Originally adopted by council in 2020
- Resolution is to update applications to include HUD and FHA participation due to a legislative update to the program
- Additionally, the city has minimal oversight with great benefit to the owner for restoration/rehabilitation of existing properties within Abilene





QUESTIONS





City Council Agenda Memo

City Council Meeting Date: 7/10/2025

TO: Honorable Mayor and City Council Members

FROM: Emily Crawford, City Manager

SUBJECT: **11. Ordinance:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Amending Chapter 17, "Miscellaneous Provisions," Code of Ordinance by Approving a Permit Requirement for Bring Your Own Beverage (BYOB) Establishments (*Emily Crawford*)

GENERAL INFORMATION

Establishments that sell alcoholic beverages are regulated by the Texas Alcohol and Beverage Commission (TABC). The TABC does not regulate Bring Your Own Beverage (BYOB) establishments. BYOB establishments may be regulated by municipalities.

The proposed BYOB Ordinance will regulate BYOB establishments which operate within the city limits of Abilene.

The purpose of this Ordinance is to protect the health, safety, and welfare of the citizens of the City of Abilene by monitoring and regulating BYOB businesses. This Ordinance establishes a permit program for BYOB businesses, imposes regulations of business operations of BYOB businesses, and imposes civil and criminal penalties for violations of this Article.

SPECIAL CONSIDERATIONS

This Bring Your Own Beverage (BYOB) Establishment Permit Ordinance may be enacted with one reading pursuant to Section 18, City Charter, if at least five council members affirmatively vote that the ordinance relates to the immediate preservation of the public peace, health, safety or welfare of the City of Abilene and the nature of the emergency is stated.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends passage of the BYOB Permit Ordinance.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. Enacting Ordinance- BYOB
2. BYOB Ordinance draft clean
3. BYOB Ordinance draft redline
4. BYOB permit ordinance powerpoint (1)

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 17, “MISCELLANEOUS PROVISIONS,” OF THE CODE OF THE CITY OF ABILENE, PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.

WHEREAS, the City seeks to protect the public health and safety of citizens of Abilene through regulation of Bring Your Own Beverage (BYOB) establishments located in the city limits; and

WHEREAS, the regulation of Bring Your Own Beverage (BYOB) establishments may be accomplished by amending Chapter 17 of the Code of Ordinances to add a permitting requirement for all BYOB establishments in the City; and

WHEREAS, the City Council, with the affirmative vote of at least five council members, has determined that regulation of BYOB establishments relates to the immediate preservation of the public peace, health, safety or welfare of the residents of the City of Abilene and that the requirement for reading of ordinances upon two separate days should be waived;

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

PART 1: That Chapter 17, “Miscellaneous Provisions,” of the Code of Ordinances of the City of Abilene, Texas, are hereby amended as set out in Exhibit A, attached and made a part of this ordinance for all purposes.

PART 2: That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.

PART 3: That any person, firm, or corporation violating the provisions of this Ordinance shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.

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, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall to permit the public to be heard. After such an opportunity for the public to be heard, said ordinance was passed on one reading due to the emergency nature of the ordinance. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON this 10th day of July, 2025.

ATTEST:

CITY SECRETARY

MAYOR

CITY ATTORNEY

CHAPTER 17 MISCELLANEOUS PROVISIONS

ARTICLE IV. ESTABLISHMENTS NOT LICENSED BY THE TEXAS ALCOHOLIC BEVERAGE COMMISSION

DIVISION 1. GENERALLY

Sec. 17-111. – Purpose.

- (A) This Article may be known and cited as “BYOB Businesses Regulation.”
- (B) The purpose of this Article is to protect the health, safety, and welfare of the citizens of the City of Abilene by monitoring and regulating BYOB businesses. This Article establishes a permit program for BYOB businesses, imposes regulations of business operations of BYOB businesses, and imposes civil and criminal penalties for violations of this Article.
- (C) The restrictions of Sections 1.06 and 109.57 of the Alcoholic Beverage Code preempt the City's regulation of permitted or licensed establishments, and the regulation of the manufacture, sale, distribution, transportation, and possession of alcoholic beverages. The intent of this ordinance is not to regulate any of these activities or premises, but to establish a process by which Texas Alcoholic Beverage Commission (agency) permitted or licensed businesses are not discriminated against regarding locations and operations within the city, to protect health, life, and property, and to preserve the good government, order, and security of the municipality and its inhabitants by establishing a City permitting process for businesses that are not regulated by the agency.

Sec. 17-112. – Administration.

The City Manager, or his/her designee, shall administer, implement, and enforce the provisions of this Article. Any powers granted to, or duties imposed upon the City Manager or the designee, may be delegated to other city personnel or authorized representatives.

Sec. 17-113. – Definitions.

- (A) It is common practice for an establishment not licensed or permitted by the Texas Alcoholic Beverage Commission (“TABC”) to sell or serve alcoholic beverages to allow its patrons to bring their own alcoholic beverages onto the premises for consumption. This practice is often referred to as “BYOB,” an acronym commonly used for “bring your own bottle,” or “bring your own beverage.”
- (B) In this article:
 - (1) *Alcoholic Beverage* has the meaning assigned by the Texas Alcoholic Beverage Code.
 - (2) *Applicant* means the owner or operator of the BYOB establishment who has applied for a BYOB permit.

- (3) *BYOB Establishment* means an establishment to which this article applies, as described in section 17-114 below.
- (4) *BYOB Permit* means a permit issued, pursuant to this article, to operate a BYOB establishment.
- (5) *City Secretary* means the City of Abilene City Secretary or Deputy City Secretary.
- (6) *City Manager* means the City Manager for the City of Abilene. The term may also include the City Manager's designee, delegated staff, or duly authorized representative of the City Manager.
- (7) *Obstruct* means to block, close up, or hinder from passage, action, or operation.
- (8) *Permit Holder* means the person to whom the BYOB permit has been issued. This term includes any agent or employee of the holder that has the responsibility for operating the BYOB Establishment or acting as a person in charge of a BYOB establishment.
- (9) *Person* has the meaning assigned by Texas Penal Section 1.07.
- (10) *Premises* means a building or portion of a building and the grounds on which the building is located, including any public or private driveway, street, sidewalk or walkway, appurtenances, parking areas, and vehicles in the parking areas.
- (11) *Public place* means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops. A public place for the purposes of this article includes a BYOB Establishment. Premises remain a public place despite the requirement to pay a fee or other cost for access.
- (12) *Restaurant* means any establishment whose principal business is the sale of foods, frozen desserts, or beverages to the customer in a ready-to-consume state.

Sec. 17-114. – Applicability.

(A) Except as provided in subsection (B), this article applies to an establishment that:

- (1) Is not licensed or permitted by the Texas Alcoholic Beverage Commission to sell or serve alcoholic beverages; and
- (2) Allows patrons to bring alcoholic beverages onto the premises for possession and consumption.

(B) This article does not apply to:

- (1) A residence;
- (2) An establishment operated by a governmental entity;

- (3) A private club permitted pursuant to Chapter 32 of the Texas Alcoholic Beverage Code;
- (4) A fraternal organization or veteran's organization, as defined by the Texas Alcoholic Beverage Code;
- (5) A university or college providing a degree program;
- (6) A place of worship; or
- (7) A restaurant.

Sec. 17-115. – Notice.

- (A) Notice may be provided by:
 - (1) U.S.P.S. regular mail;
 - (2) Hand delivery; or
 - (3) Posting of a notice on a public entry door to the BYOB establishment.
- (B) Mailed notice is deemed to be delivered on the fifth (5th) day after it is mailed.
- (C) Hand-delivery and posted notice are deemed to be delivered on the date the notice is hand delivered or posted.
- (D) If more than one manner of notice is utilized, the earliest date of notice shall be deemed the date notice was provided.
- (E) Notice to a Permit Holder may also be delivered to an employee if no person in charge is present at the BYOB Establishment at the time of delivery and is effective notice to the Permit Holder upon delivery.

DIVISION 2. PERMITS

Sec. 17-116. – Permit Required.

- (A) A person shall obtain a BYOB Permit issued by the City before the person may operate a BYOB Establishment.
- (B) A person must obtain a separate BYOB Permit for each BYOB Establishment location.

Sec. 17-117. – Qualifications.

- (A) A person must be at least eighteen (18) years of age to apply for or hold a BYOB Permit under this article.

- (B) A person may not hold a BYOB Permit issued under this article or manage a BYOB Establishment if the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities for operating a BYOB venue, including offenses that involve any regulated substances.

Sec. 17-118. – Permit Application.

- (A) A person who seeks a permit to operate a BYOB Establishment must submit an application to the City Secretary on a form provided by the City. The application must include:
- (1) The names, addresses, and birth dates of all individuals who have an ownership interest in, or who will manage or otherwise exercise control over, the proposed BYOB Establishment;
 - (2) The names, addresses, phone numbers, and email addresses for all owners of the property upon which the BYOB Establishment is located;
 - (3) Authorization for the City to conduct a criminal background check on each person described in subsection (A)(1);
 - (4) The name of the BYOB Establishment and its physical address;
 - (5) For Applicants that are a legal entity:
 - a. Sufficient evidence from the Secretary of State that demonstrates the entity is authorized to transact business in Texas.
 - b. Designation of an individual Permit Holder that resides in the State of Texas and within 150 miles of the territorial limits of the City of Abilene, and the address of the residence of such individual.
 - c. Designate an agent, who is a citizen of this state, to represent the person in matters during appeal and to be responsible for the proper conduct of any activity of a Permit Holder.
 - (6) Proof that the Applicant has all other permits and approvals required to operate the BYOB Establishment.
 - (7) A security plan that meets or exceeds the minimum standards established by administrative rule, as determined by the Chief of Police.
 - (8) Scale drawings of the site, including:
 - a. All site improvements;
 - b. The floor plan of each building; and

- c. A designation of the areas where the consumption of alcohol is to be allowed;
 - (9) An owner consent form signed and notarized by the owner of record of the property if an Applicant does not own the property upon which the BYOB Establishment is located; and
 - (10) Other information reasonably required by the City Manager.
- (B) The annual permit and inspection fee stated in the City's fee schedule shall be payable upon the submission of the application and shall be non-refundable.
- (C) An Applicant or Permit Holder shall immediately supplement the information provided as part of the BYOB permit application if the information is, or becomes in any manner, inaccurate, incomplete, or misleading. This obligation continues after a BYOB Permit is issued for as long as the BYOB Establishment is in effect and shall also continue during any period of suspension or appeal.

Sec. 17-119. – Permit approval; denial.

- (A) Except as otherwise provided in this article, the City Secretary shall approve a BYOB Permit application if the City Secretary determines that the Applicant and the proposed BYOB Establishment meet the requirements of this article.
- (B) The City Secretary shall deny a BYOB Permit application if the City Secretary determines that:
- (1) The Applicant is under the age of eighteen (18) years;
 - (2) The BYOB Establishment as proposed would not comply with this article;
 - (3) A BYOB Permit required by this article was revoked within the preceding 12-month period for the same location with a similar or related use; or
 - (4) A BYOB Permit required by this article was revoked within the preceding 12-month period and the revoked BYOB Permit was issued to the same Applicant or Permit Holder as a current Applicant or Permit Holder.
- (C) The City Secretary may deny a BYOB Permit application if the City Secretary determines that:
- (1) The Applicant provided incorrect or incomplete information on the application; or
 - (2) An Applicant or Permit Holder has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities for operating a BYOB Establishment, including an offense involving a regulated substance.
- (D) The City Secretary shall give written notice of a determination of an application to the Applicant no later than forty-five (45) days from the submission of a complete application.
- (E) An Applicant may appeal a denial of a BYOB Permit application to the City Manager in accordance with section 17-126 of this article.

- (F) Notice of a determination of approval, suspension, denial, or revocation may be delivered as provided elsewhere for notices in this article.

Sec. 17-120. – Permit not transferable.

A BYOB Permit issued under this article is not assignable or transferable to any other person or entity.

Sec. 17-121. – Permit not a right.

A BYOB Permit issued under this article is a grant of a privilege and is not a property right.

Sec. 17-122. – Permit expiration; renewal.

A BYOB Permit issued under this article expires one (1) year after the date it is issued. A renewal application for a BYOB Permit must be filed not sooner than the 90th day and not later than the 45th day before the BYOB Permit expires. An application that is not filed within the described time period shall be deemed a new application and shall comply with all new application requirements.

DIVISION 3. REVOCATION; AND APPEAL

Sec. 17-123. – Permit revocation; general.

- (A) The City Secretary may, in writing, revoke a BYOB Permit issued under the provisions of this article whenever the BYOB Permit is issued in error, or on the basis of incorrect information supplied, or when it is determined that the building, structure, or use is in violation of any provision of this article, the City of Abilene Land Development Code, or the provisions of any other ordinance of the City of Abilene that regulates public health or sanitation.
- (B) A BYOB Permit which has been revoked shall not be displayed at the BYOB Establishment.
- (C) A BYOB Permit must be surrendered to the City Secretary immediately upon revocation.

Sec. 17-124. – Reserved.

Sec. 17-125. – Permit revocation.

- (A) The City Secretary may revoke a BYOB Permit issued under this article if the City Secretary determines that:
- (1) The Permit Holder, the manager, an employee, or other agent of the BYOB Establishment has engaged in a serious violation or repeated violations of this article.
 - (2) The BYOB Establishment has repeatedly failed to comply with this article.
 - (3) The BYOB Establishment is not in compliance with all health and safety ordinances of the City of Abilene and the laws of the State of Texas.

- (4) The Permit Holder does not qualify for a BYOB Permit under this article and does not have the ability to qualify within a reasonable time period not to exceed ninety (90) days.
- (5) The calls for service to the BYOB Establishment exceeds three (3) calls within any 120-day period that involve:
 - a. Weapons charges;
 - b. Violent crime;
 - c. Calls categorized as “major disturbance” by dispatch;
 - d. Deadly conduct;
 - e. Any felony offense; or
 - f. Human trafficking related offenses.
- (6) The BYOB Permit was issued pursuant to false information provided on or with the application, renewal application, or supplemental information submitted as part of the application or renewal process or as required by this article.
- (B) The City Secretary shall provide the BYOB Permit Holder and Applicant with written notice of the BYOB permit revocation that includes the reason(s) the BYOB permit is subject to revocation.
- (C) Revocation of a BYOB Permit is effective on delivery of notice.
- (D) A BYOB Permit Holder may appeal a BYOB Permit revocation pursuant to the provisions of this article.
- (E) If an appeal is not timely filed, the City Secretary’s decision to revoke is final.

Sec. 17-126. – Appeal.

- (A) An Applicant may appeal the City Secretary’s determination to deny or revoke a BYOB Permit pursuant to this article by filing a written notice of appeal to the City Manager not later than ten (10) calendar days after delivery of the notice of denial or revocation.
- (B) If a BYOB Permit Holder timely files a written notice of appeal:
 - (1) The City Manager, or his/her designee, shall not later than the 10th day after the date the notice of appeal is filed, consider the appeal, and may affirm, reverse, or modify a permit application denial or permit revocation.
 - (2) A revocation is not stayed during the pendency of the appeal to the City Manager.

(C) The notice of appeal shall set forth the following:

- (1) The name and contact information of the person filing the appeal;
- (2) The name and address of the BYOB Establishment; and
- (3) A statement setting forth the material facts that are the basis for the appeal.

(D) The City Manager, or designee, shall give written notice of a decision on an appeal to the appellant.

(E) The decision of the City Manager, or designee, shall be final and not subject to further appeal.

DIVISION 4. REGULATIONS FOR OPERATION OF A BYOB ESTABLISHMENT

Sec. 17-127. – Public place.

A BYOB Establishment is a public place.

Sec. 17-128. – Permit posting required.

A BYOB permit holder shall post the BYOB Permit required by this article in a prominent public location near or at the entrance of the BYOB Establishment.

Sec. 17-129. – Manager required on premises.

A BYOB Permit Holder shall ensure that a Permit Holder is continuously on the BYOB Establishment premises during the hours of operation.

Sec. 17-130. – Minimum age for admittance and alcohol consumption.

A BYOB Permit Holder, a manager, or an employee of a BYOB Establishment may not allow a person under the age of twenty-one (21) years to possess or consume alcohol on the premises.

Sec. 17-131. – Security plan implementation.

- (A) A person may not operate a BYOB Establishment without an approved security plan.
- (B) The Applicant shall provide security for the BYOB Establishment in accordance with the security plan.

Sec. 17-132. – Minimum security requirements.

All BYOB Establishments shall comply with the following requirements:

- (A) Hand wand or walkthrough metal detectors shall be utilized on all persons entering the BYOB Establishment;

- (B) The exterior portions of the premises, including parking areas, shall be well lit during business hours and must have lighting to illuminate parking areas. Said lighting shall be designed so as to not interfere with any neighbor's reasonable use and/or enjoyment of the neighbor's premises;
- (C) The BYOB Establishment shall provide for at least one (1) security officer per fifty (50) patrons. Security officers must have at least a Level II non-commissioned security guard license;
- (D) The BYOB Establishment shall have a licensed and bonded security company on premise;
- (E) The BYOB Establishment must have a working security video system with low light recording capabilities. The system must record open areas and all entrances and exists outside of the premises, excluding restroom facilities. The BYOB Establishment must also have digital high-resolution surveillance cameras sufficient to provide an overall view from the exterior of the building to the property line. The owner shall maintain a library of the recorded digital images for not less than ninety (90) days. At least one (1) on-site personnel must be able to access the system if requested by law enforcement. All security cameras and security footage is subject to inspection at any time by City personnel; and
- (F) Any written requirement that the Chief of Police deems reasonably necessary for the BYOB Establishment.

Sec. 17-133. – Doors to remain unlocked.

During the hours of operation, a person may not lock or obstruct:

- (A) An exterior entrance door that is designated, or available, for use by patrons;
- (B) An exit door in a manner that impedes exiting to the outside from the interior of the premises; or
- (C) An interior door that provides access to a portion of the premises that is designated or available for use by patrons.

Sec. 17-134. – Hours of operation.

- (A) A BYOB Permit Holder, a manager, or an employee of a BYOB Establishment shall close a BYOB Establishment between 2:00 a.m. and 7:00 a.m. each day except Sunday, and between 2:00 a.m. and noon on Sunday. A patron who is on the premises at 2:00 a.m. may remain until not later than 2:15 a.m.
- (B) A person may not consume an alcoholic beverage on the premises of a BYOB Establishment between 2:00 a.m. and 7:00 a.m. each day except Sunday, or between 2:00 a.m. and noon on Sunday.
- (C) A BYOB Permit Holder, a manager, or an employee of a BYOB Establishment may not allow a member of the public to remain on its premises, including a parking area, between 2:15 a.m. and 7:00 a.m. each day except Sunday, or between 2:15 a.m. and noon on Sunday. This prohibition does not apply to a person who is providing a product or service directly to the BYOB Establishment.

Sec. 17-135. – Alcoholic beverage consumption areas.

- (A) A Permit Holder shall designate, subject to the approval of the City Manager or designee, the portions of the premises on which the consumption of alcoholic beverages is permitted. A designated area:
- (1) Must be located within the interior of a building or an enclosed deck, patio, or garden; and
 - (2) Must exclude parking areas.
- (B) A person may not consume, and a Permit Holder, a manager, employee, or other agent of a BYOB Establishment may not allow the consumption of an alcoholic beverage outside of a designated area.
- (C) The BYOB Permit Holder shall indicate the portions of the premises on which the consumption of alcoholic beverages is permitted on the floor plan provided with the BYOB Permit application. If the BYOB Permit Holder desires to change or modify the area where alcoholic beverages may be consumed, it must provide a revised floor plan to the City Secretary, and receive approval from the City Manager or designee, prior to the implementation of such change or modification.

Sec. 17-136. – Notice of designated consumption areas.

A BYOB Permit Holder shall post signs in each parking area or on the exterior of the BYOB Establishment that provides sufficient notice to all persons on the premises that consumption is allowed only within the designated area within the interior of the building or within an enclosed deck, patio, or garden.

Sec. 17-137. – Sale of alcoholic beverages prohibited.

A person shall not sell an alcoholic beverage at a BYOB Establishment.

Sec. 17-138. – Consumption and purchase of alcohol by owner prohibited.

The owner, operator, employee, or agent of a BYOB Establishment may not:

- (A) Consume an alcoholic beverage while on duty;
- (B) Purchase or otherwise acquire an alcoholic beverage for a patron; or
- (C) Give an alcoholic beverage to a patron.

Sec. 17-139. – Consent to inspection.

- (A) By accepting a permit under this article, the owner consents that law enforcement personnel, code enforcement personnel, and other on-duty governmental personnel may enter the premises

at reasonable times to investigate or inspect the premises to determine compliance with this article.

- (B) The owner, the operator, and an employee shall provide law enforcement personnel, code enforcement personnel, and other on-duty governmental personnel with immediate access to all portions of the premises. If the BYOB Establishment is occupied, the Chief of Police, or his/her designee, must present credentials to the owner or other person having charge or control of the BYOB Establishment and request entry.
- (C) If the owner or other person having charge or control of the BYOB Establishment refuses law enforcement's request to enter the premises to inspect or perform the duties imposed by this article or to inspect or review records relating to compliance with this article, police officers shall have recourse to the remedies provided by law to secure entry.

Sec. 17-140. – Compliance with other laws.

A BYOB Permit Holder, a manager, an employee, and any other agent of a BYOB Establishment shall comply with the Texas Alcoholic Beverage Code and all other applicable state and local laws, including all ordinances of the City of Abilene.

DIVISION 5. ENFORCEMENT

Sec. 17-141. – Criminal penalty.

- (A) A person commits a Class C misdemeanor if the person:
 - (1) Operates a BYOB Establishment without a permit required by this article; or
 - (2) Violates a provision of this article, other than section 17-140 (Compliance with other laws).
- (B) Proof of a culpable mental state is not required to prove an offense under this article.
- (C) Each day that a violation occurs or continues is a separate offense.

Sec. 17-142. – Civil remedies.

- (A) The City has determined that this article is necessary to protect the health, life, and property and to preserve the good government, order, and security of the city and its inhabitants.
- (B) A person who continues to violate this article after being notified of the offense in writing by an authorized city representative is subject to a civil penalty not to exceed \$1,000.00 for each day or part of a day the violation occurs.
- (C) The city may file suit to enforce this article to collect a civil penalty.
- (D) The city may seek to enjoin violations of this article.

17-143. – Cumulative remedies.

The remedies authorized under this section are cumulative. If the city files a civil or criminal action, it is not precluded from pursuing any other action or remedy.

CHAPTER 17 MISCELLANEOUS PROVISIONS

ARTICLE IV. ESTABLISHMENTS NOT LICENSED BY THE TEXAS ALCOHOLIC BEVERAGE COMMISSION

DIVISION 1. GENERALLY

Sec. 17-111. – Purpose.

- (A) This Article may be known and cited as “BYOB Businesses Regulation.”
- (B) The purpose of this Article is to protect the health, safety, and welfare of the citizens of the City of Abilene by monitoring and regulating BYOB businesses. This Article establishes a permit program for BYOB businesses, imposes regulations of business operations of BYOB businesses, and imposes civil and criminal penalties for violations of this Article.
- (C) The restrictions of Sections 1.06 and 109.57 of the Alcoholic Beverage Code preempt the City's regulation of permitted or licensed establishments, and the regulation of the manufacture, sale, distribution, transportation, and possession of alcoholic beverages. The intent of this ordinance is not to regulate any of these activities or premises, but to establish a process by which Texas Alcoholic Beverage Commission (agency) permitted or licensed businesses are not discriminated against regarding locations and operations within the city, to protect health, life, and property, and to preserve the good government, order, and security of the municipality and its inhabitants by establishing a City permitting process for businesses that are not regulated by the agency.

Sec. 17-112. – Administration.

The City Manager, or his/her designee, shall administer, implement, and enforce the provisions of this Article. Any powers granted to, or duties imposed upon the City Manager or the designee, may be delegated to other city personnel or authorized representatives.

Sec. 17-113. – Definitions.

- (A) It is common practice for an establishment not licensed or permitted by the Texas Alcoholic Beverage Commission (“TABC”) to sell or serve alcoholic beverages to allow its patrons to bring their own alcoholic beverages onto the premises for consumption. This practice is often referred to as “BYOB,” an acronym commonly used for “bring your own bottle,” or “bring your own beverage.”
- (B) In this article:
 - (1) *Alcoholic Beverage* has the meaning assigned by the Texas Alcoholic Beverage Code.
 - (2) *Applicant* means the owner or operator of the BYOB establishment who has applied for a BYOB permit.

- (3) *BYOB Establishment* means an establishment to which this article applies, as described in section 17-114 below.
- (4) *BYOB Permit* means a permit issued, pursuant to this article, to operate a BYOB establishment.
- (5) *City Secretary* means the City of Abilene City Secretary or Deputy City Secretary.
- (6) *City Manager* means the City Manager for the City of Abilene. The term may also include the City Manager's designee, delegated staff, or duly authorized representative of the City Manager.
- (7) *Obstruct* means to block, close up, or hinder from passage, action, or operation.
- (8) *Permit Holder* means the person to whom the BYOB permit has been issued. This term includes any agent or employee of the holder that has the responsibility for operating the BYOB Establishment or acting as a person in charge of a BYOB establishment.
- (9) *Person* has the meaning assigned by Texas Penal Section 1.07.
- (10) *Premises* means a building or portion of a building and the grounds on which the building is located, including any public or private driveway, street, sidewalk or walkway, appurtenances, parking areas, and vehicles in the parking areas.
- (11) *Public place* means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops. A public place for the purposes of this article includes a BYOB Establishment. Premises remain a public place despite the requirement to pay a fee or other cost for access.
- (12) *Restaurant* means any establishment whose principal business is the sale of foods, frozen desserts, or beverages to the customer in a ready-to-consume state.

Sec. 17-114. – Applicability.

(A) Except as provided in subsection (B), this article applies to an establishment that:

- (1) Is not licensed or permitted by the Texas Alcoholic Beverage Commission to sell or serve alcoholic beverages; and
- (2) Allows patrons to bring alcoholic beverages onto the premises for possession and consumption.

(B) Sections 17-129, 17-131, 17-132, 17-135, 17-136, 17-138, and 17-139 shall apply to a BYOB Establishment only if it is determined that there are three (3) or more incidents at the BYOB Establishment within any 180-day period that involve:

a. Weapons charges;

- b. Violent crime;
- c. Incidents categorized as "major disturbance";
- d. Deadly conduct;
- e. Any felony offense; or
- f. Human trafficking related offenses.

~~(B)~~(C) This article does not apply to:

- (1) A residence;
- (2) An establishment operated by a governmental entity;
- (3) A private club permitted pursuant to Chapter 32 of the Texas Alcoholic Beverage Code;
- (4) A fraternal organization or veteran's organization, as defined by the Texas Alcoholic Beverage Code;
- (5) A university or college providing a degree program;
- (6) A place of worship; or
- (7) A restaurant.

Sec. 17-115. – Notice.

(A) Notice may be provided by:

- (1) U.S.P.S. regular mail;
- (2) Hand delivery; or
- (3) Posting of a notice on a public entry door to the BYOB establishment.

(B) Mailed notice is deemed to be delivered on the fifth (5th) day after it is mailed.

(C) Hand-delivery and posted notice are deemed to be delivered on the date the notice is hand delivered or posted.

(D) If more than one manner of notice is utilized, the earliest date of notice shall be deemed the date notice was provided.

- (E) Notice to a Permit Holder may also be delivered to an employee if no person in charge is present at the BYOB Establishment at the time of delivery and is effective notice to the Permit Holder upon delivery.

DIVISION 2. PERMITS

Sec. 17-116. – Permit Required.

- (A) A person shall obtain a BYOB Permit issued by the City before the person may operate a BYOB Establishment.
- (B) A person must obtain a separate BYOB Permit for each BYOB Establishment location.

Sec. 17-117. – Qualifications.

- (A) A person must be at least eighteen (18) years of age to apply for or hold a BYOB Permit under this article.
- (B) A person may not hold a BYOB Permit issued under this article or manage a BYOB Establishment if the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities for operating a BYOB venue, including offenses that involve any regulated substances.

Sec. 17-118. – Permit Application.

- (A) A person who seeks a permit to operate a BYOB Establishment must submit an application to the City Secretary on a form provided by the City. The application must include:
 - (1) The names, addresses, and birth dates of all individuals who have an ownership interest in, or who will manage or otherwise exercise control over, the proposed BYOB Establishment;
 - (2) The names, addresses, phone numbers, and email addresses for all owners of the property upon which the BYOB Establishment is located;
 - (3) Authorization for the City to conduct a criminal background check on each person described in subsection (A)(1);
 - (4) The name of the BYOB Establishment and its physical address;
 - (5) For Applicants that are a legal entity:
 - a. Sufficient evidence from the Secretary of State that demonstrates the entity is authorized to transact business in Texas.
 - b. Designation of an individual Permit Holder that resides in the State of Texas and within 150 miles of the territorial limits of the City of Abilene, and the address of the residence of such individual.

- c. Designate an agent, who is a citizen of this state, to represent the person in matters during appeal and to be responsible for the proper conduct of any activity of a Permit Holder.
- (6) Proof that the Applicant has all other permits and approvals required to operate the BYOB Establishment.
- (7) A security plan that meets or exceeds the minimum standards established by administrative rule, as determined by the Chief of Police.
- (8) Scale drawings of the site, including:
 - a. All site improvements;
 - b. The floor plan of each building; and
 - c. A designation of the areas where the consumption of alcohol is to be allowed;
- (9) An owner consent form signed and notarized by the owner of record of the property if an Applicant does not own the property upon which the BYOB Establishment is located; and
- (10) Other information reasonably required by the City Manager.
- (B) The annual permit and inspection fee stated in the City's fee schedule shall be payable upon the submission of the application and shall be non-refundable.
- (C) An Applicant or Permit Holder shall immediately supplement the information provided as part of the BYOB permit application if the information is, or becomes in any manner, inaccurate, incomplete, or misleading. This obligation continues after a BYOB Permit is issued for as long as the BYOB Establishment is in effect and shall also continue during any period of suspension or appeal.

Sec. 17-119. – Permit approval; denial.

- (A) Except as otherwise provided in this article, the City Secretary shall approve a BYOB Permit application if the City Secretary determines that the Applicant and the proposed BYOB Establishment meet the requirements of this article.
- (B) The City Secretary shall deny a BYOB Permit application if the City Secretary determines that:
 - (1) The Applicant is under the age of eighteen (18) years;
 - (2) The BYOB Establishment as proposed would not comply with this article;
 - ~~(3) A BYOB Permit required by this article was revoked within the preceding 12-month period for the same location with a similar or related use; or~~

~~(4) A BYOB Permit required by this article was revoked within the preceding 12-month period and the revoked BYOB Permit was issued to the same Applicant or Permit Holder as a current Applicant or Permit Holder.~~

(C) The City Secretary may deny a BYOB Permit application if the City Secretary determines that:

(1) The Applicant provided incorrect or incomplete information on the application; or

(2) An Applicant or Permit Holder has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities for operating a BYOB Establishment, including an offense involving a regulated substance.

(3) A BYOB Permit required by this article was revoked within the preceding 12-month period for the same location with a similar or related use; or

(4) A BYOB Permit required by this article was revoked within the preceding 12-month period and the revoked BYOB Permit was issued to the same Applicant or Permit Holder as a current Applicant or Permit Holder.

~~(2)~~
(3)

(D) The City Secretary shall give written notice of a determination of an application to the Applicant no later than forty-five (45) days from the submission of a complete application.

(E) An Applicant may appeal a denial of a BYOB Permit application to the City Manager in accordance with section 17-126 of this article.

(F) Notice of a determination of approval, suspension, denial, or revocation may be delivered as provided elsewhere for notices in this article.

Sec. 17-120. – Permit not transferable.

A BYOB Permit issued under this article is not assignable or transferable to any other person or entity.

Sec. 17-121. – Permit not a right.

A BYOB Permit issued under this article is a grant of a privilege and is not a property right.

Sec. 17-122. – Permit expiration; renewal.

A BYOB Permit issued under this article expires one (1) year after the date it is issued. A renewal application for a BYOB Permit must be filed not sooner than the 90th day and not later than the 45th day before the BYOB Permit expires. An application that is not filed within the described time period shall be deemed a new application and shall comply with all new application requirements.

DIVISION 3. REVOCATION; AND APPEAL

Sec. 17-123. – Permit revocation; general.

- (A) The City Secretary may, in writing, revoke a BYOB Permit issued under the provisions of this article whenever the BYOB Permit is issued in error, or on the basis of incorrect information supplied, or when it is determined that the building, structure, or use is in violation of any provision of this article, the City of Abilene Land Development Code, or the provisions of any other ordinance of the City of Abilene that regulates public health or sanitation.
- (B) A BYOB Permit which has been revoked shall not be displayed at the BYOB Establishment.
- (C) A BYOB Permit must be surrendered to the City Secretary immediately upon revocation.

Sec. 17-124. – Reserved.

Sec. 17-125. – Permit revocation.

- (A) The City Secretary may revoke a BYOB Permit issued under this article if the City Secretary determines that:
 - (1) The Permit Holder, the manager, an employee, or other agent of the BYOB Establishment has engaged in a serious violation or repeated violations of this article.
 - (2) The BYOB Establishment has repeatedly failed to comply with this article.
 - (3) The BYOB Establishment is not in compliance with all health and safety ordinances of the City of Abilene and the laws of the State of Texas.
 - (4) The Permit Holder does not qualify for a BYOB Permit under this article and does not have the ability to qualify within a reasonable time period not to exceed ninety (90) days.
 - (5) The calls for service to the BYOB Establishment exceeds three (3) calls within any 120-day period that involve:
 - a. Weapons charges;
 - b. Violent crime;
 - c. Calls categorized as “major disturbance” by dispatch;
 - d. Deadly conduct;
 - e. Any felony offense; or
 - f. Human trafficking related offenses.

- (6) The BYOB Permit was issued pursuant to false information provided on or with the application, renewal application, or supplemental information submitted as part of the application or renewal process or as required by this article.
- (B) The City Secretary shall provide the BYOB Permit Holder and Applicant with written notice of the BYOB permit revocation that includes the reason(s) the BYOB permit is subject to revocation.
- (C) Revocation of a BYOB Permit is effective on delivery of notice.
- (D) A BYOB Permit Holder may appeal a BYOB Permit revocation pursuant to the provisions of this article.
- (E) If an appeal is not timely filed, the City Secretary's decision to revoke is final.

Sec. 17-126. – Appeal.

- (A) An Applicant may appeal the City Secretary's determination to deny or revoke a BYOB Permit pursuant to this article by filing a written notice of appeal to the City Manager not later than ten (10) calendar days after delivery of the notice of denial or revocation.
- (B) If a BYOB Permit Holder timely files a written notice of appeal:
 - (1) The City Manager, or his/her designee, shall not later than the 10th day after the date the notice of appeal is filed, consider the appeal, and may affirm, reverse, or modify a permit application denial or permit revocation.
 - (2) A revocation is not stayed during the pendency of the appeal to the City Manager.
- (C) The notice of appeal shall set forth the following:
 - (1) The name and contact information of the person filing the appeal;
 - (2) The name and address of the BYOB Establishment; and
 - (3) A statement setting forth the material facts that are the basis for the appeal.
- (D) The City Manager, or designee, shall give written notice of a decision on an appeal to the appellant.
- (E) The decision of the City Manager, or designee, shall be final and not subject to further appeal.

DIVISION 4. REGULATIONS FOR OPERATION OF A BYOB ESTABLISHMENT

Sec. 17-127. – Public place.

A BYOB Establishment is a public place.

Sec. 17-128. – Permit posting required.

A BYOB permit holder shall post the BYOB Permit required by this article in a prominent public location near or at the entrance of the BYOB Establishment.

Sec. 17-129. – Manager required on premises.

A BYOB Permit Holder shall ensure that a Permit Holder is continuously on the BYOB Establishment premises during the hours of operation.

Sec. 17-130. – Minimum age for admittance and alcohol consumption.

A BYOB Permit Holder, a manager, or an employee of a BYOB Establishment may not allow a person under the age of twenty-one (21) years to possess or consume alcohol on the premises.

Sec. 17-131. – Security plan implementation.

- (A) A person may not operate a BYOB Establishment without an approved security plan.
- (B) The Applicant shall provide security for the BYOB Establishment in accordance with the security plan.

Sec. 17-132. – Minimum security requirements.

All BYOB Establishments shall comply with the following requirements:

- (A) Hand wand or walkthrough metal detectors shall be utilized on all persons entering the BYOB Establishment;
- (B) The exterior portions of the premises, including parking areas, shall be well lit during business hours and must have lighting to illuminate parking areas. Said lighting shall be designed so as to not interfere with any neighbor's reasonable use and/or enjoyment of the neighbor's premises;
- (C) The BYOB Establishment shall provide for at least one (1) security officer per fifty (50) patrons. Security officers must have at least a Level II non-commissioned security guard license;
- (D) The BYOB Establishment shall have a licensed and bonded security company on premise;
- (E) The BYOB Establishment must have a working security video system with low light recording capabilities. The system must record open areas and all entrances and exists outside of the premises, excluding restroom facilities. The BYOB Establishment must also have digital high-resolution surveillance cameras sufficient to provide an overall view from the exterior of the building to the property line. The owner shall maintain a library of the recorded digital images for not less than ninety (90) days. At least one (1) on-site personnel must be able to access the system if requested by law enforcement. All security cameras and security footage is subject to inspection at any time by City personnel; and

- (F) Any written requirement that the Chief of Police deems reasonably necessary for the BYOB Establishment.

Sec. 17-133. – Doors to remain unlocked.

During the hours of operation, a person may not lock or obstruct:

- (A) An exterior entrance door that is designated, or available, for use by patrons;
- (B) An exit door in a manner that impedes exiting to the outside from the interior of the premises; or
- (C) An interior door that provides access to a portion of the premises that is designated or available for use by patrons.

Sec. 17-134. – Hours of operation.

- (A) A BYOB Permit Holder, a manager, or an employee of a BYOB Establishment shall close a BYOB Establishment between 2:00 a.m. and 7:00 a.m. each day except Sunday, and between 2:00 a.m. and noon on Sunday. A patron who is on the premises at 2:00 a.m. may remain until not later than 2:15 a.m.
- (B) A person may not consume an alcoholic beverage on the premises of a BYOB Establishment between 2:00 a.m. and 7:00 a.m. each day except Sunday, or between 2:00 a.m. and noon on Sunday.
- (C) A BYOB Permit Holder, a manager, or an employee of a BYOB Establishment may not allow a member of the public to remain on its premises, including a parking area, between 2:15 a.m. and 7:00 a.m. each day except Sunday, or between 2:15 a.m. and noon on Sunday. This prohibition does not apply to a person who is providing a product or service directly to the BYOB Establishment.

Sec. 17-135. – Alcoholic beverage consumption areas.

- (A) A Permit Holder shall designate, subject to the approval of the City Manager or designee, the portions of the premises on which the consumption of alcoholic beverages is permitted. A designated area:
 - (1) Must be located within the interior of a building or an enclosed deck, patio, or garden; and
 - (2) Must exclude parking areas.
- (B) A person may not consume, and a Permit Holder, a manager, employee, or other agent of a BYOB Establishment may not allow the consumption of an alcoholic beverage outside of a designated area.
- (C) The BYOB Permit Holder shall indicate the portions of the premises on which the consumption of alcoholic beverages is permitted on the floor plan provided with the BYOB Permit application. If

the BYOB Permit Holder desires to change or modify the area where alcoholic beverages may be consumed, it must provide a revised floor plan to the City Secretary, and receive approval from the City Manager or designee, prior to the implementation of such change or modification.

Sec. 17-136. – Notice of designated consumption areas.

A BYOB Permit Holder shall post signs in each parking area or on the exterior of the BYOB Establishment that provides sufficient notice to all persons on the premises that consumption is allowed only within the designated area within the interior of the building or within an enclosed deck, patio, or garden.

Sec. 17-137. – Sale of alcoholic beverages prohibited.

A person shall not sell an alcoholic beverage at a BYOB Establishment.

Sec. 17-138. – Consumption and purchase of alcohol by owner prohibited.

The owner, operator, employee, or agent of a BYOB Establishment may not:

- (A) Consume an alcoholic beverage while on duty;
- (B) Purchase or otherwise acquire an alcoholic beverage for a patron; or
- (C) Give an alcoholic beverage to a patron.

Sec. 17-139. – Consent to inspection.

- (A) By accepting a permit under this article, the owner consents that law enforcement personnel, code enforcement personnel, and other on-duty governmental personnel may enter the premises at reasonable times to investigate or inspect the premises to determine compliance with this article.
- (B) The owner, the operator, and an employee shall provide law enforcement personnel, code enforcement personnel, and other on-duty governmental personnel with immediate access to all portions of the premises. If the BYOB Establishment is occupied, the Chief of Police, or his/her designee, must present credentials to the owner or other person having charge or control of the BYOB Establishment and request entry.
- (C) If the owner or other person having charge or control of the BYOB Establishment refuses law enforcement's request to enter the premises to inspect or perform the duties imposed by this article or to inspect or review records relating to compliance with this article, police officers shall have recourse to the remedies provided by law to secure entry.

Sec. 17-140. – Compliance with other laws.

A BYOB Permit Holder, a manager, an employee, and any other agent of a BYOB Establishment shall comply with the Texas Alcoholic Beverage Code and all other applicable state and local laws, including all ordinances of the City of Abilene.

DIVISION 5. ENFORCEMENT

Sec. 17-141. – Criminal penalty.

- (A) A person commits a Class C misdemeanor if the person:
 - (1) Operates a BYOB Establishment without a permit required by this article; or
 - (2) Violates a provision of this article, other than section 17-140 (Compliance with other laws).
- (B) Proof of a culpable mental state is not required to prove an offense under this article.
- (C) Each day that a violation occurs or continues is a separate offense.

Sec. 17-142. – Civil remedies.

- (A) The City has determined that this article is necessary to protect the health, life, and property and to preserve the good government, order, and security of the city and its inhabitants.
- (B) A person who continues to violate this article after being notified of the offense in writing by an authorized city representative is subject to a civil penalty not to exceed \$1,000.00 for each day or part of a day the violation occurs.
- (C) The city may file suit to enforce this article to collect a civil penalty.
- (D) The city may seek to enjoin violations of this article.

17-143. – Cumulative remedies.

The remedies authorized under this section are cumulative. If the city files a civil or criminal action, it is not precluded from pursuing any other action or remedy.

Amend Chapter 17, “Miscellaneous Provisions,” Code of Ordinances, Permitting and Regulation of BYOB Establishments



Bring Your Own Beverage (BYOB) establishments are not regulated by the Texas Alcohol and Beverage Commission. Any regulation of BYOB establishments must come from local governments.

The purpose of the Ordinance is to protect the health, safety, and welfare of the citizens of the City of Abilene by monitoring and regulating BYOB businesses. The Ordinance establishes a permit program for BYOB businesses, imposes regulations of business operations of BYOB businesses, and imposes civil and criminal penalties for violations of this Article.



Highlights of the BYOB Permit Ordinance:

1. A BYOB establishment must meet all requirements to obtain a BYOB permit before operating a BYOB establishment.
2. A person must be at least eighteen (18) years of age to apply for or hold a BYOB Permit, and may not hold a BYOB Permit or manage a BYOB Establishment if the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities for operating a BYOB venue, including offenses that involve any regulated substances.



3. The BYOB Permit must be prominently displayed at the BYOB establishment.
4. The BYBO Permit Holder must be on the premises while the BYOB establishment is open for business.
5. All persons entering the BYBO establishment must walk through metal detectors or hand wand detectors must be utilized.
6. The exterior portions of the BYOB establishment must be well lit during business hours.
7. The BYOB establishment must provide at least one security officer per 50 patrons.



8. Security officers must have at least a Level II non-commissioned security guard license.
9. The BYOB establishment must have a working security video system with low light recording capabilities.
10. The BYOB establishment may not be open during the hours of 2:00 AM to 7:00 AM Monday through Saturday, and 2:00 AM to Noon on Sundays. This is the same as establishments that sell alcoholic beverages.
11. Owners, operators, employees and agents of the BYOB establishment may not consume alcohol during business hours.



12. The owner consents to entry and inspection of the premises by law enforcement, code enforcement, or other government personnel at all reasonable times.
13. Violation of the BYOB permit ordinance may result in revocation of the permit, issuance of a class C misdemeanor citation, and/or filing of a civil suit by the City of Abilene to seek a civil penalty of up to \$1,000 for each day a violation occurs.
14. QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 7/10/2025

TO: Honorable Mayor and City Council Members

FROM: Emily Crawford, City Manager

SUBJECT: **12. Ordinance:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Amending the Fee Schedule Ordinance to Add a BYOB Permit Fee (*Emily Crawford*)

GENERAL INFORMATION

In conjunction with passage of the BYOB Permit Ordinance, a BYOB permit fee must be added to the City's Fee Schedule Ordinance.

The BYOB Permit Fee amount is recommended to be set at \$100.00 annually, which is the reasonable administrative cost to process the permit applications and monitor the businesses for compliance.

SPECIAL CONSIDERATIONS

This Fee Schedule Ordinance amendment may be enacted with one reading pursuant to Section 18, City Charter, if at least five council members affirmatively vote that the ordinance relates to the immediate preservation of the public peace, health, safety or welfare of the City of Abilene and the nature of the emergency is stated.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends passage of the amendment of the Fee Schedule to add a BYOB permit fee in the amount of \$100.00 annually.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 2025 Ordinance-BYOB Permit Fee Added to Fee Schedule
2. Exhibit A BYOB permit fee
3. BYOB permit fee powerpoint

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE 37-2024 AND ADOPTING FEES AND CHARGES FOR A BRING YOUR OWN BEVERAGE (BYOB) ESTABLISHMENT PERMIT, FOR THE CITY OF ABILENE; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES, RESOLUTIONS AND PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; CALLING A PUBLIC HEARING.

WHEREAS, the City Council adopted Ordinance 37-2024 ("Fee Ordinance") on August 8, 2024 setting fees and charges commencing on October 1, 2024; and,

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

WHEREAS, the City of Abilene desires to add a BYOB permit fee; and

WHEREAS, the City Council, with the affirmative vote of at least five council members, has determined, in conjunction with the emergency nature of the BYOB permit ordinance passed immediately prior to this permit fee, relates to the immediate preservation of the public peace, health, safety or welfare of the residents of the City of Abilene and that the requirement for reading of ordinances upon two separate days should be waived;

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

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

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

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

A notice of the time and place said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene. The same being more than twenty-four (24) hours prior to the time designated for said hearing. After such an opportunity for the public to be heard, said ordinance was passed on one reading due to the emergency nature of the ordinance.

PASSED on the 10th day of July, 2025.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

EXHIBIT A

BYOB PERMIT

\$100.00 annually

Amend Fee Schedule Ordinance to Add a BYOB Permit Fee



In conjunction with the BYOB Permit Ordinance, adding a BYOB permit fee in the amount of \$100.

Permit fee will be paid annually by BYOB establishments.

Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 7/10/2025

TO: Honorable Mayor & Members of City Council

FROM: Stanley Smith, City Attorney

SUBJECT: 13. 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
11. Patricia Anderson v. City of Abilene; Cause No. 51867-A, In the 42nd Judicial District Court, Taylor County, Texas; filed March 1, 2024

12. Mary Lou Gonzales v. City of Abilene, Board of Building Standards; Cause No. 29156-B; In the District Court, 104th Judicial District, Taylor County, Texas; filed April 10, 2024
13. Bouldin Pat Crofton v. City of Abilene, Board of Building Standards; Cause No. 52175-A, In the 42nd Judicial Court, Taylor County, Texas; filed May 9, 2025

B. 551.072 (Deliberations about Real Property)

1. 1002 S. 32nd St.

C. 551.073 (Deliberations about Gifts and Donations)

D. 551.074 (Personnel Matters)

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

E. 551.076 (Deliberations about Security Devices)

F.551.087 (Business Prospect/Economic Development)

1. Project Surf

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

None



**City Council
Agenda Memo**

City Council Meeting Date: 7/10/2025

TO: Honorable Mayor & Members of City Council

FROM: Shawna Atkinson, City Secretary

SUBJECT: 14.

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

- Landmarks Commission

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 10th day of July, 2025.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

RESOLUTION NO. _____
EXHIBIT "A"

<i>Landmarks Commission</i>	
Franz Hallgren [Regular] [New]	November 2026 [Unexpired Term]



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

- Landmarks Commission
 - Franz Hallgren[New]





**City Council
Agenda Memo**

City Council Meeting Date: 7/10/2025

TO: Emily Crawford, City Manager

FROM: Mindy Patterson, Deputy City Manager

SUBJECT: **15. Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Authorizing the City Manager to Enter into a New Building Lease Agreement for a New Main Branch Library at Abilene Heritage Square *(Mindy Patterson)*

GENERAL INFORMATION

Item details will be provided after Executive Session if needed.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

This item is funded in the Library Services, General Fund Budget.

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. AHS Lease - City Council Presentation (1)

City Council Meeting

Receive a report, hold a discussion and take action on authorizing the city manager to enter into a building lease agreement for a new main branch library at Abilene Heritage Square.

July 10, 2025





Main Branch Library

- On December 19, 2019, the City of Abilene and Abilene Heritage Square, Inc entered into an agreement for the development of a new main branch library at the old Lincoln Middle School.
- The agreement specified the deal points associated with the private development. Since 2019, much has happened in the world and inflationary pressures have increased operating costs.
- A new lease agreement is being proposed to address these realities.





Main Branch Library

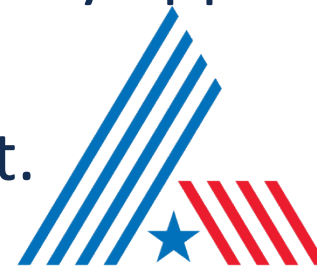
- The cost of the library alone is approximately \$43,637,789.
- If the City issued debt to build the library, and assuming level principal payments for 20 years at 4.25%, the total principal and interest paid would equal \$63,106,814.
- If the City issued debt with level debt service payments for 20 years at 4.25%, the total principal and interest paid would equal \$66,728,865.
- For our comparison purposes, we will assume an issuance with level principal payments as it is the least costly of the two options.





Main Branch Library

- The agreement before is a lease agreement, so no debt need be issued by the City for the library. Indeed, it is being constructed with 100% private funding.
- The City is paying for furniture, fixtures and equipment, site improvements, and we've committed to provide insurance settlement proceeds for roof repairs to the building when it was owned by the City. In total, the City's cash contributions for the library totals \$4,400,000. Funding is coming from the Minor Improvement Fund (\$3,000,000), insurance proceeds (\$900,000), and TIRZ No. 2 (\$500,000). All funding has been previously approved and discussed by Council.
- These costs are in addition to the construction cost.



CITY OF
ABILENE
T E X A S



Main Branch Library

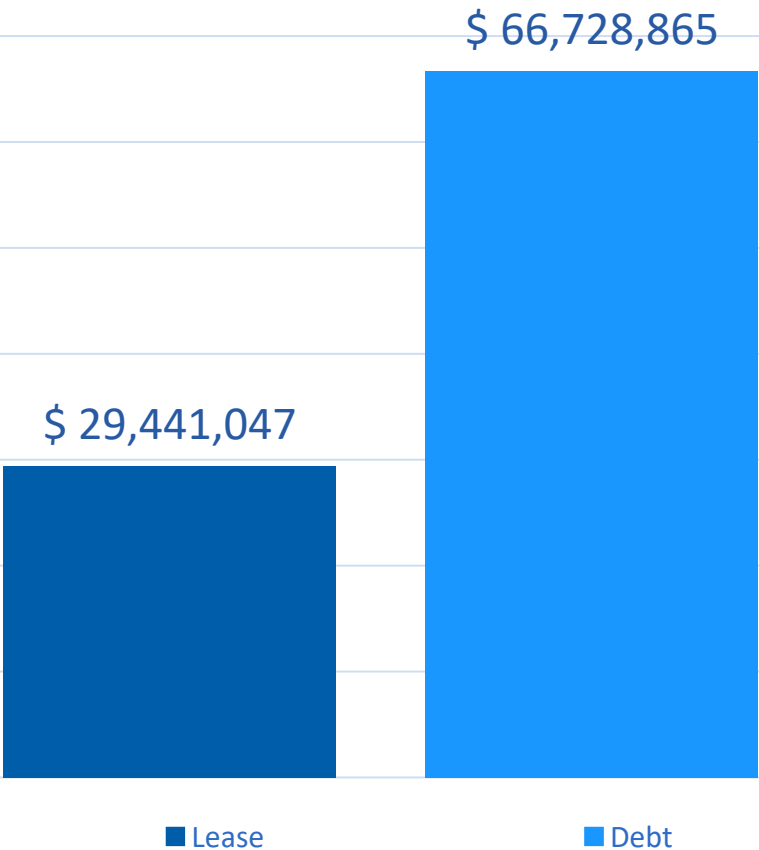
- The lease agreement contemplates an initial lease rate of \$0.74 cents per square foot, with an escalator every three years. Assuming the escalator is 3.5%. Over the course of the 40-year lease, there are 13.33 rate escalating events. At the end of the 40-year term the City will pay a lease rate of \$1.12 per square foot.





Main Branch Library

Lease vs Debt



The total lease payments (including escalation) over the 40-year term equals \$29,441,047.

This is \$33,665,767 less than if the City built the library with traditional debt financing.





Main Branch Library

- The lease requires the City to maintain insurance for property and loss on the library building contents. Because the City does not own the building, the landlord will hold property and loss insurance and liability insurance on the entire campus and the City will be charged their pro-rata cost for the library portion.
- At the end of the 40-year lease, additional terms may be negotiated.





Main Branch Libraryç



1924 Exterior views – Abilene High School

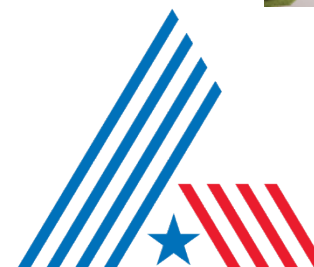




Main Branch Library



Rendering: Exterior views and Library Main Entrance



CITY OF
ABILENE
TEXAS



Main Branch Library



Rendering: Library first floor circulation desk and staircase

New Library Highlights:

- Three floors
- Podcast/recording studio
- Makerspace
- Dedicated children's floor
- Study rooms and meeting rooms





Main Branch Library





Main Branch Library

QUESTIONS?

