



City of Abilene City Council Agenda

Weldon Hurt, Mayor Pro-tem
Shane Price, Council Member
Jack Rentz, Council Member
Robert Hanna, City Manager

Anthony Williams, Mayor

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

AMENDED

Notice is hereby given of a meeting of the City Council of City of Abilene to be held on March 26, 2020, at 4:30 p.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

1. **Executive Session** - City Council will convene into Executive Session at 4:30 p.m.
Reconvene - City Council will reconvene into open session at 5:30 p.m.

INVOCATION

2. Mayor Anthony Williams

PLEDGE TO THE UNITED STATES FLAG AND THE TEXAS FLAG

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS AND ANNOUNCEMENTS

CONSENT AGENDA

All consent agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests, in which event the item will be removed from the Consent Agenda and considered separately.

3. **Minutes:** Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Council Workshop Meeting Held on March 6, 2020 and the Regular Meeting Held on March 12, 2020 (**Shawna Atkinson**)

4. **Resolution:** Receive a Report, Hold a Discussion and Take Action on authorizing a professional services contract with Enprotec/Hibbs & Todd, Inc. for the 2020 E. Hwy 80 Water Line Replacement Coordination & Design (**Rodney Taylor**)
5. **Resolution:** Receive a Report, Hold a Discussion and Take Action on awarding the bid to Lupe Rubio Construction Company, Inc. for the Baylor Drive Lift Station Replacement Project. (**Rodney Taylor**)
6. **Resolution:** Receive a Report, Hold a Discussion and Take Action on authorizing a professional services contract with Enprotec/Hibbs & Todd, Inc. for the NEWTP SCADA System Improvements. (**Rodney Taylor**)
7. **Ordinance (First Reading) TC-2020-04:** Receive a Report, Hold a Discussion and Take Action on a request from the City of Abilene to abandon public right-of-way within an 80' wide segment of Cedar Street extending 300' between the north line of right-of-way for North 5th Street and the south line of right-of-way for North 6th Street; and a request to abandon public right-of-way within a 20' wide alley extending 300' between the north line of right-of-way for North 5th Street and the south line of right-of-way for North 6th Street, midway and parallel between Cypress and Cedar Streets (**Mike Warrix**)
8. **Ordinance (First Reading) TC-2020-05:** Receive a Report, Hold a Discussion and Take Action on a request from Jeff Prince Operating, L.P., to abandon public right-of-way within an unimproved 60' wide segment of South 23rd Street extending approximately 500 feet between the east line of right-of-way for South Treadaway Boulevard and the west line of right-of-way for the Abilene & Southern Railway (**Mike Warrix**)

REGULAR AGENDA - ORDINANCES AND PUBLIC HEARINGS - RESOLUTIONS

9. **Ordinance (Final Reading):** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Amending the Abilene Code of Ordinances, Chapter 7, Civil Defense (**Stanley Smith**)

EXECUTIVE SESSION

10. **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, Texas v. Aurora Bumgarner; 104th Judicial District Court, Taylor County, Texas; filed November 17, 2011
2. Chad Carter v. City of Abilene, Texas; Cause No. 10138-D, In the 350th Judicial District Court, Taylor County, Texas, filed June 17, 2014
3. Susan Lewis King & Austin King MD vs Ken Paxton, Attorney General of Texas and the City of Abilene, Cause No. D-1-GN-16-001160, filed March 16, 2016
4. Ruby Flores and Cory Almanza v. Jesus Verastegui, Alfredo Verastegui, Rosalva Verastegui, and City of Abilene, Cause No. 49368-A, 42nd District Court, Abilene, Taylor County, Texas, filed April 13, 2016
5. Robert Steven Reitz v. City of Abilene, Texas, et al., Case No. 1:16-cv-00181-BL; In the U.S. District Court, Northern District of Texas, Abilene Division, filed October 10, 2016
6. Officer Patrick Sumrall and City of Abilene, Case No. 01-18-000-8653; Appeal of Indefinite Suspension to Arbitration, filed February 6, 2018
7. Tracy Kennedy and Richard Kennedy v. Katie Snell, Richard Perez, Thomas Bryant, John Doe 1, and John Doe 2; Case No. 1:18-cv-162, In the United States District Court, Northern District of Texas, Abilene Division, filed October 16, 2018
8. Alfredo Valencia v. Corey Davis and City of Abilene; Case No. 1:19-cv-00017-C; In the United States District Court, Northern District of Texas, Abilene Division, filed February 4, 2019.
9. City of Abilene v. Patrick Sumrall; Cause No. 27,733-B, In the 104th Judicial District Court, Taylor County, Texas, filed May 28, 2019
10. Ovation Services, LLC v. Blanca Cortez, et al.; Case No. 11875-D; In the 350th Judicial District Court, Taylor County, Texas; filed July 15, 2019
11. 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
12. The State of Texas v. The Unknown Heirs of B.E. Caffey, Senior, et al., Cause No. 6939, Condemnation Proceeding filed in the County Court at Law No. 2, Taylor County, Texas, filed August 20, 2019
14. Sanctuary City for the Unborn
15. City of Abilene, Texas and Garfield Public/Private LLC v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-20-000900, In the 261st Judicial District Court, Travis County, Texas, filed February 13, 2020

B. 551.072 (Deliberations about Real Property)

1. Clyde Water

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. Abilene Convention Center Hotel Project
2. 101 Oak Streets - Matera Gardens, LLC

RECONVENE

PUBLIC COMMENTS

There will be no votes or any formal actions taken on subjects presented during public comment. The public comment period will only allow members of the public to present ideas and information to city officials and staff.

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 AMENDED notice was posted on the bulletin board at the City Hall of the City of Abilene, Texas, on the 23rd day of March, 2020, at 3:00 p.m.

Shawna Atkinson, City Secretary

NOTICE REGARDING PUBLIC PARTICIPATION

Governor Greg Abbott has granted a temporary suspension of certain rules to allow for telephone or video conference public meetings in an effort to reduce in-person meetings that assemble large groups of people, due to the COVID-19 (coronavirus) public health emergency.

In an effort to reduce the spread of the virus, for the March 26, 2020 City Council meeting will be closed to in person attendance by the public, individuals will be able to address the Council via telephone conference call.

To participate in a telephone conference call, please call 833-773-2663, participant code is 5918781, to speak on an agenda item. This will also allow you to listen to the meeting.

Pursuant to Section 551.007 of the Texas Government Code, individuals wishing to address the Council for items listed as public hearings will be recognized when the public hearing is opened. For individuals wishing to speak on a non-public hearing item, they may either address the Council during the Public Comments portion of the meeting or when the item is considered by the City Council.

The agenda packet can be viewed online here: <https://www.abilenetx.gov/714/Agendas-Minutes>



**City Council
Agenda Memo**

City Council Meeting Date: 3/26/2020

TO:

FROM: Shawna Atkinson, City Secretary

SUBJECT: 3. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Council Workshop Meeting Held on March 6, 2020 and the Regular Meeting Held on March 12, 2020 (Shawna Atkinson)

GENERAL INFORMATION

Approval of the Minutes from the March 6, 2020 Workshop meeting and the March 12, 2020 Regular meeting.

SPECIAL CONSIDERATIONS

None.

FUNDING/FISCAL IMPACT

None

STAFF RECOMMENDATION

Approval of the Minutes

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 03-06-2020 Minutes - Special - Retreat
2. 03-12-2020 Minutes - Regular - Morning

CITY COUNCIL SPECIAL MEETING
March 6, 2020 at 9:00 a.m.

CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
SOUTH BRANCH LIBRARY, MALL OF ABILENE

The City Council of the City of Abilene, Texas met in a Special Called Work Session Meeting (Retreat) on March 6, 2020, at 9:00 a.m. at 4310 Buffalo Gap Road, South Branch Library, Mall of Abilene, 1st Floor, South Conference Room. Mayor Anthony Williams was present and presiding with Mayor Pro-tem Weldon Hurt, Deputy Mayor Pro-tem Donna Albus, Councilmembers Shane Price, Jack Rentz, Kyle McAlister and Travis Craver. Also present were City Manager Robert Hanna, City Attorney Stanley Smith, City Secretary Shawna Atkinson, and various members of the City staff.

Councilmember Craver delivered the invocation. City Council led the pledges to the United States Flag and the Texas Flag.

The special called meeting was held for the purpose of holding the annual city council retreat to provide the city manager the opportunity to present certain issues and obtain input from the city council on the direction desired in specific service areas as well as any new areas members of the city council felt needed to be reviewed/included for staff follow up, research, strategy development, and/or project analysis.

PUBLIC COMMENTS

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

AGENDA ITEMS

2. Recreation Center Study

Zack Bisek with Barker, Rinker, Seacat Architecture, presented the findings of the Recreation Feasibility Study that was done. There were 332 points of data collected from public responses for this study. Mr. Bisek went over the existing facilities assessment and what could be done to make our facilities better – this included GV Daniels, Sears, Cobb, Rose and Cesar Chavez. He presented facility concept designs for each of these with proposed budgets, as well as the plans for a new facility on the South side of town at Kirby Lake Park.

Mr. Bisek and Lesli Andrews, Director of Community Services, answered Council's questions on the projects. There were community partners invited to attend focus groups for the study, the modern programming they are discussing adding are things like space for games, teaching kitchens, walking tracks, and gym equipment. Council questioned if there would be fees for these services, but Ms. Andrews clarified that they would keep it without fees at first. The whole goal of the project is to attract young families and professionals to our area and doing these upgrades will help. Our centers are not competitive right now and potentially pose safety risks.

3. Review of Core Values and Mission

Robert Hanna, City Manager, briefly discussed the City's core values and mission statement. Council was asked if they were comfortable keeping these as they are, or if changes need to be made. The consensus was they are fine the way they are.

4. Review of Council Priorities

City Manager Hanna discussed the current five Council Priorities – Infill Development, Downtown Hotel, Efficient and Effective Government, Full Understanding of Deferred Maintenance and the Plan to Address It, and Street Maintenance. Mr. Hanna asked Council if they are comfortable with each of these or if they need to be changed.

Councilmember McAlister stated his desire to expand the Downtown Hotel Priority to just Downtown Improvements. Mayor Williams agreed that this could be an umbrella for downtown to grow under once the Hotel is completed. Mayor Pro-tem Hurt would like to see the Animal Shelter moved up to the list.

5. Council Rules of Procedure and Charter

The City of Abilene Charter was last amended in 2006 and there has been legislation passed since then, and the Charter needs to be updated accordingly. City Manager Hanna suggested changing the language from male dominant to a more gender inclusive language. Councilmember McAlister would like to see a filing fee or a petition requirement to run for office. City Manager Hanna thinks there are legal requirements that would hold this back. The consensus of Council is they do not want to see that added. Mayor Pro-tem Hurt would like to address attendance problems with Council in the charter – stating elected officials can be kicked off if they do not attend a required number of meetings, or some type of penalty.

City Manager Hanna would like to see a charter review committee to recommend small changes to Council.

For the Rules of Procedure, Council discussed options on changing the meeting times. There was discussion on keeping them split between mornings and evenings, making them all evenings, and making them all mornings. Council would like to see this added to an agenda for public comment on it during open session.

6. Post-Election Retreat

Mayor Williams requested to hold a post-election retreat. This would be an opportunity for Council to have a workshop to define their roles and allow them to be more effective. The rest of Council agreed and the consensus is to wait until any new members are seated after the election. City Manager Hanna would like to bring in an outside party to facilitate this.

7. Electronic Voting Demo

Shawna Atkinson, City Secretary, gave Council a brief demonstration of the electronic voting capability of agenda management software currently in use, CivicClerk. Ms. Atkinson walked Council through the voting process on their end, and showed what it would look like to the public. Council questioned if this was needed; there was a split between moving to this and keeping it the way it currently is, with audible voting. Council would like to see it both ways during a meeting.

8. Financial Overview

City Manager Hanna gave a brief financial overview – discussion of the General Fund balance, Water Utility Fund balance, and the Self-Insurance Fund. Options on saving money on health insurance were discussed, from moving to an HSA, to the City not paying for high-dollar pharmaceuticals, to an option of a tiered plan based on income. Staff will come up with different options and present to Council at a later date.

9. Denison Infill Program

City Manager Hanna presented a program that he started in Denison 7 years ago. The City of Denison worked with the community to set up an incentive program that promotes new home construction in existing neighborhoods with a goal of 10 infill housing projects in 24 months. There were different incentive options and qualifications to apply for the project. After 4 years of the program, 70 new homes had been built and they ran out of lots in the affordable program. City Manager Hanna would like to take Council on a field trip to Denison to show them the program first hand. Council agreed this sounds like a great program and would be open to a field trip to Denison. There is no timeframe for the project yet, but discussions among community partners could begin soon.

10. Third Party Convention Center Management

City Manager Hanna discussed the option of outsourcing the Convention Center management to a third party. The Convention Center tries to remain competitive but with the new hotel coming, we probably will not be competitive with them. There have been conversations with ASM Global on managing, which would really help elevate the types of shows we get. They would raise the rates, but the money would go right back into the facility. Their big change would be in the food and beverage service. We currently have over 40 vendors and it creates confusion and does not allow us to maximize revenue. We have three options if we were to use ASM Global:

- Option 1: stay with the over 40 caterers, as is.
- Option 2: ASM Global and their food and beverage company Savor, serves as the caterer for all in house events, alongside a greatly reduced list of local vendors.
- Option 3: Savor becomes the sole food and beverage provider.

City Manager Hanna thinks that option 3 is too much too fast, so recommends going with option 2 first and reevaluating in a few years. Council agrees to proceed into looking at option 2.

11. Towing Regulations

Mayor Pro-tem Hurt requested this item. There have been several concerns about parking lots price gouging and taking advantage of people recently. City Manager Hanna stated that he has been in talks with Doug Peters from the Chamber of Commerce to see if we could approach the banks to see what it would take to open those lots up to public use after hours. No decision has been made yet but they are working proactively on the issue. Councilmember Rentz stated that he met with a representative from one of the parking lots and they say they have stopped towing under pressure from the public.

Stanley Smith, City Attorney, presented an overview of the legal side of regulating towing fees. There are quite a few limits set out by the State as to what you can and cannot charge for and City Attorney Smith went over all the options. The consensus of Council is that we would need to have a towing fee study done and look at what other sister cities are doing.

12. Discussion of a New Bond Initiative

City Manager Hanna discussed the idea of a bond committee and then each department presented their bond proposals.

a. Community Services:

Lesli Andrews, Director of Community Services, went into further detail on the various projects that were outlined in the Recreation Feasibility Study by Zack Bisek, earlier in the meeting, for bond projects. The following centers were discussed:

- GV Daniels – \$12,160,634 budget
- Sears – phase 1 is \$17,795,425, phase 2 is \$7,504,317 budget
- Kirby Lake – phase 1 is \$25,771,680, phase 2 is \$22,520,219 budget
- Cesar Chavez – \$11,069,815 budget
- Adaptive Rec – \$14,062,500, phase 2 is \$2,844,400 budget
- Nelson Park Flat Field Complex and Roads – \$14,853,535 budget
- Walking Trail Renovation – \$1,578,000 budget
- Adventure Cove Expansion – \$5,500,000 budget
- Zoo Parking Improvements and Entry – for parking - \$1,400,000, for entry \$358,000 budget
- Park Restroom Replacements - \$2,500,000 budget

b. Streets:

Not discussed – Public Works is preparing a stand-alone presentation to present to Council during a regular Council meeting at a later date.

c. Fire:

Cande Flores, Fire Chief, presented his proposal for Fire Station #9, to be located on Highway 707, off of the Beltway and 707 Spur. Chief Flores presented the cost and specs of the project. With the new developments going into this area, the current two stations covering the area (Station 2 & 8) are stretched very thin. This new station would allow for a faster response time, and keep our ISO rating at a level 1. There was discussion on mutual aid to the Potosi area and annexation of ETJ areas. Councilmember McAlister questioned if we would also need to look at adding a Station #10, but Chief Flores thinks the Training Facility will be able accommodate a full station in the future. The total for the project would be \$5,640,000, but only \$4,750,000 would be bond money.

d. Convention Center:

City Manager Hanna presented the Convention Center bond requests. This would be for an update of the Convention Center, making the required accessibility updates. Council questioned if this would address all the needs of the Convention Center, but City Manager Hanna stated that it would only address the most critical needs. It would be a lot more money to completely redo the entire Convention Center and Conference Center. The total funds needed for this project would be \$6,094,218.

e. Airport:

Chris Taylor, Assistant Airport Director, presented the Airport bond requests.

- Airport Improvement Project - \$4,107,775, to replace ARFF truck, terminal rehab, Taxiway C1 partial closure, Hangar P taxi lane, De-coupling of runway 4/22, 17R/35L and NW GA Ramp, and reconstruction of T1 and T2.
- Airport Aerospace/Industrial Development - \$8 million for infrastructure development to identified tracks in area A and B, to attract high-quality aerospace and non-aerospace industrial jobs.

f. Animal Services:

City Manager Hanna and Council discussed the presentation by Tim Rice McClarty at the last City Council meeting with a budget of \$9.1 million. Council is hesitant to spend that much money but knows something needs to be done with the shelter. Council is also not set on the location being at the zoo. Council would like staff to look into other locations, try to get the budget down, and look at other ways we could pay for this project.

13. Water Capital Improvement Plan

Rodney Taylor, Director of Water Utilities presented the item. There was discussion on:

- Drought Response Strategies
- Infrastructure Needs Presentation of April 2016
- Water Distribution System Master Plan
- Wastewater System Master Plan
- Water Treatment Plant Master Plan
- Computer Based Water Rate Model
- Funding – intentional drawdown of residual funds, a 5 year plan for water rates and issuance of Certificates of Obligations at market rates
- Implementation and Progress – a report card to hold them accountable. Discussion of the Fort Phantom Hill dam. Coordination with TX Dot to widen the dam will be coming to Council soon, but it is not failing.
- Looking Ahead – unplanned expenditures in utilities because of the street improvement plan. Water will be coordinating with the street maintenance projects to see how they will affect utilities and working together to get it all done at the same time.

Agenda Items 14 (Storm Water Update) and 15 (Solid Waste Study) were not discussed.

ADJOURNMENT

There being no further business, the meeting adjourned at 1:45 p.m.

Shawna Atkinson
City Secretary

Anthony Williams
Mayor

Minutes approved on: _____

CITY COUNCIL MEETING
March 12, 2020 at 8:30 a.m.

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

The City Council of the City of Abilene, Texas met in Regular Session on the March 12, 2020, at 8:30 a.m. in the Council Chambers, 555 Walnut St. Mayor Anthony Williams was present and presiding with Mayor Pro-tem Weldon Hurt, Deputy Mayor Pro-tem Donna Albus and Councilmembers Shane Price, Jack Rentz, Kyle McAlister and Travis Craver. Also present were City Manager Robert Hanna, City Attorney Stanley Smith, City Secretary Shawna Atkinson, and various members of the City staff.

Councilmember Kyle McAlister delivered the invocation.

Jackson Richardson, 3rd grader at Bonham Elementary, and Sophia Richardson, 3rd grader at Bonham Elementary, led the Pledge of Allegiance to the Flag of the United States of America and State of Texas Flag.

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS, ANNOUNCEMENTS

- Chief Freida from the Sweetwater Police Department presented Chief Standridge and the Abilene Police Department with the Texas Law Enforcement Best Practices Recognition Program Award
- Jay Hardaway gave a brief presentation on the 2020 Census
- Mayor Williams gave a brief statement on the coronavirus outbreak

- Employee Service Awards
 - Suzanne Shahan – Solid Waste & Recycling – 20 Years
 - Danny Blankenship – Police Department – 35 Years
 - Willie Ford – Police Department – 35 Years

CONSENT AGENDA

The Consent Agenda consisted of items 4-14. Items 5 and 11 were pulled for individual consideration.

Items pulled for individual consideration were as follows:

- David Swart, citizen – Item 5
- Councilmember Rentz –Item 11

Mayor Pro-tem Hurt moved to approve the consent agenda, now consisting of items 4, 6-10 and 12-14. Deputy Mayor Pro-tem Albus seconded the motion; motion carried.

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

NAYS (0): None

4. Minutes: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving the Minutes from the Regular Meeting Held on February 27, 2020

6. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the purchase of a Leica RTC360 Laser and Scanner Kit for use in criminal investigations
[ASSIGNED RESOLUTION NO. 46-2020]

7. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approval of the Investment Policy
[ASSIGNED RESOLUTION NO. 47-2020]
8. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Accepting the FY 2019 Comprehensive Annual Financial Report (CAFR)
[ASSIGNED RESOLUTION NO. 48-2020]
9. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approval of Expenditure of Funds in Excess of the General Fund Three Month Operating Reserve
[ASSIGNED RESOLUTION NO. 49-2020]
10. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Bid No. CB-2037 to Nobles Road Construction for T&P Lane Reconstruction Project
[ASSIGNED RESOLUTION NO. 50-2020]
12. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Bid No. CB-2035 to Bontke Brothers Construction for S. Willis St. Rehabilitation Project
[ASSIGNED RESOLUTION NO. 52-2020]
13. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Bid No. CB-2040 to Bontke Brothers Construction for Butternut Street Reconstruction Project
[ASSIGNED RESOLUTION NO. 53-2020]
14. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Approve an Extended Term Street Use License with Motis Investments, LLC
[ASSIGNED RESOLUTION NO. 54-2020]

ITEMS PULLED FOR INDIVIDUAL CONSIDERATION

5. Resolution: Receive a Report, Hold a Discussion and Take Action to Approve the Purchase of Two (2) Brush-Wildland Fire Fighting Vehicles
[ASSIGNED RESOLUTION NO. 45-2020]

The item was pulled by David Swart, citizen.

Having pulled the item, David Swart questioned why the pictures show a Dodge pickup, if the trucks will be going to all stations will additional personnel be required to man them, and if the price listed is the out the door price or if upgrades will still need to be made. He also stated that he doesn't know how these trucks will fit in certain stations, as they are all full.

Deputy Fire Chief Brunett answered Mr. Swart's questions. He stated that the picture in the packet is only the best representative of the product they will receive. These vehicles aren't staffed normally, and they will be stationed at Station 1 and 3. They come completely ready to go, just a radio has to be added and programmed.

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

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

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

NAYS (0): None

11. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Bid No. CB-2036 to Intermountain Slurry Seal, Inc. for Modified-Slurry-Seal in Work Zones S6 & S24
[ASSIGNED RESOLUTION NO. 51-2020]

This item was pulled by Councilmember Rentz.

Having pulled the item, Councilmember Rentz questioned if no one locally provides this service and if it is similar to what people see on parking lots but heavier.

Greg McCaffery, Director of Public Works clarified that it is a specialized application made primarily of sand, but a thicker seal coat than what you would see on a parking lot. This is a new method we are using, so we are only doing a small number of roads at first. Street Maintenance Funds are being used for this project and it will begin in the next few weeks.

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

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

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

NAYS (0): None

REGULAR AGENDA

15. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Resolution Establishing the City of Abilene Property Assessed Clean Energy (PACE) Program
[ASSIGNED RESOLUTION NO. 55-2020]

Cheryl Sawyers, Planning Services Manager, presented the item. Adoption of the item would establish the PACE program created by the State of Texas to foster economic development. The City will serve as a conduit of funds, without risk or exposure to the taxpayer, to private developers for facility improvements.

Council questioned where the funding would come from and what advantages the homeowner will receive? Ms. Sawyers clarified that the money comes from the non-profit agency, and that the lender is a private entity. She also clarified that this is an easier way for them to get a loan that won't come out on their balance sheet, and stays with the property if they chose to sell it at a later date.

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

- Charlene Hiding, administrator of the Texas PACE program – thanked Council for their support and availed herself to questions.

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

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

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

NAYS (0): None

16. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to execute a Professional Services Contract with the Texas Property Assessed Clean Energy Authority to administer the Texas Property Assessed Clean Energy Act (PACE Act), and serve as the Authorized Representative for the program

[ASSIGNED RESOLUTION NO. 56-2020]

Cheryl Sawyers, Planning Services Manager, presented the item. Adoption of the item would authorize a professional services contract with the Texas Property Assessed Clean Energy Authority to administer the Texas PACE Act in the City of Abilene.

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

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

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

NAYS (0): None

17. Ordinance (Final Reading): Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Authorizing the Issuance of City of Abilene, Texas General Obligation Refunding Bonds, Taxable Series 2020; Establishing Procedures and Delegating Authority for the Sale and Delivery of the Bonds; Providing An Effective Date; and Enacting Other Provisions Relating to the Subject

[ASSIGNED ORDINANCE NO. 08-2020]

Mike Rains, Director of Finance, presented the item. Adoption of the item would allow the City to refund portions of the 2010 General Obligation Refunding, 2013 General Obligation Refunding, 2015 Certificates of Obligation and the 2015 General Obligation Refunding and Improvement Bonds under a taxable issuance.

Mr. Rains introduced George Williford, from Hilltop Securities, who provided a detailed presentation of the bonds and the numbers involved.

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

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

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

NAYS (0): None

18. Ordinance (Final Reading) Z-2020-04: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from Bryan Pope to Rezone Property from Heavy Commercial (HC) to Heavy Industrial (HI) District Located at 1401 Cherry Street on Southeast Corner of Dimmitt and Cherry Streets
[ASSIGNED ORDINANCE NO. 09-2020]

Mike Warrix, Director of Planning and Development Services, presented the item. Adoption of the item would rezone the above referenced property from Heavy Commercial (HC) to Heavy Industrial (HI) in order to utilize the location for processing, fabrication and storage of rebar for a wide range of construction services.

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

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

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

Mayor Williams recessed the meeting to take a short break from 9:30 to 9:35 a.m.

19. Ordinance (Final Reading) Z-2020-05: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Request from KPLB LLC, Agent Jacob & Martin Engineering, to Rezone Property from Residential Medium-Density (MD) to Residential Single-Family Patio Home (PH) District Located at 1826 Colony Hill Road Approximately 500 to 800 Feet East from its Intersection with Maple Street
[ASSIGNED ORDINANCE NO. 09-2020]

Mike Warrix, Director of Planning and Development Services, presented the item. Adoption of the item would rezone the above referenced property from Residential Medium-Density (MD) to Residential Single-Family Patio Home (PH) District.

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

- Clayton Farrow, with Jacob & Martin – stated that things are happening so fast in this portion of town that their original plan of duplexes didn't work out, and they would now like to do something more like townhouses with narrower lot lines.

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

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

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

20. Ordinance (Final Reading) TC-2020-02: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Homer Hillis, agent Riley Griffith of Enprotec/Hibbs & Todd, to abandon an unimproved west margin (0.0469 acre) of right-of-way available for Lytle Acres Drive and adjacent to vacant building site at 1208 Lytle Acres Drive occupying Block D of Lytle Lake Gardens
[ASSIGNED ORDINANCE NO. 11-2020]

Mike Warrix, Director of Planning and Development Services, presented the item. Adoption of the item would abandon the unimproved west margin (0.0469 acre) of right-of-way available for Lytle Acres Drive, adjacent to vacant building site at 1208 Lytle Acres Drive.

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

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

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

21. Ordinance (Final Reading) OAM-2019-03: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on proposed amendments to Land Development Code for the City of Abilene, removing the entire text of existing Section 2.4.4.2 in Chapter 2 (Zoning Regulations) and which specifically concerns carports and patio covers, replacing the existing text with a new Section 2.4.4.2 regulating the size, height, placement and architectural character of certain carports and patio covers; adopting new definitions of both “carport” and “patio cover” as those terms appear in Section 5.1.1.4 (34), Chapter 5 (Definitions); and deleting Paragraph 12 of Section 1.4.4.1(d), Chapter 1 (General Provisions) regarding allowing Special Exceptions for carports
[ASSIGNED ORDINANCE NO. 12-2020]

Brad Stone, Planner, presented the item. Adoption of the item would make amendments to the local zoning regulations concerning carports and patio covers withing the Land Development Code, Section 2.4.4.2.

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

- David Swart – stated that this ordinance is confusing to him. Questioned if the metal carports you currently see all over town will be grandfathered in or if the City will go through each neighborhood and crack-down on them. He also stated that the 12 foot limit is really high and the wood fascia board provision is confusing.
- Charles Byrn – stated that this is too much of a government overreach. Thinks that the government needs to stay out of this type of thing and if someone wants a larger vehicle like an RV, they should not have to use storage facilities to store them. He urged Council to vote no on this.

Council discussed the citizen’s concerns and stated that there is already an ordinance in place for this, this just makes a more streamlined process and we are actually stepping back a little.

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

Councilmember Albus moved to approve the item as presented. Councilmember Rentz seconded the motion; motion carried.

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

NAYS (0): None

PUBLIC COMMENTS

Mayor Pro tem Hurt opened the public comment period. The following addressed the city council:

- David Swart – spoke about a collision on North 3rd street three weeks ago where the person ran away from the scene. They took out a fiber line and this is the second time something like that has happened. Questioned why there isn't a STEP program for this type of situation.
- Bernadette Demboski – spoke about the Fort Phantom Hill dam road. Her original concern was for the safety of the road, but now that it has been shut down, she is concerned about the response time for emergency services to be able to get to her and her neighbors. She urged Council to do what they can to help.
- Cynthia Alvidrez – spoke about the Fort Phantom Hill dam road and her concerns about the safety of it and the delays in response time from emergency services because of it.

City Manager Hanna addressed citizen's concerns on the Fort Phantom Hill dam stating that the dam is not failing. We own the dam but TXDoT owns the road and it is their responsibility to fix it.

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

EXECUTIVE SESSION

Mayor Williams recessed into Executive Session at 10:13 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:

- 22. A. 551.071 (Consultation with Attorney)
 - 1. Chad Carter v. City of Abilene, Cause # 10138-D
 - 2. Tracy Kennedy & Richard Kennedy v. Katie Snell, Richard Perez, Thomas Bryant, Jon Doe 1&2; Case No 1:18-cv-162
 - 3. Sanctuary City for the Unborn
- 22.D. 551.076 (Deliberations about Security Devices)
 - 1. Cornoavirus Risk
- 22. F. 551.087 (Business Prospect/Economic Development)
 - 1. Abilene Convention Center Hotel Development Project
 - 2. Economic Development Incentives for a Proposed Residential Subdivision off Buffalo Gap and North FM 707
 - 3. Agenda Item #23 – DCOA Project Gateway
 - 4. Agenda Item #24 – DCOA Project Threshold

The Executive Session ended at 11:24 a.m. and reconvened to Open Session. Mayor Williams reported no votes or action were taken in Executive Session.

REGULAR AGENDA

23. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving the Development Corporation of Abilene, Inc.'s Incentive Package Agreement with Project Gateway
[ASSIGNED RESOLUTION NO. 57-2020]

Earlier in the meeting, under Section 551.087 (Business Prospect/Economic Development) of the Open Meetings Act, the item was discussed during the Executive Session, which started at 10:13 a.m. and ended at 11:24 a.m. No votes or actions were taken at that time.

Misty Mayo, Chief Executive Officer of the Development Corporation of Abilene, presented the item. Adoption of the item would approve an incentive package agreement with Chike Nutrition.

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

- David Swart – questioned if this will be at the old US Brass location. Stated he was glad to see that building was being repurposed.

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

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

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

24. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving the Development Corporation of Abilene, Inc.'s Incentive Package Agreement with Project Threshold
[ASSIGNED RESOLUTION NO. 58-2020]

Earlier in the meeting, under Section 551.087 (Business Prospect/Economic Development) of the Open Meetings Act, the item was discussed during the Executive Session, which started at 10:13 a.m. and ended at 11:24 a.m. No votes or actions were taken at that time.

Misty Mayo, Chief Executive Officer of the Development Corporation of Abilene, presented the item. Adoption of the item would approve an incentive package agreement with Bavarian Polymers.

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

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

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

25. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Possible Action on Approving a Settlement Agreement in Cause No. 10138-D, Chad Carter v. City of Abilene, Taylor County, Texas **[ASSIGNED RESOLUTION 59-2020]**

Earlier in the meeting, under Section 551.71 (Consultation with Attorney) of the Open Meetings Act, the item was discussed during the Executive Session, which started at 10:13 a.m. and ended at 11:24 a.m. No votes or actions were taken at that time.

Stanley Smith, City Attorney, presented the item. Adoption of the item would approve a settlement agreement in Cause No 10138-D, Chad Carter v. the City of Abilene, Taylor County, Texas, as discussed in Executive Session.

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

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

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

NAYS (0): None

26. 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. 60-2020]**

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

Mayor Williams moved to (re)appoint the following:

Board	Term End Date
<i>Airport Development Board</i>	
Larry Gill [Reappointment]	November 2022
<i>Citizens Advisory Board for People with Disabilities</i>	
Jaime Thomas [New]	October 2021 (unexpired term)

Councilmember Price seconded the motion; motion carried.

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

NAYS (0): None

ADJOURNMENT

There being no further business, the meeting adjourned at 11:44 a.m.

Shawna Atkinson
City Secretary

Anthony Williams
Mayor

Minutes approved on: _____



**City Council
Agenda Memo**

City Council Meeting Date: 3/26/2020

TO: Robert Hanna, City Manager

FROM: Rodney Taylor, Director

SUBJECT: 4. Resolution: Receive a Report, Hold a Discussion and Take Action on authorizing a professional services contract with Enprotec/Hibbs & Todd, Inc. for the 2020 E. Hwy 80 Water Line Replacement Coordination & Design (*Rodney Taylor*)

GENERAL INFORMATION

Water Utilities staff is requesting that the Abilene City Council approve a Professional Services Contract with Enprotec/Hibbs & Todd, Inc. (EHT) for the 2020 E. Hwy 80 Water Line Replacement Coordination & Design in the amount not to exceed \$100,700.00. This contract will provide for the preparation of plans and contract documents, bidding assistance, project general supervision (not RPR), and contract administration.

SPECIAL CONSIDERATIONS

The engineer is to design the replacement of cast iron pipe existing along the north side of East Highway 80 generally between Cottonwood Street and Goliad Drive. There are three separate segments of replacement work included in the design:

- > E. Highway 80 from Cottonwood Street to Cockerell Drive
- > E. Highway 80 from Washington Blvd. to N. Judge Ely Blvd.
- > From 1134 to 1402 E. Highway 80

The existing cast iron pipe is aged and in poor condition. Water main breaks along this stretch are very disruptive to businesses and traffic along East Highway 80.

FUNDING/FISCAL IMPACT

Funding for this professional services contract is included in the fiscal year 2020 annual operating budget of the Water Utilities Department.

STAFF RECOMMENDATION

Staff recommends that the Abilene City Council approve the professional services contract with Enprotec/Hibbs & Todd, Inc. for the 2020 E. Hwy 80 Water Line Replacement Coordination & Design in the amount of \$100,700.00

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. WrittenResolution-WtrDpt-Authorize PS Contract with EHT for 2020 E Hwy 80 Water Line Replacement Coordination and Design-3-26-2020
2. Contract-PS-EHT-2020 E HWY 80 WL Replacement-3-26-2020
3. Presentation-PS Contract-EHT-2020 E Hwy 80 Water Line Coordination and Design-3-26-2020

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AUTHORIZING A PROFESSIONAL SERVICES CONTRACT WITH ENPROTEC/HIBBS & TODD, INC. FOR THE 2020 E. HWY 80 WATER LINE COORDINATION AND DESIGN.

WHEREAS, the City of Abilene (Abilene) owns and operates the water distribution system of Abilene's Public Water System; and

WHEREAS, there exists three segments of 14 inch diameter cast iron pipe along the north side of east highway 80 which are aged and in need of replacement; and

WHEREAS, aged cast iron pipe can result in water quality issues and excessive water line breaks that can be disruptive to the business and traffic along east Highway 80; and

WHEREAS, the engineer's design will call for replacing aged cast iron pipe with corrosion resistant plastic pipe and for the installation of new valves and hydrants; and

WHEREAS, the professional services contract with Enprotec/Hibbs & Todd, Inc. for the 2020 E. Hwy 80 Water Line Coordination and Design will provide for the preparation of plans and contract documents, bidding assistance, general project supervision (not RPR) and contract administration in the amount not to exceed \$100,700.00; and

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

That the City Manager is authorized to execute the professional services contract with Enprotec/Hibbs & Todd, Inc. for the 2020 E. Hwy 80 Water Line Coordination and Design in the amount not to exceed \$100,700.00.

ADOPTED this 26th day of March 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley E. Smith, City Attorney



PROFESSIONAL SERVICES CONTRACT Engineers & Architects

This contract, dated the _____ day of _____, 2020, is between the City of Abilene, a home rule municipal corporation of the State of Texas ("City"), and Enprotec/Hibbs & Todd, a corporation organized under the laws of the State of Texas ("Consultant").

The City is engaged in 2020 E. HWY 80 Water Line Replacement Coordination & Design and desires to engage the services of Consultant, as an independent contractor and not as an employee, to assist in the project and to render his or her or its services on the terms and conditions provided in this Contract.

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

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

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

I. TERMS

In consideration of the compensation stated in paragraph II, the Consultant must provide all services as described in Attachment A, which is incorporated by reference for all purposes. The Consultant must complete all services by a mutually agreed upon date.

II. FEE

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

III. FACILITIES

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

IV. ASSIGNMENT

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

V. STATUS OF CONSULTANT

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

VI. AMENDMENT OR MODIFICATION

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

VII. OWNERSHIP OF DOCUMENTS AND MATERIALS

All documents and materials prepared by Consultant under the terms of this contract are the Consultant's property from the time of preparation. Consultant will deliver copies of the documents and materials to the City or make them available for inspection *whenever requested*. City has the right to make duplicate copies of such documents or materials for its own file or use for any other such purposes as the City deems necessary and there shall be no additional costs incurred because of such copying or use.

VIII. NONDISCLOSURE

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

IX. INDEMNITY

A. Definitions

For the purpose of this section the following definitions apply:

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

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

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

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

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

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

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

B. Indemnity

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

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

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

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

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

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

X. INSURANCE

A. GENERAL REQUIREMENTS

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

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

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

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

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

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

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

B. ADDITIONAL REQUIREMENTS

The required liability insurances and their certificates must:

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

C. TYPES AND AMOUNTS OF INSURANCE

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

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

___ 6. No Insurance Required

XI. VENUE, CHOICE OF LAW AND INTERPRETATION

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

XII. TERMINATION

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

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

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

XIII. PROJECT REPRESENTATION

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

XIV. NOTICE

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

City – ATTN:

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

Consultant – ATTN:

Scott D. Hay, P.E.
Enprotec/Hibbs & Todd, Inc
402 Cedar St, Abilene, TX 79601

XV. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES



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

XVI. NO INDEBTEDNESS

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

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

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

XVII. EQUAL EMPLOYMENT OPPORTUNITY

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

XVIII. VERIFICATION OF EMPLOYMENT ELIGIBILITY

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

XIX. MINORITY AND WOMEN BUSINESS ENTERPRISES

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



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

XX. SALES TAX

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

XXI. LEGAL CONSTRUCTION

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

XXII. BOYCOTT OF ISRAEL

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

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

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

XXIII. SECTIONS AND OTHER HEADINGS

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

XIV. COUNTERPARTS

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

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

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

CITY OF ABILENE

By: _____

Name: Robert Hanna

Title: City Manager

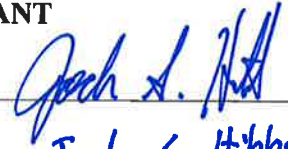
ATTEST:

City Secretary

APPROVED:

By: _____
City Attorney

CONSULTANT

By:  _____

Name: Jordan S. Hibbs

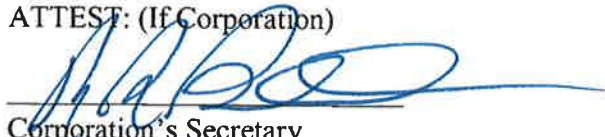
Title: Vice President

Address: 402 Cedar St
Abilene, TX 79601

Phone Number: (325) 698-5560

Federal Tax ID#: 75-2258512

ATTEST: (If Corporation)



Corporation's Secretary

Corporate Seal (if available)

ATTACHMENT A

Scope of Services

2020 E. HWY 80 WATER LINE REPLACEMENT COORDINATION AND DESIGN

Consultant (or “Engineer”) shall design and assemble drawings and specifications for the replacement of certain water lines along East Highway 80 within the City of Abilene and procuring a qualified contractor to perform the installation work. The full scope of services to be provided by the Engineer is set forth below.

I. Basic Services – Planning Phase

A. Once authorized by the City, the Engineer shall:

1. Conduct a Project Kickoff Meeting. Meeting shall include key members of Engineer’s Project Team and the City. The meeting shall focus on the scope of work, schedule, deliverables, protocols for communication throughout the project, and coordination on initial data collection activities.
2. Develop draft plans of the proposed water distribution system improvements.
3. Conduct Project Review Meeting with the City based on the draft plans. Based on this meeting, develop specific project requirements for proposed routing, and other issues that might impact system design, facility layout and supporting infrastructure.
4. Complete topographic survey of the applicable sections of the City’s existing water distribution system and proposed pipeline route to complete the preliminary analysis of the proposed improvements and piping modifications necessary to complete the project.

II. Basic Services – Final Design Phase

B. Once authorized by the City, the Engineer shall:

1. Prepare final Drawings indicating the scope, extent, and character of the Work to be performed and furnished by the installation Contractor. Specifications will be prepared, where appropriate, in general conformance with the 16-division format of the Construction Specifications Institute.
2. Provide an Opinion of Probable Construction Cost to the City.

3. Furnish the Design Phase documents to and review them with City. Make any final modifications or changes as requested by the City.

4. Submit up to 5 final copies of the Design Phase Documents and an Opinion of Probable Construction Cost to City.

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

III. Basic Services - Bidding Phase

A. After acceptance by City of the final Design Phase Documents and the most recent Opinion of Probable Construction Cost as determined in the Final Design Phase, Engineer shall:

1. Assist City in advertising for and obtaining bids for the Work and, if applicable, attend a pre-Bid conference.

2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.

3. Consult with City as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.

4. Attend the Bid opening and assist City in evaluating Bids or proposals.

B. The Bidding Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

IV. Basic Services - Construction Phase

A. Upon successful completion of the Bidding Phase, Engineer shall:

1. General Administration of Construction Contract. Consult with City and act as City's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of Engineer as assigned in said General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of City's instructions to Contractor will be issued through Engineer, who shall have authority to act on behalf of City in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.

2. Pre-Construction Conference. Participate in a Pre-Construction Conference prior to commencement of Work at the Site.

3. Visits to Site and Observation of Construction. In connection with observations of Contractor's work in progress while it is in progress:

a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by Engineer, and the Project Inspector, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Project Inspector, if any. Based on information obtained during such visits and such observations, Engineer will determine in general if Contractor's work is proceeding in accordance with the Contract Documents, and Engineer shall keep City informed of the progress of the Work.

b. The purpose of Engineer's visits to, and representation by the Project Inspector, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for City a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

4. Defective Work. Recommended to City that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, Engineer believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning

whole as indicated in the Contract Documents.

5. Clarifications and Interpretations; Field Orders. Issue necessary clarifications and interpretations of the Contract Documents to allow the orderly completion of the Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Engineer may issue Field Orders through the City's representative, authorizing minor variations from the requirements of the Contract Documents.

6. Change Orders and Work Change Directives. Recommend Change Orders and Work Change Directives to the City, as appropriate, and support the City in the preparation of Change Orders and Work Change Directives as required.

7. Shop Drawings and Samples. Review and take appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. Engineer has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to Engineer.

8. Substitutes and "or-equal." Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by contractor, but subject to a reasonable number of substitution requests.

9. Inspections and Tests. Require such inspections or construction materials tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.

10. Disagreements between City and Contractor. Render formal written decisions on all claims of City and Contractor relating to the acceptability of contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's work. In rendering such decisions, Engineer shall be fair and not show partiality to City or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

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

a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of Engineer contained in this paragraph are expressly subject to the limitations set forth in subparagraph b. below and other express or general limitations in this Agreement and elsewhere.

b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to City free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between City and Contractor that might affect the amount that should be paid.

12. Contractor's Completion Documents.

a. Receive and review maintenance and operating instructions, schedules, and guarantees.

b. Receive certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as specified, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such Engineer's review will be limited as stated.

c. Engineer shall transmit these documents to City.

13. Substantial Completion. Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with City and Contractor, conduct an inspection to determine if the Work is Substantially Complete.

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

B. Duration of Construction Phase. The Construction Phase will commence with the execution of the Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractor.

C. Limitation of Responsibilities. Engineer shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. Engineer shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

ATTACHMENT B

PAYMENT SCHEDULE PARTIES TO INITIAL OPTION SELECTED

OPTION 1 Click or tap here to enter text.

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

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

OPTION 2 X

Payment will be made on a Lump Sum Basis of \$78,700 and a Time and Materials Basis of \$22,000 for a Total Contract Amount of \$100,700 payable as outlined below:

Lump Sum:

Final Design Phase	\$42,000.00
Bidding Phase	\$6,700.00
Construction Phase	\$30,000.00

Time and Materials:

Inspection	\$12,000.00
Surveying	\$4,000.00
Construction Materials Testing	\$6,000.00

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

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

OPTION 3 Click or tap here to enter text.



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

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

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

ATTACHMENT C

OWNERSHIP OF DOCUMENTS AND MATERIALS

Parties to initial option chosen

(Option 1) X

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

(Option 2) Click or tap here to enter text.

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



ATTACHMENT D

STATE MANDATED WORKERS' COMPENSATION INSURANCE LANGUAGE

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

a. Definitions

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

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

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

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

(1) a certificate of coverage, prior to that person beginning work on the project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the project; and



- (2) no later than seven (7) days after receipt by the Professional, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- f. The Professional shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.
- g. The Professional shall notify the City in writing by certified mail or personal delivery, within ten (10) days after the Professional knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- h. The Professional shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- i. The Professional shall contractually require each person with whom it contracts to provide services on a project to:
- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the Professional, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing service on the project, for the duration of the project;
 - (3) provide the Professional, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the Professional:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
 - (6) notify the City in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing service on the project;



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

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

ATTACHMENT E
NOTICE TO PROCEED

TO: ENPROTEC/HIBBS & TODD, INC
402 CEDAR ST
ABILENE, TX 79601

Project Description: 2020 E Hwy 80 Water Line Replacement Coordination & Design

You are to begin work on this project on or before _____, and to complete the work within _____ consecutive working days for Base Bid and _____ consecutive working days for Add Alternate.

You must complete all work on or before _____, 20____.

You must return a signed copy of this Notice to Proceed to the City.

THE CITY OF ABILENE, TEXAS

BY: _____
(Signature)

Printed Name

Title: _____

Date: _____

Contractor acknowledges
receiving the Notice to Proceed.

BY: _____
(Signature)

Title: _____

Federal Tax ID #: _____

ATTACHMENT F
CHANGE IN SCOPE OF SERVICES

Click or tap here to enter text.

Authorizing a professional services contract with
Enprotec/Hibbs & Todd, Inc. for the
2020 E. Hwy 80 Water Line Coordination and
Design.

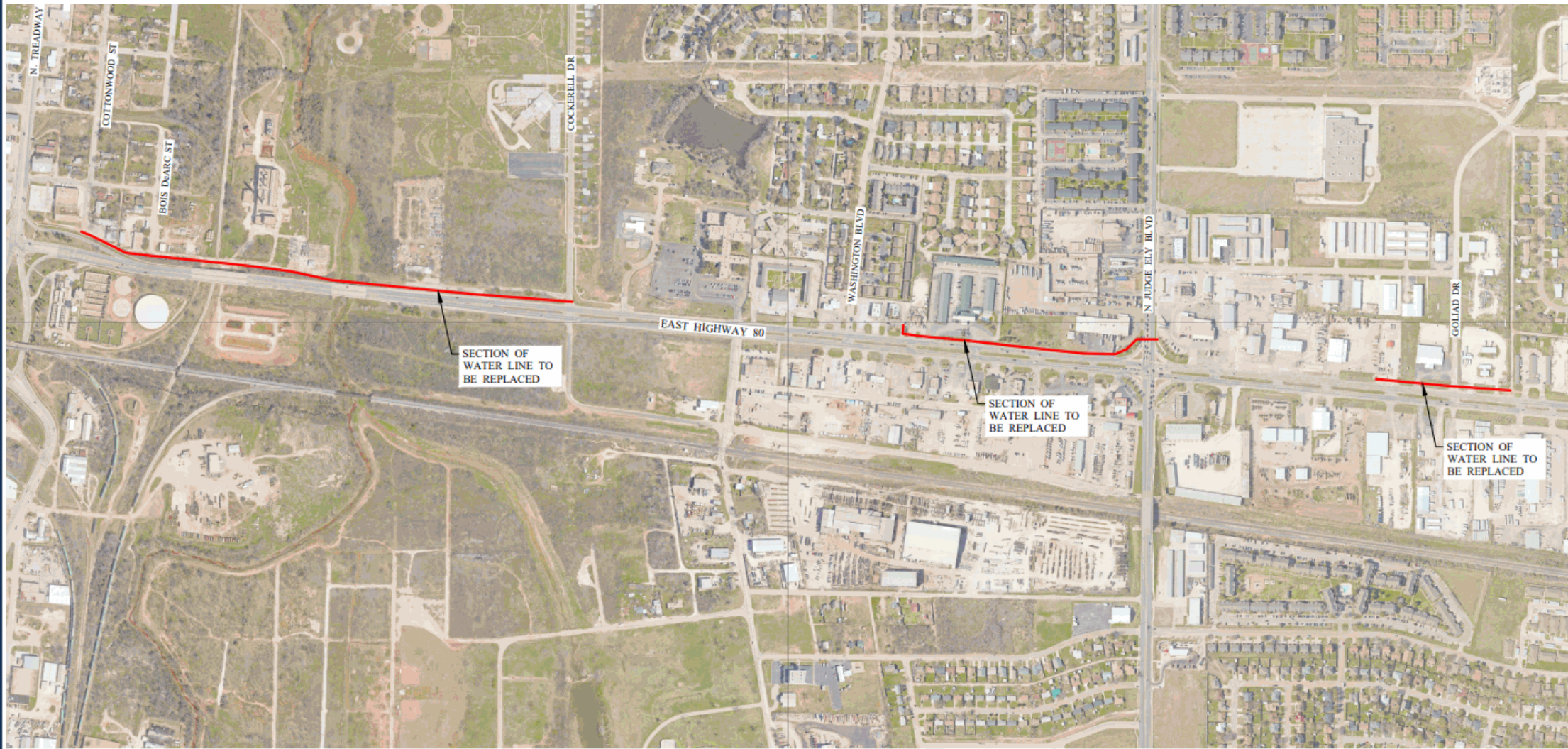


- Professional Services Contract with Enprotec/Hibbs & Todd, Inc.
- Contract price of \$100,700.00.
- Professional services for the preparation of plans and contract documents, bidding assistance, general project supervision (not RPR) and contract administration.



- Design the replacement of aged cast iron pipe with corrosion resistant plastic pipe and the installation of new valves and hydrants.
- Aged cast iron pipe can result in water quality issues and water main breaks that are disruptive to businesses and adjacent highway traffic.
- The design will address three remaining segments of cast iron pipe along the north side of east Highway 80.





Authorizing a professional services contract with
Enprotec/Hibbs & Todd, Inc. for the
2020 E. Hwy 80 Water Line Coordination and
Design.

QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 3/26/2020

TO: Robert Hanna, City Manager

FROM: Rodney Taylor, Director

SUBJECT: 5. Resolution: Receive a Report, Hold a Discussion and Take Action on awarding the bid to Lupe Rubio Construction Company, Inc. for the Baylor Drive Lift Station Replacement Project. (Rodney Taylor)

GENERAL INFORMATION

Water Utilities staff is requesting that the Abilene City Council award the bid to Lupe Rubio Construction Company, Inc. (Rubio) of Kingsland, Texas in the amount of \$1,030,096.74 for CB-2031 Baylor Drive Lift Station Replacement Project (Project). Bids were advertised in the Abilene Reporter News on January 26th and February 2nd, 2020. Bids were opened on Wednesday February 19th, 2020. A total of 3 bids were received. The Project Engineer has evaluated the bids using the best value criteria and does recommend awarding the bid to Rubio.

The bid amount includes the base bid of \$1,021,546.74 and the Add Alternate Item No. B1 of \$8,550.00 to include a spare pump delivered to owner.

SPECIAL CONSIDERATIONS

This project is for the relocation of the existing Baylor Drive Lift Station about 500 feet east from its current location. The existing lift station was constructed in about 1980. The location is a very small parcel carved out of the two adjoining residential properties. The lift station is in poor condition and in need of an upgrade. The limited space of the existing site causes difficulties in accessing, maintaining, and repairing the submersible pumps. The new lift station will be a modern, TCEQ compliant design to allow easy access for maintenance and repairs, and includes new electrical and controls, rail mounted pumps, odor control, and a backup generator.

FUNDING/FISCAL IMPACT

Funding for the project will come from Fund 575 designated for Water Utilities Capital Improvement Projects.

STAFF RECOMMENDATION

Staff recommends that the Abilene City Council award the bid to Lupe Rubio Construction Company, Inc. for the Baylor Drive Lift Station Replacement Project in the amount of \$1,030,096.74.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. WrittenResolution-WtrDpt-Award Bid-Lupe Rubio-Baylor Drive Lift Station Replacement Project-3-26-2020
2. Letter of Recommendation-Baylor Drive Lift Station Replacement-3-26-2020
3. Bid Tab Sheet-Lupe Rubio-Baylor Drive Lift Station Replacement-3-26-2020
4. Contract-Lupe Rubio-Baylor Drive Lift Station-v2-3-26-2020
5. Presentation-Award Bid-Lupe Rubio-Baylor Drive Lift Station Replacement-3-26-2020

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AWARDING THE BID TO LUPE RUBIO CONSTRUCTION COMPANY, INC. FOR THE
BAYLOR DRIVE LIFT STATION REPLACEMENT PROJECT.**

WHEREAS, the City of Abilene (City) owns and operates a Publicly Owned Treatment Works that includes a sanitary sewer collection system; and

WHEREAS, the existing Baylor Drive Lift Station is aged, in poor condition, and is located within a very small parcel that restricts access for maintenance, repair, and needed upgrades; and

WHEREAS, Enprotec/Hibbs & Todd, Inc. (EHT) was hired to provide plans and contract documents, bidding assistance, general project supervision, and contract administration for the relocation of the Baylor Drive Lift Station; and

WHEREAS, the improvements include an adequately sized site, updated electrical and controls, new submersible pumps on rails for ease of maintenance and repairs, odor control, hoist, and a standby generator; and

WHEREAS, Lupe Rubio Construction Company, Inc. (Rubio) submitted the lowest qualifying bid in the amount of \$1,030,096.74 for the Baylor Drive Lift Station Replacement Project, and EHT has evaluated the bids for best value criteria and for conformity with the advertisement for bids and does recommend awarding the bid to Rubio; and

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

That the City Manager is authorized to execute a construction contract with Lupe Rubio Construction Company, Inc. for the Baylor Drive Lift Station Replacement Project in the amount of \$1,030,096.74.

ADOPTED this 26th day of March, 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley E. Smith, City Attorney



February 26, 2020

City of Abilene
209 East Highway 80
Abilene, TX 79601
Attn: Mr. Kevin Jaeger, Water Utilities Engineer

**Re: Recommendation of Award
Baylor Drive Lift Station Replacement Project
Abilene, Texas**

Dear Mr. Jaeger:

Bids for the referenced project were opened on Wednesday, February 19, 2020. Three (3) bids were received and the apparent low bidder is Lupe Rubio Construction Co., Inc., from Kingsland, Texas. See attached Bid Tabulation.

The responsiveness and responsibility of the bidder has been evaluated for conformity with all material conditions of the Advertisement to Bid and the Information for Bidders. Additionally, the bidder's qualifications and ability to perform the project successfully have been evaluated in accordance with professional standards.

Based on these findings, eHT recommends award of a contract for constructing the Baylor Drive Lift Station Replacement Project to Lupe Rubio Construction Co. Inc., as the lowest responsible bidder and the "best value" for completion of the project. The Base Bid plus Alternate B1 totaled \$1,030,096.74.

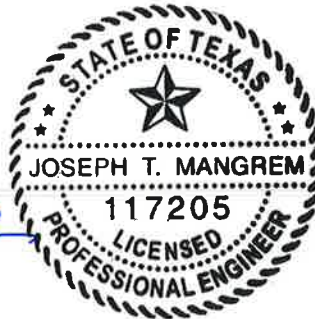
We look forward to working with the City of Abilene as this project moves into the construction phase.

Sincerely,

Enprotec / Hibbs & Todd, Inc.


Joe Mangrem, P.E.
Project Engineer

JM/jd



Attachment: Bid Tabulation

c: Rodney Taylor, Director of Water Utilities
Project File: 7209

P:\Projects\Abilene, City of\7209 Baylor Drive Lift Station Improvements\4. Bidding Phase\Bidder Evaluation\Recommendation of Award.docx

Environmental, Civil & Geotechnical Engineers

Abilene Office
402 Cedar
Abilene, Texas 79601
P.O. Box 3097
Abilene, Texas 79604
325.698.5560 | 325.690.3240 fax

Lubbock Office
6310 Genoa Avenue, Suite E
Lubbock, Texas 79424
806.794.1100 | 806.794.0778 fax

www.e-ht.com

Granbury Office
1310 Weatherford Highway, Suite 116
Granbury, Texas 76048
682.498.6000 | 682.498.6293 fax

PE Firm Registration No. 1151
PG Firm Registration No. 50103
RPLS Firm Registration No. 10011900

TABULATION OF BIDS FOR: Baylor Drive Lift Station Replacement, City of Abilene, Texas

BIDS RECEIVED: 2/19/2020

PE Firm Registration No. 1151

BASE BID				Lupe Rubio Construction		MH Civil Constructors		Dowtech Specialty Contractors	
Item No.	Quantity	Unit	Item	Unit Cost	Amount	Unit Cost	Amount	Unit Cost	Amount
1	1	LS	Mobilization, bonds & insurance	\$ 28,500.00	\$ 28,500.00	\$ 50,688.00	\$ 50,688.00	\$ 47,350.00	\$ 47,350.00
2	1	LS	Lift Station	\$ 335,667.81	\$ 335,667.81	\$ 239,000.00	\$ 239,000.00	\$ 454,000.00	\$ 454,000.00
3	1	LS	Lift Station Odor Control Unit	\$ 38,526.76	\$ 38,526.76	\$ 96,000.00	\$ 96,000.00	\$ 72,100.00	\$ 72,100.00
4	1	LS	Lift Station Backup Generator	\$ 57,000.00	\$ 57,000.00	\$ 75,000.00	\$ 75,000.00	\$ 43,800.00	\$ 43,800.00
5	1	LS	Lift Station Water Service Line	\$ 17,373.77	\$ 17,373.77	\$ 5,080.00	\$ 5,080.00	\$ 8,700.00	\$ 8,700.00
6	1	LS	Lift Station Site Electrical Controls and Communication	\$ 96,900.00	\$ 96,900.00	\$ 100,000.00	\$ 100,000.00	\$ 83,300.00	\$ 83,300.00
7	1	LS	Lift Station Site Fencing, Gates and Sign	\$ 30,780.00	\$ 30,780.00	\$ 26,500.00	\$ 26,500.00	\$ 56,700.00	\$ 56,700.00
8	402	SY	Lift Station Site Concrete Paving, Slab and Driveway	\$ 102.60	\$ 41,245.20	\$ 100.00	\$ 40,200.00	\$ 132.00	\$ 53,064.00
9	45	LF	8" DR-18 C900 PVC Water Main	\$ 85.44	\$ 3,844.80	\$ 155.00	\$ 6,975.00	\$ 104.00	\$ 4,680.00
10	1	EA	8" Resilient Seated Gate Valve	\$ 1,810.78	\$ 1,810.78	\$ 2,000.00	\$ 2,000.00	\$ 2,400.00	\$ 2,400.00
11	1	EA	6" Resilient Seated Gate Valve	\$ 1,173.57	\$ 1,173.57	\$ 1,300.00	\$ 1,300.00	\$ 1,566.00	\$ 1,566.00
12	1	LS	Fire Hydrant Assembly	\$ 4,149.77	\$ 4,149.77	\$ 3,300.00	\$ 3,300.00	\$ 4,400.00	\$ 4,400.00
13	657	LF	8" SDR-35 PVC Sewer Gravity Main	\$ 78.45	\$ 51,541.65	\$ 100.00	\$ 65,700.00	\$ 34.00	\$ 22,338.00
14	30	LF	6" SDR-35 PVC Sewer Gravity Main	\$ 145.42	\$ 4,362.60	\$ 100.00	\$ 3,000.00	\$ 52.00	\$ 1,560.00
15	1,255	LF	6" DR-18 C900 Green PVC Sewer Force Main	\$ 34.35	\$ 43,109.25	\$ 100.00	\$ 125,500.00	\$ 27.00	\$ 33,885.00
16	6	EA	4' Diameter FRP Manhole	\$ 6,272.14	\$ 37,632.84	\$ 12,000.00	\$ 72,000.00	\$ 6,000.00	\$ 36,000.00
17	1	EA	5' Diameter FRP Manhole	\$ 11,105.40	\$ 11,105.40	\$ 16,000.00	\$ 16,000.00	\$ 10,300.00	\$ 10,300.00
18	1	EA	Tie-in to existing Mahole	\$ 14,107.22	\$ 14,107.22	\$ 2,000.00	\$ 2,000.00	\$ 4,000.00	\$ 4,000.00
19	1	LS	Dewatering	\$ 11,400.00	\$ 11,400.00	\$ 9,000.00	\$ 9,000.00	\$ 27,000.00	\$ 27,000.00
20	1	LS	Bypass Pumping	\$ 13,680.00	\$ 13,680.00	\$ 5,700.00	\$ 5,700.00	\$ 24,500.00	\$ 24,500.00
21	8	EA	Sewer Service Reconnect	\$ 1,810.15	\$ 14,481.20	\$ 800.00	\$ 6,400.00	\$ 976.00	\$ 7,808.00
22	1	LS	Remove existing Maholes and abandon existing Sewer Mains	\$ 10,260.00	\$ 10,260.00	\$ 3,000.00	\$ 3,000.00	\$ 11,400.00	\$ 11,400.00
23	1	LS	Demolition of existing Lift Station and Site Restoration	\$ 17,100.00	\$ 17,100.00	\$ 28,000.00	\$ 28,000.00	\$ 10,400.00	\$ 10,400.00
24	1	LS	Erosion Control Measures	\$ 6,840.00	\$ 6,840.00	\$ 4,000.00	\$ 4,000.00	\$ 6,400.00	\$ 6,400.00
25	1	LS	Traffic Contol Measures	\$ 4,560.00	\$ 4,560.00	\$ 15,000.00	\$ 15,000.00	\$ 7,300.00	\$ 7,300.00
26	20	LF	Concrete Curb and Gutter repair	\$ 34.20	\$ 684.00	\$ 160.00	\$ 3,200.00	\$ 80.00	\$ 1,600.00
27	1,073	SY	Asphalt Pavement repair	\$ 43.32	\$ 46,482.36	\$ 55.00	\$ 59,015.00	\$ 29.00	\$ 31,117.00
28	1	LS	Surface Restoration	\$ 22,800.00	\$ 22,800.00	\$ 6,500.00	\$ 6,500.00	\$ 7,500.00	\$ 7,500.00
29	1,942	LF	Trench Safety System	\$ 2.28	\$ 4,427.76	\$ 1.00	\$ 1,942.00	\$ 7.00	\$ 13,594.00
30	1	LS	Allowance for work directed by City	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00
TOTAL BASE BID PRICE (Items 1 thru 30)					\$ 1,021,546.74		\$ 1,122,000.00		\$ 1,138,762.00

ADD ALTERNATES				Lupe Rubio Construction		MH Civil Constructors		Dowtech Specialty Contractors	
Item No.	Quantity	Unit	Item	Unit Cost	Amount	Unit Cost	Amount	Unit Cost	Amount
A1	1	LS	Landscape and Irrigation Plan for Lift Station Site	\$ 45,600.00	\$ 45,600.00	\$ 25,000.00	\$ 25,000.00	\$ 7,680.00	\$ 7,680.00
B1	1	EA	Spare Pump, delivered to Owner	\$ 8,550.00	\$ 8,550.00	\$ 65,000.00	\$ 65,000.00	\$ 8,600.00	\$ 8,600.00
TOTAL ADD ALTERNATE BID PRICES (Items A1 and B1)					\$ 54,150.00		\$ 90,000.00		\$ 16,280.00
TOTAL BASE BID + ADD ALTERNATE BID PRICES (Items 1-30 BASE BID AND A1 and B1)					\$ 1,075,696.74		\$ 1,212,000.00		\$ 1,155,042.00

I, JOSEPH T. MANGREM, P.E., #117205, DO HEREBY CERTIFY THAT THE ABOVE REFERENCED BIDS WERE RECEIVED, IN ACCORDANCE WITH THE ADVERTISED PROCEDURES, OPENED, AND READ ALOUD. THE BID TABULATION HEREIN IS A TRUE AND ACCURATE REPRESENTATION OF THE BIDS READ ALOUD.


JOSEPH T. MANGREM, P.E. #117205
02/19/2020


CONSTRUCTION CONTRACT

BACKGROUND

THIS CONTRACT, made _____, 2020, is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and Lupe Rubio Construction Co., Inc. of the City of Kingsland, 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 described as **Baylor Drive Lift Station Replacement**

The Contractor must provide all Work required in the Contract Documents -- incorporated herein by reference -- labeled:

Baylor Drive Lift Station Replacement

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

In consideration of this Work, the City will pay the Contractor the sum of **\$1,030,096.74**.
(Base Bid + Alternate B1)

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

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

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

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

6. **Indemnity.**

A. Definitions

For the purpose of this section the following definitions apply:

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

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

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

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

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

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

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

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

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

B. Indemnity

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

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

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

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

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

BOTH CITY AND CONTRACTOR EXPRESSLY INTEND THIS CONTRACT'S INDEMNITY PROVISION TO REQUIRE CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE WHILE CITY IS PARTICIPATING IN THIS CONTRACT, WHERE

THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE DAMAGES. THIS CONTRACT'S INDEMNITY PROVISION DOES NOT APPLY TO ANY CLAIM WHERE DAMAGE IS PROVEN TO RESULT FROM THE SOLE NEGLIGENCE OF THE CITY.

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

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

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

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

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

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

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

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

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

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

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

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

CONTRACTOR

Name of Contractor:

Lupe Rubio Construction Co., Inc.

Business Address:

PO Box 1838,
Kingsland, TX 78639

Jose Guadalupe Rubio
Signature

Jose Guadalupe Rubio
Name - Typed or Printed

President
Title - Typed or Printed

(325)388-8500
Business Phone No.

42-1543104
Federal Tax I.D.#

ATTEST: (If Corporation)

Guillermina Sanchez M.
Corporate Secretary's Signature

Corporate Seal None
(if none, write "None")

CITY OF ABILENE

Authorized Signature

APPROVED:

City Attorney

ATTEST:

City Secretary

Seal:

Award Bid to Lupe Rubio Construction Company, Inc. for the
Baylor Drive Lift Station Replacement Project.



- Award bid to Lupe Rubio Construction Company, Inc.
- Bid value of \$1,030,096.74.
- Project to relocate the existing Baylor Drive Lift Station.
- Existing location is very small, and lift station is aged and in poor condition.
- Project will include new submersible pumps, modern electrical and controls, odor control, emergency power generation.
- Funded from Fund 575 designated for Water Utility Capital Improvements.





Award Bid to Lupe Rubio Construction Company, Inc. for
the
Baylor Drive Lift Station Replacement Project.

Questions
?





**City Council
Agenda Memo**

City Council Meeting Date: 3/26/2020

TO: Robert Hanna, City Manager

FROM: Rodney Taylor, Director

SUBJECT: 6. Resolution: Receive a Report, Hold a Discussion and Take Action on authorizing a professional services contract with Enprotec/Hibbs & Todd, Inc. for the NEWTP SCADA System Improvements. (Rodney Taylor)

GENERAL INFORMATION

Water Utilities staff is requesting that the Abilene City Council approve a Professional Services Contract with Enprotec/Hibbs & Todd, Inc. (EHT) for the NEWTP SCADA System Improvements in the amount not to exceed \$140,190.00. This contract will provide for the preparation of plans and contract documents, bidding assistance, project general supervision (not RPR), and contract administration.

SPECIAL CONSIDERATIONS

The City of Abilene relies heavily on the Northeast Water Treatment Plant (NEWTP) due to its 25 million gallons per day capacity and its reliability. The Supervisory Control and Data Acquisition system (SCADA) is the computer hardware and software systems that provide computer automation of processes and supports the human/machine interface for monitoring and operating the raw water pumping, treatment plant processes, distribution systems, and historian data base. The existing SCADA system is 30 year old technology for which the proprietary programming language and parts are no longer supported by the manufacturer or by aftermarket suppliers. The SCADA system is in dire need of upgrading. The contract is for the preparation of design plans, specifications, and contract documents for acquisition and integration of a modern SCADA system including upgraded electrical and control wiring and panels.

FUNDING/FISCAL IMPACT

Funding for the professional services contract is included in the annual operating budget of the Water Utilities Department.

STAFF RECOMMENDATION

Staff recommends that the Abilene City Council approve the professional services contract with EHT for design of the NEWTP SCADA System Improvements in the amount of \$140,190.00

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. WrittenResolution-WtrDpt-Authorize PS Contract with EHT for NEWTP SCADA Improvements-3-26-2020
2. Contract-PS-EHT-NEWTP SCADA System Improvements-3-26-2020
3. Presentation-PS Contract-EHT-NEWTP SCADA Improvements-3-26-2020

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AUTHORIZING A PROFESSIONAL SERVICES CONTRACT WITH ENPROTEC/HIBBS & TODD, INC. FOR THE NEWTP SCADA SYSTEM IMPROVEMENTS.

WHEREAS, the City of Abilene (Abilene) owns and operates three water treatment facilities including the Northeast Water Treatment Plant (NEWTP) producing potable water for Abilene's Public Water System; and

WHEREAS, the NEWTP utilizes a computer based Supervisory Control and Data Acquisition (SCADA) system for the automation of processes and supporting the human/machine interface allowing treatment plant operators to monitor and control raw water pumping, treatment plant processes, and the distribution system for maintaining water quality and pressures throughout the treatment and distribution systems; and

WHEREAS, the existing SCADA system is antiquated, and the hardware, software, and programming language are obsolete and no longer supported by the manufacturer or aftermarket suppliers; and

WHEREAS, there is a need for the acquisition and integration of a new SCADA system at the NEWTP including related electrical and control wiring and ancillary equipment; and

WHEREAS, the professional services contract with Enprotec/Hibbs & Todd, Inc. for the NEWTP SCADA System Improvements will provide for the preparation of plans and contract documents, bidding assistance, general project supervision (not RPR) and contract administration in the amount not to exceed \$140,190.00; and

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

That the City Manager is authorized to execute the professional services contract with Enprotec/Hibbs & Todd, Inc. for the NEWTP SCADA System Improvements in the amount not to exceed \$140,190.00.

ADOPTED this 26th day of March 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley E. Smith, City Attorney



PROFESSIONAL SERVICES CONTRACT Engineers & Architects

This contract, dated the ____ day of March, 2020, is between the City of Abilene, a home rule municipal corporation of the State of Texas ("City"), and Enprotec/Hibbs & Todd, a corporation organized under the laws of the State of Texas ("Consultant").

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

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

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

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

I. TERMS

In consideration of the compensation stated in paragraph II, the Consultant must provide all services as described in Attachment A, which is incorporated by reference for all purposes. The Consultant must complete all services by a mutually agreed upon date.

II. FEE

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

III. FACILITIES

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

IV. ASSIGNMENT

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

V. STATUS OF CONSULTANT

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

VI. AMENDMENT OR MODIFICATION

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

VII. OWNERSHIP OF DOCUMENTS AND MATERIALS

All documents and materials prepared by Consultant under the terms of this contract are the Consultant's property from the time of preparation. Consultant will deliver copies of the documents and materials to the City or make them available for inspection *whenever requested*. City has the right to make duplicate copies of such documents or materials for its own file or use for any other such purposes as the City deems necessary and there shall be no additional costs incurred because of such copying or use.

VIII. NONDISCLOSURE

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



IX. INDEMNITY

A. Definitions

For the purpose of this section the following definitions apply:

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

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

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

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

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

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

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

B. Indemnity

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

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

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

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

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

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

X. INSURANCE

A. GENERAL REQUIREMENTS

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

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

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

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

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

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



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

B. ADDITIONAL REQUIREMENTS

The required liability insurances and their certificates must:

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

C. TYPES AND AMOUNTS OF INSURANCE

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

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



6. No Insurance Required

XI. VENUE, CHOICE OF LAW AND INTERPRETATION

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

XII. TERMINATION

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

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

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

XIII. PROJECT REPRESENTATION

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

XIV. NOTICE

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

City – ATTN:

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

Consultant – ATTN:

Jordan S. Hibbs, P.E.
Enprotec/Hibbs & Todd, Inc
402 Cedar St, Abilene, TX 79601

XV. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES

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

XVI. NO INDEBTEDNESS

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

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

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

XVII. EQUAL EMPLOYMENT OPPORTUNITY

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

XVIII. VERIFICATION OF EMPLOYMENT ELIGIBILITY

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

XIX. MINORITY AND WOMEN BUSINESS ENTERPRISES

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



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

XX. SALES TAX

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

XXI. LEGAL CONSTRUCTION

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

XXII. BOYCOTT OF ISRAEL

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

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

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

XXIII. SECTIONS AND OTHER HEADINGS



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

XIV. COUNTERPARTS

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

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

A handwritten signature in blue ink, appearing to be 'JA' or similar, located in the bottom right corner of the page.

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

CITY OF ABILENE

By: _____

Name: Robert Hanna

Title: City Manager

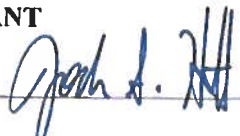
ATTEST:

City Secretary

APPROVED:

By: _____
City Attorney

CONSULTANT

By:  _____

Name: Jordan S. Hibbs, P.E.

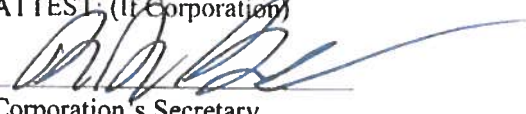
Title: Vice President

Address: 402 Cedar St
Abilene, TX 79601

Phone Number: (325) 698-5560

Federal Tax ID#: 75-2258512

ATTEST: (If Corporation)


Corporation's Secretary

Corporate Seal (if available)



ATTACHMENT A

Scope of Services

NEWTP SCADA System Improvements

Consultant (or "Engineer") shall design Supervisory Control and Data Acquisition (SCADA) System improvements for the City of Abilene's Northeast Water Treatment Plant.

The Engineer shall prepare plans, specifications, and contract documents for the purpose of acquiring a qualified contractor to perform and install the proposed improvements. The Engineer shall assist with bidding of the project and shall provide limited construction phase administration services. The full scope of services to be provided by the Engineer is set forth below.

I. Basic Services - Design Phase

A. The Engineer shall:

1. Perform field investigations, as necessary, to aide in defining the scope of the project.
2. Prepare Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by the Contractor. Specifications will be prepared, where appropriate, in general conformance with the 16-division format of the Construction Specifications Institute.
3. Drawings shall include the following:
 - a. Overall layout of existing and proposed equipment.
 - b. Electrical site layout depicting location of electrical equipment and conduit routing.
 - c. Conduit schedule specifying conductor and conduit sizes.
 - d. Electrical control schematics for the proposed equipment.
 - e. SCADA network diagrams and PLC I/O schedules.
 - f. Panel schedule(s).
 - g. Electrical details.
4. Specifications shall include the following:
 - a. Necessary Division 16 specifications.
 - b. Control narratives for the proposed system.
5. Prepare an Opinion of Probable Construction Cost, where necessary and required by the Owner.
6. Furnish the Design Phase documents to, and review them with, the Owner. Make

QA

any final modifications or changes as requested by the Owner.

7. Submit up to 5 final copies of the Design Phase Documents and an Opinion of Probable Construction Cost to the Owner.
- B. The Engineer's Services under the Design Phase will be considered complete on the date when the final copies of the Design Phase Documents required above have been delivered to the Owner.

II. Basic Services - Bidding Phase

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

III. Basic Services - Construction Phase

- A. Upon successful completion of the Bidding Phase, the Engineer shall:
1. *General Administration of Construction Contract.* Consult with the Owner and act as the Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of the Engineer as assigned in said General Conditions shall not be modified, except as the Engineer may otherwise agree in writing. All of the Owner's instructions to the Contractor will be issued through the Engineer, who shall have authority to act on behalf of the Owner in dealings with the Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.
 2. *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
 3. *Visits to Site and Observation of Construction.* In connection with observations of the Contractor's work in progress while it is in progress:



a. Make limited visits to the Site at intervals appropriate to the various stages of construction, as the Engineer deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by the Engineer, if any, are not intended to be exhaustive or to extend to every aspect of the Contractor's work in progress or to involve detailed inspections of the Contractor's work in progress beyond the responsibilities specifically assigned to the Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking and similar methods of general observation of the Work based on the Engineer's exercise of professional judgment as assisted by the Owner's Project Inspector, if any. Based on information obtained during such visits and such observations, the Engineer will determine in general if the Contractor's work is proceeding in accordance with the Contract Documents, and the Engineer shall keep the Owner informed of the progress of the Work.

b. The purpose of the Engineer's visits, if any, at the Site, will be to enable the Engineer to better carry out the duties and responsibilities assigned to and undertaken by the Engineer during the Construction Phase, and, in addition, by the exercise of the Engineer's efforts as an experienced and qualified design professional, to provide for the Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by the Contractor. The Engineer shall not, during such visits or as a result of such observations of the Contractor's work in progress, supervise, direct, or have control over the Contractor's work, nor shall the Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by the Contractor, for safety precautions and programs incident to the Contractor's work, or for any failure of the Contractor to comply with Laws and Regulations applicable to the Contractor's furnishing and performing the Work. Accordingly, the Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

4. *Defective Work.* Recommend to the Owner that the Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, the Engineer believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
5. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents to allow the orderly completion of the Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. The Engineer may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.
6. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to the Owner, as appropriate, and support the Owner in the preparation of Change Orders and Work Change Directives as required.



7. *Shop Drawings and Samples.* Review and take appropriate action in respect to Shop Drawings and Samples and other data which the Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. The Engineer has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to the Engineer.
8. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by the Contractor, but subject to a reasonable number of substitution requests.
9. *Inspections and Tests.* Require such special inspections or tests of the Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. The Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. The Engineer shall be entitled to rely on the results of such tests.
10. *Disagreements between the Owner and the Contractor.* Render formal written decisions on all claims of the Owner and the Contractor relating to the acceptability of the Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Contractor's work. In rendering such decisions, the Engineer shall be fair and not show partiality to the Owner or the Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
11. *Applications for Payment.* Based on the Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that the Engineer recommends the Contractor be paid. Such recommendations of payment will be in writing and will constitute the Engineer's representation to the Owner, based on such observations and review, that, to the best of the Engineer's knowledge, information and belief, the Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to the Contractor's being entitled to such payment appear to



have been fulfilled in so far as it is the Engineer's responsibility to observe the Contractor's work. In the case of unit price work, the Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of the Engineer contained in this paragraph are expressly subject to the limitations set forth in subparagraph b. below and other express or general limitations in this Agreement and elsewhere.

- b. By recommending any payment, the Engineer shall not thereby be deemed to have represented that observations made by the Engineer to check the quality or quantity of the Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to the Engineer in this Agreement and the Contract Documents. Neither the Engineer's review of the Contractor's work for the purposes of recommending payments nor the Engineer's recommendation of any payment including final payment will impose on the Engineer's responsibility to supervise, direct, or control the Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or the Contractor's compliance with Laws and Regulations applicable to the Contractor's furnishing and performing the Work. It will also not impose responsibility on the Engineer to make any examination to ascertain how or for what purposes the Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to the Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between the Owner and the Contractor that might affect the amount that should be paid.

12. *Contractor's Completion Documents.*

- a. Receive and review maintenance and operating instructions, schedules, and guarantees.
- b. Receive certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as specified, and the annotated record documents which are to be assembled by the Contractor in accordance with the Contract Documents to obtain final payment. The extent of such Engineer's review will be limited as stated.
- c. The Engineer shall transmit these documents to the Owner.

13. *Substantial Completion.* Promptly after notice from the Contractor that the Contractor considers the entire Work ready for its intended use, in company with

the Owner and the Contractor, conduct an inspection to determine if the Work is Substantially Complete.

14. *Final Notice of Acceptability of the Work.* Work with the Owner to determine if the completed Work of the Contractor is acceptable so that the Engineer may recommend, in writing, final payment to the Contractor. Accompanying the recommendation for final payment, the Engineer shall also provide a "Notice of Acceptability of Work", based on the Owner's observations that the Work is acceptable to the best of the Engineer's knowledge, information, and belief and based on the extent of the services provided by the Engineer under this Agreement.
 15. Engineer shall develop Record or As-Built Drawings based on the Contractor's red-lined drawings. Engineer shall deliver two (2) full-size sets of the Record Drawings along with electronic files (.pdf and .dwg) once complete.
- B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by the Engineer for final payment to the Contractor.
- C. *Limitation of Responsibilities.* The Engineer shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. The Engineer shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.



ATTACHMENT B

PAYMENT SCHEDULE PARTIES TO INITIAL OPTION SELECTED

OPTION 1 Click or tap here to enter text.

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

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

OPTION 2 X

Payment will be made on a Lump Sum Basis of \$75,500 and a Time and Materials Basis of \$64,690 for a Total Contract Amount of \$140,190 payable as outlined below:

Lump Sum:

Final Design Phase	\$ 75,500
--------------------	-----------

Time and Materials:

Bidding Phase Services	\$ 13,010
Construction Phase Services	\$ 51,680

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

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



OPTION 3 Click or tap here to enter text.

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

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

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

A handwritten signature in blue ink, appearing to be 'GA' or similar initials, located in the bottom right corner of the page.

ATTACHMENT C

OWNERSHIP OF DOCUMENTS AND MATERIALS

Parties to initial option chosen

(Option 1) X

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

(Option 2) Click or tap here to enter text.

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



ATTACHMENT D

STATE MANDATED WORKERS' COMPENSATION INSURANCE LANGUAGE

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

a. Definitions

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

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

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

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



- (2) no later than seven (7) days after receipt by the Professional, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- f. The Professional shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.
- g. The Professional shall notify the City in writing by certified mail or personal delivery, within ten (10) days after the Professional knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- h. The Professional shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- i. The Professional shall contractually require each person with whom it contracts to provide services on a project to:
- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the Professional, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing service on the project, for the duration of the project;
 - (3) provide the Professional, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the Professional:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
 - (6) notify the City in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing service on the project;



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

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



ATTACHMENT E
NOTICE TO PROCEED

TO: ENPROTEC/HIBBS & TODD, INC
402 CEDAR ST
ABILENE, TX 79601

Project Description: NEWTP SCADA Improvements

You are to begin work on this project on or before _____, and to complete
the work within _____ consecutive working days for Base Bid and _____ consecutive
working days for Add Alternate.

You must complete all work on or before _____, 20____.

You must return a signed copy of this Notice to Proceed to the City.

THE CITY OF ABILENE, TEXAS

BY: _____
(Signature)

Printed Name

Title: _____

Date: _____

Contractor acknowledges
receiving the Notice to Proceed.

BY: _____
(Signature)

Title: _____

Federal Tax ID #: _____



ATTACHMENT F
CHANGE IN SCOPE OF SERVICES

Click or tap here to enter text.



Authorizing a professional services contract
with Enprotec/Hibbs & Todd, Inc. for the
NEWTP SCADA System Improvements.



- Professional Services Contract with Enprotec/Hibbs & Todd, Inc.
- Contract price of \$140,190.00.
- Professional services for the preparation of plans and contract documents, bidding assistance, general project supervision (not RPR) and contract administration.



- Supervisory Control and Data Acquisition (SCADA) system is used for automation of treatment plant processes, and supporting human/machine interface allowing operator to monitor and control treatment plant and water distribution systems.
- The existing SCADA system is antiquated and is not reliable.
- Existing hardware and software no longer supported by manufacturer or aftermarket suppliers.



Authorizing a professional services contract with
Enprotec/Hibbs & Todd, Inc. for the
NEWTP SCADA System Improvements.

QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 3/26/2020

TO: Robert Hanna, City Manager

FROM: Mike Warrix, Director

SUBJECT: **7. Ordinance (First Reading) TC-2020-04:** Receive a Report, Hold a Discussion and Take Action on a request from the City of Abilene to abandon public right-of-way within an 80' wide segment of Cedar Street extending 300' between the north line of right-of-way for North 5th Street and the south line of right-of-way for North 6th Street; and a request to abandon public right-of-way within a 20' wide alley extending 300' between the north line of right-of-way for North 5th Street and the south line of right-of-way for North 6th Street, midway and parallel between Cypress and Cedar Streets *(Mike Warrix)*

GENERAL INFORMATION

Abandon a 300-foot section of Cedar Street right of way and a 300-foot section of a platted alleyway between North 5th and North 6th Streets

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Approval with conditions for re-plat.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of five (5) to zero (0).

ATTACHMENTS:

1. TC-2020-04 authorizing ordinance
2. 1-TC-2020-04 Council Staff Report full
3. 2-TC-2020-04 Council Presentation

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR ABANDONMENT OF CERTAIN PORTION OF PUBLIC RIGHT-OF-WAY FOR CEDAR STREET AND A SECTION OF PLATTED ALLEYWAY BETWEEN NORTH 5TH AND 6TH STREETS, PROVIDING FOR TERMS AND CONDITIONS OF SUCH ABANDONMENT, AND CALLING A PUBLIC HEARING.

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

PART 1: That the following described portion of public right-of-way for Cedar Street and a portion of alleyway between North 5th and 6th Streets, as described on Exhibit “A” attached hereto and made part of this ordinance for all purposes, be and the same is hereby abandoned, vacated and closed insofar as the right, title or easement of the City of Abilene is concerned, subject to the underlying property owner(s) graphically resubdividing (by replat,) the subject portion of public right-of-way into the adjoining properties.

PART 2: That said portion of public right-of-way is not needed for public purposes, and it is in the public interest to abandon the above described portion of public right-of-way.

PART 3: That the abandonment provided for herein shall extend only to the public right, title and easement in and to the tract of land specifically described in Part 1 of this ordinance, and shall be construed only to that interest the governing body of the City of Abilene may legally and lawfully abandon.

PASSED ON FIRST READING THE 26th day of March, A.D. 2020.

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 14th day of February, 2020, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 9th day of April, 2020, to permit the public to be heard prior to final consideration of this ordinance.

PASSED ON FINAL READING THIS 9th day of April, 2020.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT "A"

The City of Abilene hereby abandons the following public right-of-way within an 80' wide segment of Cedar Street extending 300' between the north line of right-of-way for North 5th Street and the south line of right-of-way for North 6th Street; **and** abandons the public right-of-way within a 20' wide alley extending 300' between the north line of right-of-way for North 5th Street and the south line of right-of-way for North 6th Street, midway and parallel between Cypress and Cedar Streets.



-END-

TC-2020-04

STAFF REPORT



REQUEST: Abandon a 300-foot section of Cedar Street right-of-way and a 300-foot section of a platted alley between North 5th and North 6th streets.

APPLICANT:

City of Abilene

HEARING DATES:

P & Z Commission: March 3, 2020

City Council 1st Reading: March 26, 2020

City Council 2nd Reading: April 9, 2020

LOCATION:

- 80-foot wide right-of-way for Cedar Street extending 300 feet between north line of right-of-way for North 5th Street and south line of right-of-way for North 6th Street in downtown Abilene
- 20-foot wide alley extending 300 feet between north line of right-of-way for North 5th Street and south line of right-of-way for North 6th Street, midway and parallel between Cypress and Cedar Streets in downtown Abilene

BACKGROUND AND REQUESTED ACTION:

During the fall of 2019, the City of Abilene entered into a Master Development Agreement with the Abilene Convention Center Hotel Development Corporation and Garfield Public/Private LLC for the design and construction of a full-service, convention center hotel in the heart of Downtown Abilene. The proposed site of this hotel will encompass all of Block 72 and 73 of the Original Town of Abilene, a portion of Cedar Street which runs through these blocks, as well as the alley that runs between the parcels of Block 72. The City requests to abandon these public right-of-ways.

REQUEST ANALYSIS:

Plans for proposed abandonment were shared with the City of Abilene's Development Review Committee (DRC). There were no objections from members of the DRC. Water and sewer lines currently exist along alley of block 72. The city intends to either seal off or reroute these lines.

STAFF RECOMMENDATION:

City staff recommends approving both requested abandonments subject to approval and subsequent recording of a re-plat showing how the right-of-way (authorized to be abandoned) will be integrated with one or more adjacent new lot(s).

PLANNING AND ZONING COMMISSION RECOMMENDATION:

The Planning & Zoning Commission voted to recommend approval of the request by a vote of seven (7) to zero (0) at the March 3, 2020 regular meeting.

NOTIFICATION:

The planning Services Division sent written notice of this request (with certificate of mailing) to all owners of property within a 200-foot radius of this subject property.

Owner	Situs	Response
ABILENE BEEHIVE INC	426 CEDAR ST	
ABILENE BEEHIVE INC	1217 N 5TH ST	
ABILENE BEEHIVE INC	1205 N 5TH ST	
ABILENE BEEHIVE INC	442 CEDAR ST	
ABILENE BEEHIVE INC	1229 N 5TH ST	
BARNARD JIM WALTER	501 HICKORY ST	
BARNARD JIM WALTER	1234 N 5TH ST	
BARNARD JIM WALTER	517 HICKORY ST	
BARNARD JIM WALTER	535 HICKORY ST	
CITY OF ABILENE	1208 N 5TH ST	In Favor
CITY OF ABILENE	1222 N 5TH ST	In Favor
CITY OF ABILENE	533 CEDAR ST	In Favor
CITY OF ABILENE	535 CEDAR ST	In Favor
CITY OF ABILENE	502 CYPRESS ST	In Favor
CITY OF ABILENE	534 CYPRESS ST	In Favor
CITY OF ABILENE	509 CEDAR ST	In Favor
CITY OF ABILENE	1100 N 6TH ST	In Favor
DAY NURSERY OF ABILENE	650 CEDAR ST	
MC CLURE FRANCES INC	1246 1/2 N 6TH ST	
MC CLURE FRANCES INC	1246 N 6TH ST	
PETRE JACKSON LIVING TR	1235 N 6TH ST	
PROSPERITY BANK		
PROSPERITY BANK	402 CYPRESS ST	

ATTACHMENTS: 1) Application 2) PowerPoint





Development

Planning

☐ Conditional

Use

☐ PDD

Other: _____

☐ Easement Release

☐ Street Name

Change

☐ Rezoning

X Thoroughfare

Abandonment

☐ Other

☐ PDD Amendment

Project Name: Abilene Convention Center Hotel; Cedar St. partial ROW abandonment and Alley Abandonment between Cedar St., N 6th St., Hickory St., and N 5th St.

Address: N/A No. of lots: N/A Acreage: N/A

Legal Description: 80' wide right-of-way for Cedar Street extending 300' between north line of right-of-way for North 5th Street and south line of right-of-way for North 6th Street in downtown Abilene

20' wide alley extending 300' between north line of right-of-way for North 5th Street and south line of right-of-way for North 6th Street, midway and parallel between Cypress and Cedar Streets in downtown Abilene

Subdivision Name: N/A Block: N/A Lot: N/A

Current Zoning: N/A Proposed Zoning (if applicable): N/A

OWNER AND AUTHORIZATION

Agent Name: _____

Address: _____

City, State, Zip: _____ Fax: _____

Phone: _____ Email: _____

I am the property owner, and I certify that the information included in this application is true to the best of my knowledge. (Name) _____ will act as my agent before the Planning and Zoning Commission.

Agent Name: City of Abilene

Address: 555 Walnut St

City, State, Zip: Abilene, TX, 79604 Fax: _____

Phone: (325) – 637 - 6237 Email: _____

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

Signature Owner: _____ Date: _____

FOR OFFICE USE ONLY

Received: _____ Fee: \$ _____ Receipt No.: _____

Case No.: _____ Reviewed By: _____



Development

Please answer the following question in order to assist Staff with the processing of your Zoning request.

1. Please (if necessary) provide background information for the zoning request and explain why you feel it is appropriate.

During the fall of 2019, the City of Abilene entered into a Master Development Agreement with the Abilene Convention Center Hotel Development Corporation and Garfield Public/Private LLC for the design and construction of a full-service, convention center hotel in the heart of Downtown Abilene. The city of Abilene intends for the Hotel lot to encompass several parcels between North 6th Street, Hickory Street, North 5th Street, Cypress Street, a 20' alley, as well as a portion of Cedar Street.

CITY OF ABILENE

THOROUGHFARE CLOSURE COMMENT FORM

02/17/2020

CASE # TC-2020-04(1of2)

THOROUGHFARE LOCATION: 20' wide alley extending 300' between north line of right-of-way for North 5th Street and south line of right-of-way for North 6th Street, midway and parallel between Cypress and Cedar Streets in downtown Abilene.

CITY DEPARTMENT/PVT. UTILITY CO.: ENGINEERING

REPRESENTATIVE: DAVID MUNDSCHENK/CHARLIE THOMAS, P.E.

TITLE: _____

I HAVE REVIEWED THE ABOVE THOROUGHFARE CLOSURE REQUEST AND FIND IT TO BE:



SATISFACTORY



UNSATISFACTORY

(explain

below:



SATISFACTORY WITH CONDITIONS

THE FOLLOWING CONDITIONS AND/OR CORRECTIONS ARE RECOMMENDED:

NO COMMENTS

02/17/2020

David L. Mundschenk

DATE

SIGNED: DIRECTOR / REPRESENTATIVE

CITY OF ABILENE

THOROUGHFARE CLOSURE COMMENT FORM

02/17/2020

CASE # TC-2020-04 (2of2)

THOROUGHFARE LOCATION: 80' wide right-of-way for Cedar Street extending 300' between north line of right-of-way for North 5th Street and south line of right-of-way for North 6th Street in downtown Abilene.

CITY DEPARTMENT/PVT. UTILITY CO.: ENGINEERING

REPRESENTATIVE: DAVID MUNDSCHENK/CHARLIE THOMAS, P.E.

TITLE: _____

I HAVE REVIEWED THE ABOVE THOROUGHFARE CLOSURE REQUEST AND FIND IT TO BE:



SATISFACTORY



UNSATISFACTORY

(explain

below:



SATISFACTORY WITH CONDITIONS

THE FOLLOWING CONDITIONS AND/OR CORRECTIONS ARE RECOMMENDED:

NO COMMENTS

02/17/2020

David L. Mundschenk

DATE

SIGNED: DIRECTOR / REPRESENTATIVE

CITY OF ABILENE

THOROUGHFARE CLOSURE COMMENT FORM

02/25/2020

CASE # TC-2020-04(1of2)

THOROUGHFARE LOCATION: 20' wide alley extending 300' between north line of right-of-way for North 5th Street and south line of right-of-way for North 6th Street, midway and parallel between Cypress and Cedar Streets in downtown Abilene.

CITY DEPARTMENT/PVT. UTILITY CO.: _____Fire

REPRESENTATIVE: ____Justin Tiemann

TITLE: __Fire Marshal

I HAVE REVIEWED THE ABOVE THOROUGHFARE CLOSURE REQUEST AND FIND IT TO BE:



SATISFACTORY



UNSATISFACTORY

(explain

below:



SATISFACTORY WITH CONDITIONS

THE FOLLOWING CONDITIONS AND/OR CORRECTIONS ARE RECOMMENDED:

No Comments

____2-12-20
DATE

____Justin Tiemann
SIGNED: DIRECTOR / REPRESENTATIVE

CITY OF ABILENE

THOROUGHFARE CLOSURE COMMENT FORM

02/25/2020

CASE # TC-2020-04(2of2)

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CITY DEPARTMENT/PVT. UTILITY CO.: ___Fire

REPRESENTATIVE: _____Justin Tiemann

TITLE: _____Fire Marshal

I HAVE REVIEWED THE ABOVE THOROUGHFARE CLOSURE REQUEST AND FIND IT TO BE:



SATISFACTORY



UNSATISFACTORY

(explain

below:



SATISFACTORY WITH CONDITIONS

THE FOLLOWING CONDITIONS AND/OR CORRECTIONS ARE RECOMMENDED:

No Comments

__ 2-12-20
DATE

_____Justin Tiemann
SIGNED: DIRECTOR / REPRESENTATIVE

CITY OF ABILENE

THOROUGHFARE CLOSURE COMMENT FORM

2/12/2020

CASE # TC-2020-04(1of2)

THOROUGHFARE LOCATION: 20' wide alley extending 300' between north line of right-of-way for North 5th Street and south line of right-of-way for North 6th Street, midway and parallel between Cypress and Cedar Streets in downtown Abilene.

CITY DEPARTMENT/PVT. UTILITY CO.: Suddenlink Communications

REPRESENTATIVE: Josh Lunsford

TITLE: Construction Supervisor

I HAVE REVIEWED THE ABOVE THOROUGHFARE CLOSURE REQUEST AND FIND IT TO BE:



SATISFACTORY



UNSATISFACTORY (explain below:



SATISFACTORY WITH CONDITIONS

THE FOLLOWING CONDITIONS AND/OR CORRECTIONS ARE RECOMMENDED:

2/12/2020
DATE

Josh Lunsford
SIGNED: DIRECTOR REPRESENTATIVE

CITY OF ABILENE

THOROUGHFARE CLOSURE COMMENT FORM

2/12/2020

CASE # TC-2020-04(2of2)

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SATISFACTORY WITH CONDITIONS

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2/12/2020
DATE

Josh Lunsford
SIGNED: DIRECTOR & REPRESENTATIVE

CITY OF ABILENE

THOROUGHFARE CLOSURE COMMENT FORM

02/25/2020

CASE # TC-2020-04(1of2)

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CITY DEPARTMENT/PVT. UTILITY CO.: Water Administration

REPRESENTATIVE: Kevin Jaeger

TITLE: Utility Engineer

I HAVE REVIEWED THE ABOVE THOROUGHFARE CLOSURE REQUEST AND FIND IT TO BE:



SATISFACTORY



UNSATISFACTORY (explain below:



SATISFACTORY WITH CONDITIONS

THE FOLLOWING CONDITIONS AND/OR CORRECTIONS ARE RECOMMENDED:

2/12/20
DATE

Kevin Jaeger

SIGNED: DIRECTOR / REPRESENTATIVE

CITY OF ABILENE

THOROUGHFARE CLOSURE COMMENT FORM

02/25/2020

CASE # TC-2020-04 (2 of 2)

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REPRESENTATIVE: Kevin Jaeger

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SATISFACTORY WITH CONDITIONS

THE FOLLOWING CONDITIONS AND/OR CORRECTIONS ARE RECOMMENDED:

2/12/20
DATE

Kevin Jaeger

SIGNED: DIRECTOR / REPRESENTATIVE



Watts, Nick <nick.watts@abilenetx.gov>

20' wide alley abandonment for Abilene Civic Center Hotel

2 messages

Watts, Nick <nick.watts@abilenetx.gov>
To: adhimmelstein@aep.com

Thu, Feb 20, 2020 at 9:07 AM

Athan,

I am presenting the thoroughfare abandonment for the Abilene Civic Center Hotel at the P&Z meeting on February 4th and I was wondering if you had any comments regarding the closure and relocation of utility lines along the alley of block 72. Please let me know.



Nick Watts

Planner I

Planning & Development Services

Physical Address: 555 Walnut Street, Suite 110

Abilene, Texas 79601-5254

Mailing Address: Post Office Box 60

Abilene, Texas 79604-0060

(325) 437-4585 (Office)

(325) 676-6242 (Fax)

Athan D Himmelstein <adhimmelstein@aep.com>
To: "Watts, Nick" <nick.watts@abilenetx.gov>

Fri, Feb 21, 2020 at 3:52 PM

Good Afternoon Nick,

We do not have any comments. We removed the primary feed and all we need to do is retire the old low voltage cable and lighting in that alley. You guys are good to proceed the alley closure.

Thanks,

[Quoted text hidden]

Watts, Nick <nick.watts@abilenetx.gov>
To: "Ahrens, Earla C" <Earla.Ahrens@atmosenergy.com>

Thu, Feb 20, 2020 at 10:52 AM

Yes, that is correct.



Nick Watts

Planner I

Planning & Development Services

Physical Address: 555 Walnut Street, Suite 110

Abilene, Texas 79601-5254

Mailing Address: Post Office Box 60

Abilene, Texas 79604-0060

(325) 437-4585 (Office)

(325) 676-6242 (Fax)

[Quoted text hidden]

Ahrens, Earla C <Earla.Ahrens@atmosenergy.com>
To: "Watts, Nick" <nick.watts@abilenetx.gov>

Thu, Feb 20, 2020 at 11:04 AM

We are abandoning our facilities in that alley and relocating to the Cypress St. Comment Form already sent i. Thank You.

[Quoted text hidden]

Watts, Nick <nick.watts@abilenetx.gov>
To: "Ahrens, Earla C" <Earla.Ahrens@atmosenergy.com>

Thu, Feb 20, 2020 at 11:48 AM

Ok, thanks.



Nick Watts

Planner I

Planning & Development Services



CITY OF ABILENE
PO BOX 60
ABILENE, TX 79604-0060

NOTICE OF PUBLIC HEARING

RE: Thoroughfare Closure Application Number TC-2020-04

02/21/2020

The Planning and Zoning Commission will hold a public hearing on **Tuesday, March 3, 2020 at 1:30 PM**, in **City Council Chambers, 2nd Floor**, City Hall, N. 5th and Walnut Streets, to recommend approval or denial to City Council on a request from agent, The City of Abilene, to abandon a 80' wide right-of-way for Cedar Street extending 300' between north line of right-of-way for North 5th Street and south line of right-of-way for North 6th Street in downtown Abilene. As well as a 20' wide alley extending 300' between north line of right-of-way for North 5th Street and south line of right-of-way for North 6th Street, midway and parallel between Cypress and Cedar Streets in downtown Abilene.

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If you have any questions, please contact Nick Watts, Planner I at (325) 437-4585 or nick.watts@abilentx.gov

For the PLANNING & ZONING COMMISSION

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

CASE #: TC 2020-04

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Name: CITY OF ABILENE
Address: 1100 N 6TH ST

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: _____

A handwritten signature in blue ink, appearing to read "R. Watts", written over a horizontal line.



CITY OF ABILENE
% MIKE RAINS
PO BOX 60
ABILENE, TX 79604-0060

NOTICE OF PUBLIC HEARING

RE: Thoroughfare Closure Application Number TC-2020-04

02/21/2020

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Name: CITY OF ABILENE
Address: 509 CEDAR ST

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: _____

A handwritten signature in blue ink, appearing to read "P. Watts", written over a horizontal line.



CITY OF ABILENE
% MIKE RAINS
PO BOX 60
ABILENE, TX 79604-0060

NOTICE OF PUBLIC HEARING

RE: Thoroughfare Closure Application Number TC-2020-04

02/21/2020

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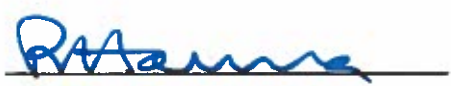
Name: CITY OF ABILENE
Address: 534 CYPRESS ST

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: 



CITY OF ABILENE
% MIKE RAINS
PO BOX 60
ABILENE, TX 79604-0060

NOTICE OF PUBLIC HEARING

RE: Thoroughfare Closure Application Number TC-2020-04

02/21/2020

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CASE #: TC 2020-04

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Name: CITY OF ABILENE
Address: 502 CYPRESS ST

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: _____

A handwritten signature in blue ink, appearing to be "R. Rains", written over a horizontal line.



CITY OF ABILENE
555 WALNUT ST
ABILENE, TX 79601-5254

NOTICE OF PUBLIC HEARING

RE: Thoroughfare Closure Application Number TC-2020-04

02/21/2020

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Name: CITY OF ABILENE

Address: 535 CEDAR ST

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: _____

A handwritten signature in blue ink, appearing to read "R. Watts", written over a horizontal line.



CITY OF ABILENE
555 WALNUT ST
ABILENE, TX 79601-5254

NOTICE OF PUBLIC HEARING

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02/21/2020

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Name: CITY OF ABILENE

Address: 1222 N 5TH ST

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: _____

[Handwritten Signature]



CITY OF ABILENE
555 WALNUT ST
ABILENE, TX 79601-5254

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The Planning and Zoning Commission will hold a public hearing on **Tuesday, March 3, 2020 at 1:30 PM**, in **City Council Chambers, 2nd Floor**, City Hall, N. 5th and Walnut Streets, to recommend approval or denial to City Council on a request from agent, The City of Abilene, to abandon a 80' wide right-of-way for Cedar Street extending 300' between north line of right-of-way for North 5th Street and south line of right-of-way for North 6th Street in downtown Abilene. As well as a 20' wide alley extending 300' between north line of right-of-way for North 5th Street and south line of right-of-way for North 6th Street, midway and parallel between Cypress and Cedar Streets in downtown Abilene.

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The attached map shows the area of the request. Only the area's which are bounded by the cross-hatched line on the map are being considered for thoroughfare closure. The solid boundary line around the subject areas is only a notification area. If approved by the Planning and Zoning Commission, or if denied and appealed to Abilene's City Council within the specified ten-day period, this case will be heard by City Council for 2nd and Final Reading with a public hearing on **April 9, 2020, at 8:30 AM** in Council Chambers on the second floor of City Hall, 555 Walnut Street.

If you have any questions, please contact Nick Watts, Planner I at (325) 437-4585 or nick.watts@abilentx.gov

For the PLANNING & ZONING COMMISSION

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

CASE #: TC 2020-04

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

Name: CITY OF ABILENE

Address: 533 CEDAR ST

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: _____

A handwritten signature in blue ink, appearing to read "R. A. ...", written over a horizontal line.



CITY OF ABILENE
555 WALNUT ST
ABILENE, TX 79601-5254

NOTICE OF PUBLIC HEARING

RE: Thoroughfare Closure Application Number TC-2020-04

02/21/2020

The Planning and Zoning Commission will hold a public hearing on **Tuesday, March 3, 2020 at 1:30 PM**, in **City Council Chambers, 2nd Floor**, City Hall, N. 5th and Walnut Streets, to recommend approval or denial to City Council on a request from agent, The City of Abilene, to abandon a 80' wide right-of-way for Cedar Street extending 300' between north line of right-of-way for North 5th Street and south line of right-of-way for North 6th Street in downtown Abilene. As well as a 20' wide alley extending 300' between north line of right-of-way for North 5th Street and south line of right-of-way for North 6th Street, midway and parallel between Cypress and Cedar Streets in downtown Abilene.

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

The attached map shows the area of the request. Only the area's which are bounded by the cross-hatched line on the map are being considered for thoroughfare closure. The solid boundary line around the subject areas is only a notification area. If approved by the Planning and Zoning Commission, or if denied and appealed to Abilene's City Council within the specified ten-day period, this case will be heard by City Council for 2nd and Final Reading with a public hearing on **April 9, 2020, at 8:30 AM** in Council Chambers on the second floor of City Hall, 555 Walnut Street.

If you have any questions, please contact Nick Watts, Planner I at (325) 437-4585 or nick.watts@abilentx.gov

For the PLANNING & ZONING COMMISSION

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

CASE #: TC 2020-04

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

Name: CITY OF ABILENE

Address: 1208 N 5TH ST

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments:

I am opposed ☐

Signature: _____

A handwritten signature in blue ink, appearing to read "R. Steiner", written over a horizontal line.

THOROUGHFARE ABANDONMENT REQUEST

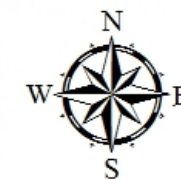
Case:	TC-2020-04
Owner:	City of Abilene
Request:	Thoroughfare abandonment and Alley abandonment for Abilene Downtown Convention Center Hotel
Location:	80' wide right-of-way for Cedar Street extending 300' between north line of right-of-way for North 5 th Street and south line of right-of-way for North 6 th Street in downtown Abilene 20' wide alley extending 300' between north line of right-of-way for North 5 th Street and south line of right-of-way for North 6 th Street, midway and parallel between Cypress and Cedar Streets in downtown Abilene
Notification:	8 in Favor, 0 Opposed
Planning & Zoning Recommendation:	Approval



TC-2020-04 AERIAL LOCATION MAP



Location Map



Legend

 TC-2020-04

TC-2020-04 NOTIFICATION AREA MAP



TC-2020-04 VIEWS OF SUBJECT PROPERTY



FINDINGS AND RECOMMENDATIONS

- DRC Recommendation: **Satisfactory**
- Staff Recommendation: **Approval**



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 3/26/2020

TO: Robert Hanna, City Manager

FROM: Mike Warrix, Director

SUBJECT: **8. Ordinance (First Reading) TC-2020-05:** Receive a Report, Hold a Discussion and Take Action on a request from Jeff Prince Operating, L.P., to abandon public right-of-way within an unimproved 60' wide segment of South 23rd Street extending approximately 500 feet between the east line of right-of-way for South Treadaway Boulevard and the west line of right-of-way for the Abilene & Southern Railway *(Mike Warrix)*

GENERAL INFORMATION

Abandon public right-of-way within an unimproved 60-foot wide segment of South 23rd Street extending approximately 500 feet between the east line of right-of-way for South Treadaway Blvd. and the west line of right-of-way for the Abilene & Southern Railway

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Approval

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of five (5) to zero (0).

ATTACHMENTS:

1. TC-2020-05 authorizing ordinance
2. 1-TC-2020-05 Council staff report full
3. 2 - TC-2020-05 Council Presentation

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR ABANDONMENT OF CERTAIN PORTION OF PUBLIC RIGHT-OF-WAY FOR SOUTH 23RD STREET, PROVIDING FOR TERMS AND CONDITIONS OF SUCH ABANDONMENT, AND CALLING A PUBLIC HEARING.

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

PART 1: That the following described portion of public right-of-way for South 23rd Street, as described on Exhibit "A" attached hereto and made part of this ordinance for all purposes, be and the same is hereby abandoned, vacated and closed insofar as the right, title or easement of the City of Abilene is concerned, subject to the underlying property owner(s) graphically resubdividing (by replat,) the subject portion of public right-of-way into the adjoining properties.

PART 2: That said portion of public right-of-way is not needed for public purposes, and it is in the public interest to abandon the above described portion of public right-of-way.

PART 3: That the abandonment provided for herein shall extend only to the public right, title and easement in and to the tract of land specifically described in Part 1 of this ordinance, and shall be construed only to that interest the governing body of the City of Abilene may legally and lawfully abandon.

PASSED ON FIRST READING THE 26th day of March, A.D. 2020.

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 14th day of February, 2020, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 9th day of April, 2020, to permit the public to be heard prior to final consideration of this ordinance.

PASSED ON FINAL READING THIS 9th day of April, 2020.

ATTEST:

CITY SECRETARY

MAYOR

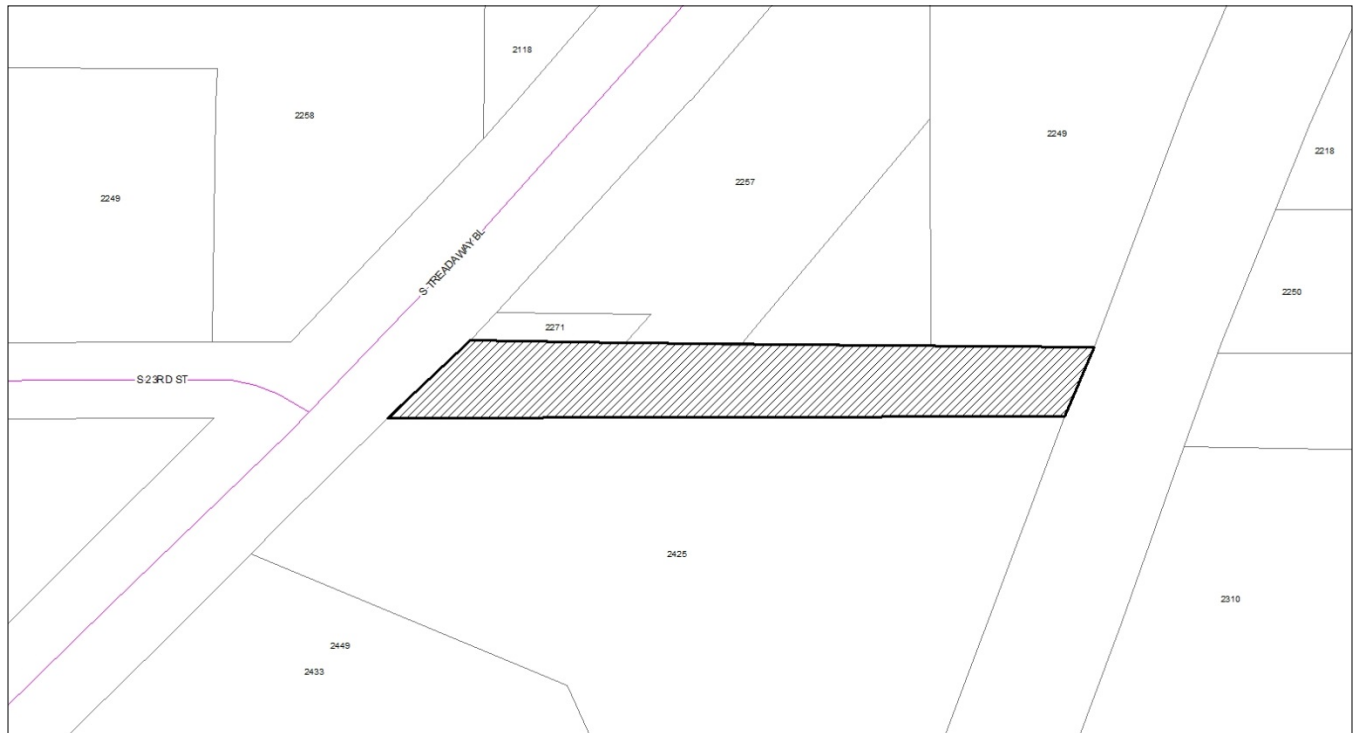
APPROVED:

CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT "A"

The City of Abilene hereby abandons the following public right-of-way within an unimproved 60' wide segment of South 23rd Street extending approximately 500 feet between the east line of right-of-way for South Treadaway Boulevard and the west line of right-of-way for the Abilene & Southern Railway.



-END-

TC-2020-05

STAFF REPORT



REQUEST: Abandon public right-of-way within an unimproved 60-foot wide segment of South 23rd Street extending approximately 500 feet between the east line of right-of-way for South Treadaway Blvd. and the west line of right-of-way for the Abilene & Southern Railway.

APPLICANT: Jeff Prince Operating, LP

HEARING DATES:

P & Z Commission: March 3, 2020

City Council 1st Reading: March 26, 2020

City Council 2nd Reading: April 9, 2020

BACKGROUND AND REQUESTED ACTION:

The original plat from 1933 recorded with the Taylor County Clerk's office formally created Block 22 and Block 23 of the Bowyer Subdivision, and illustrates the dedication of a 60-foot wide right-of-way for South 23rd Street (formally recorded as S. 24th Street), bisecting these two blocks and terminating at the dedicated Abilene Southern Railroad right-of-way. This portion of 60-foot wide right-of-way for South 23rd Street (formally S. 24th Street) extends approximately 500-feet from the eastern most extent of the right-of-way along South Treadaway Boulevard to the western most extent of the right-of-way dedicated to Abilene Southern Railroad.

Five lots adjoin this portion of South 23rd Street, four within Block 22 adjoining the northern most extent of right-of-way and one within Block 23 adjoining the entire southernmost extent of right-of-way. These five lots are zoned Heavy Industrial (HI), the property owner to the north has fenced in the northern 50-feet of this right-of-way and utilizes it as outdoor storage space, this fence appears to effectively grant dominion of the southern 10-feet of this right-of-way to the property south of the right-of-way.

The property owner north of the right-of-way plans to sell all four of the lots which he owns within Block 22, however, he does not formally "own" the northern 50-feet of this dedicated right-of-way. In order to sell the entire tract of land, the right-of-way will need to be formally abandoned and the lots re-platted to show this property encompassing the northern 50-foot width (or perhaps even the entire 60-foot width) of this right-of-way, in order to be the lawful owner of the property. Once abandoned, this portion of South 23rd Street will revert to the adjoining property owners, and once it is formally platted, would legally permit the use of this space by the owner/owners of the adjoining properties.

REQUEST ANALYSIS:

The proposed abandonment is not intersected by existing utility mains, nor does the extension of this right-of-way for South 23rd Street seem likely, as the property east of the Abilene Southern Railroad R.O.W has already been developed. Plans for proposed abandonment were shared with the City of Abilene's Development Review Committee (DRC) whose members include representatives from locally franchised

utility services as well as the City's Water Utilities Department. There were no objections from members of the DRC.

STAFF RECOMMENDATION:

City staff recommends approving the requested abandonment, subject to approval and subsequent recording of a re-plat showing how the right-of-way (authorized to be abandoned) will be integrated with one or more adjacent new lot(s). Abandoning this right-of-way will help promote re-subdivision and redevelopment of adjoining properties.

PLANNING AND ZONING COMMISSION RECOMMENDATION:

The Planning & Zoning Commission recommended approval with a vote of seven (7) to zero (0) on Tuesday, March 3, 2020.

NOTIFICATION:

The Planning Services Division sent written notice of this request (with certificate of mailing) to all owners of property within a 200-foot radius of this subject property:

Owner	Situs	Response
BEST TREE SERVICE LLC	2218 OAK ST	
FIRST STATE BANK	2118 S TREADAWAY BL	In Favor
HIT VENTURES LLC	2258 S TREADAWAY BL	
JEFF PRINCE OPERATING LP	2249 S TREADAWAY BL	
JEFF PRINCE OPERATING LP	2271 S TREADAWAY BL	
JEFF PRINCE OPERATING LP		
JEFF PRINCE OPERATING LP	2257 S TREADAWAY BL	
KPH REAL ESTATE HOLDINGS LLC		
KPH REAL ESTATE HOLDINGS LLC	2250 OAK ST	
MHS LLC	2425 S TREADAWAY BL	
SITZES APB LP	2249 BUTTERNUT ST	
SITZES STEVEN O	2433 S TREADAWAY BL	
SITZES STEVEN O	2449 S TREADAWAY BL	
WEATHERSBY RUSSELL	2310 OAK ST	

ATTACHMENTS:

- Power Point

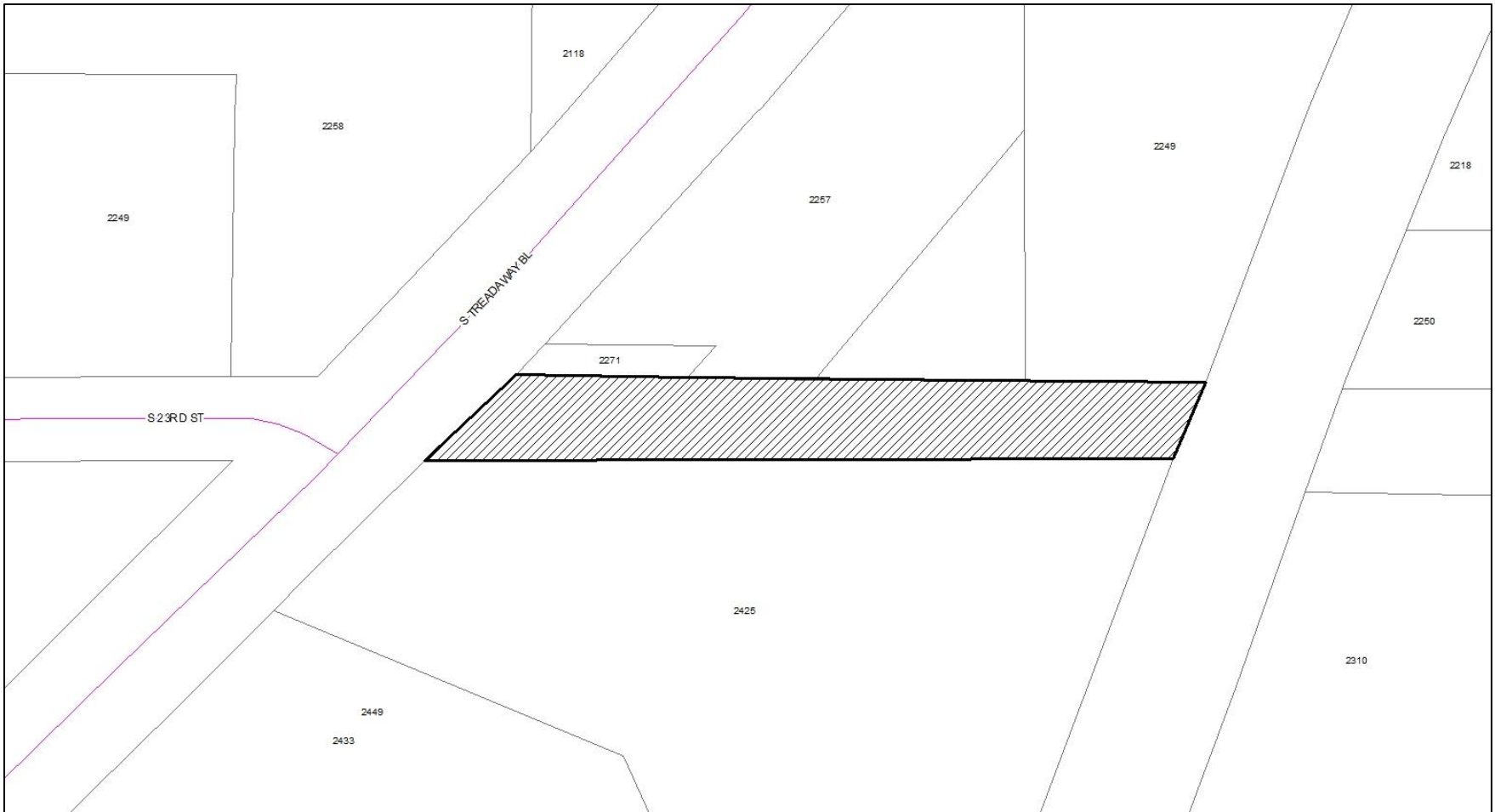
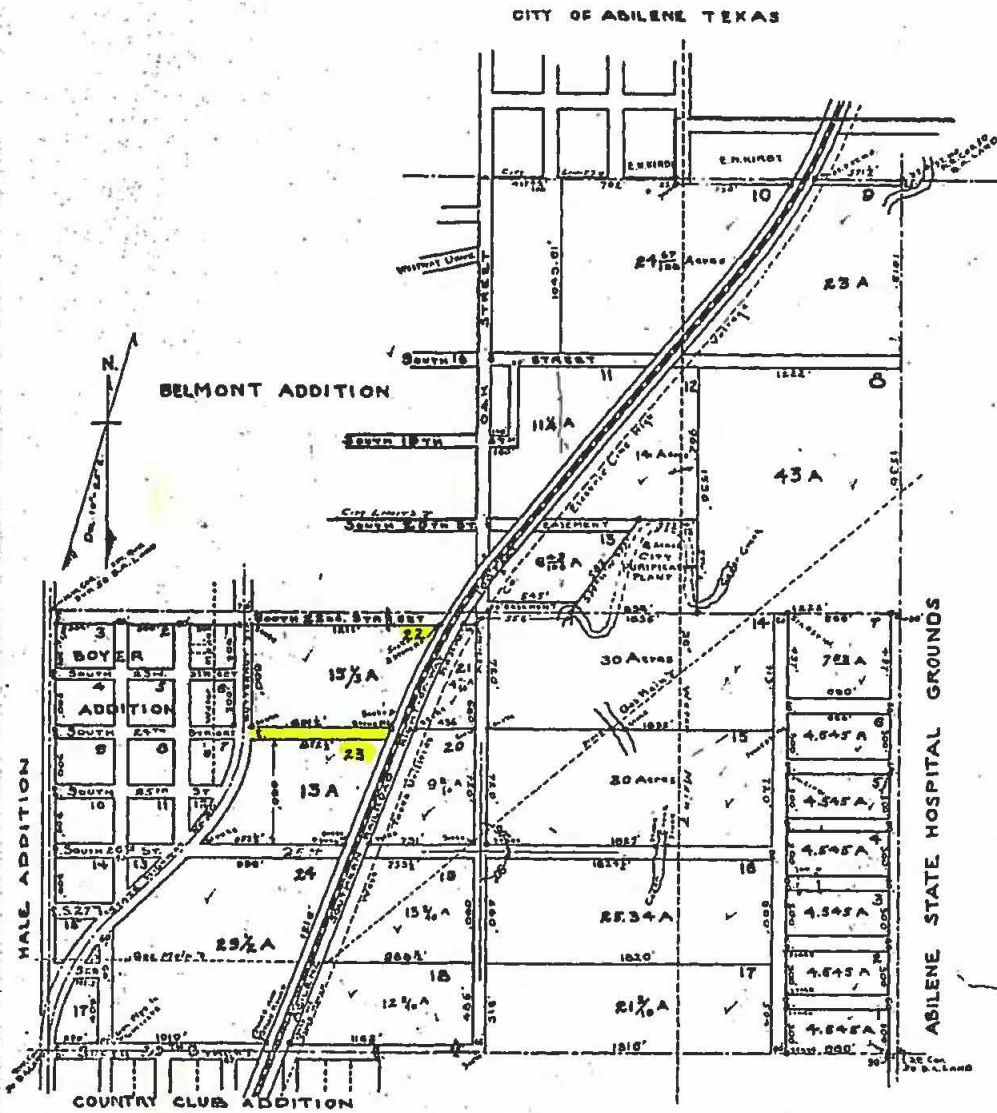


EXHIBIT 'A'

MAP OF THE BOWYER SUBDIVISION OF PARTS OF THE N. E.
S. E. AND S. W. QUARTERS OF SURVEY NO. 50 Blind
ASYLUM LAND, TAYLOR COUNTY
TEXAS.

Scale 1" = 500 feet. by N. A. Riney C. E.
Oct. 16, 1933.



No. 1960. ESTATE OF ELLEN F. BOWYER, DECEASED. COMMISSIONERS' REPORT IN PARTITION
OF ESTATE, AMENDED. Filed 9 day of Nov. 1933, W. P. Bounds, County Clerk, Taylor Co.
Texas, by Vivian Fryar, Deputy.



Development Application

Planning

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

Relief Procedures

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

Project Name: South 23rd Street Right of Way South of Bobcat of Abilene
 Address: South Treadaway Blvd and South 23rd Street No. of lots: _____ Acreage: _____
 Legal Description: ROW for South 23rd Street between the east ROW Line of S. Treadaway and the west ROW line of Railroad
 Subdivision Name: Bowyer Block: 22 Lot: _____
 Current Zoning: Heavy Industrial Proposed Zoning (if applicable): _____

OWNER AND AUTHORIZATION

Owner Name: Jeff Prince Operating, LP
 Address: P.O. Box 5087
 City, State, Zip: Abilene, TX 79604 Fax: _____
 Phone: 325.673.7361 Email: jprince@bobcatcce.com
 Agent Name: Andy McCall
 Address: 3417 Curry Lane
 City, State, Zip: Abilene, TX 79606 Fax: 325.794.2727
 Phone: 325.794.2700 Email: amccall@firsttexastitle.com

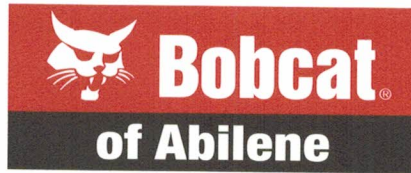
I hereby certify that I am the owner of the property and further certify that the information provided on this development application is true and correct. I hereby designate the aforementioned agent to act on my behalf for submittal, processing, representation, and/or presentation of this development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

Signature Owner: [Signature] Date: 2-10-2020

FOR OFFICE USE ONLY

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

RECEIVED
 FEB 10 2020
 PLANNING



RENTAL • PARTS • SALES • SERVICE

To whom it may concern,

The purpose of this letter is to build a case that will illustrate why I have submitted application for a thoroughfare abandonment.

In 2006 I purchased parcel numbers 40156 and 39534 from Templeton Operating, Inc along with purchasing the assets of that company. We used this property to operate an equipment rental store. As our business began to grow we found ourselves needing to expand our footprint. The property to the east and north of us became available for sale in 2009 and we acquired parcel numbers 111809 and 40427 from Basic Energy Services.

In October of 2019, Jeff Prince Operating, LP sold its assets to Compact Construction Equipment (CCE). I am in the process of selling the previously mentioned properties to CCE and have run into a right of way issue that will not allow clear title to all of the property inside our existing fence. According to the City GIS map, there is a right of way for South 23rd Street (on one old plat, it is referred to as South 24th...but it lines up with South 23rd) that runs along the south side of this property. We have been unable to find a dedication for this portion of the street, and I (along with all of my predecessors in title) have been in possession of the North 50' of this "right of way". The property owner to the south is in possession of the South 10' of the right of way. All of the right of way between S. Treadaway (on the west) and the railroad (on the east) has been under fence for years.

I can't imagine a scenario where this street would be developed and lead to the rail road tracks. Immediately east of the rail road track is more private property. This right of way leads to nowhere. It would help me greatly if the city would abandon this right of way and allow me clear title to property that has been occupied for decades.

Thank you,

Jeff Prince

Jeff Prince Operating, LP

2249 So. Treadaway

Abilene, TX 79602

325-721-0059



Development Application

RECOMMENDATIONS

The Planning & Zoning Commission (P&Z) and the City Council look to the Planning & Development Services staff to make a recommendation for the approval or disapproval of this application. We will make every effort to notify you (FAX or E-mail) of our recommendation at least one (1) week in advance of the scheduled meeting of the P&Z Commission. In the case of a rezoning, and when the public interest requires it, we may recommend a rezoning to a Planned Development District (PDD) or a classification other than the classification requested. We will notify you of our decision to propose a PDD as soon as possible after the application is filed to give you time to prepare a site plan.

PUBLIC NOTIFICATION

The public is entitled to examine this application and participate in the decision-making process. In most cases, we are required to notify all property owners within two hundred feet (200') of the boundaries of your property. To ensure the fullest possible consideration, we may also notify neighborhood groups, organizations or individuals that have a special interest in a particular issue. Except for matters that the Planning & Development Services staff have expressly agreed not to disclose (and provided the law allows us to hold the matter in confidence), then all information that we deem relevant to the review and processing of this application may become public knowledge.

PLEASE READ BEFORE SIGNING

The undersigned has read the above application and hereby certifies that the information contained therein is complete, true and correct; and does hereby request that said application be submitted to the Planning & Zoning Commission at the earliest available meeting.

I understand and acknowledge that it is my responsibility to furnish an accurate and precise legal description of the property, and only the property, that is subject of this application, and that failure to furnish such information prior to the application deadline date will delay the processing of this application. I also understand that the City must notify affected property owners of this application. In the event that I fail to submit in a timely manner any information that the City deems necessary to transmit this application to the Planning & Zoning Commission or City Council, then in lieu of dismissal I hereby request that this application be temporarily withdrawn from further consideration until such information is submitted, and I agree to pay a resubmission fee of \$120 to reimburse the City for the expense of re-notifying affected property owners. I have been informed of the tentative date and time that the Planning & Zoning Commission and City Council will hear this application, and I understand that hearings may be continued from time to time at the discretion of the Commission or Council to allow for full consideration or when the public interest requires a continuation.

SIGNED: _____

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line.

DATE: _____

2-10-2020

RECEIVED
FEB 10 2020
PLANNING

12 | Page

CITY OF ABILENE

THOROUGHFARE CLOSURE COMMENT FORM

02/17/2020

CASE # TC-2020-05

THOROUGHFARE LOCATION: 60' wide right-of-way for South 23rd Street extending approximately 500' between the east line of right-of-way for S. Treadaway Boulevard and the west line of right-of-way for Abilene Southern Railroad.

CITY DEPARTMENT/PVT. UTILITY CO.: ENGINEERING

REPRESENTATIVE: DAVID MUNDSCHEK/CHARLIE THOMAS, P.E.

TITLE: _____

I HAVE REVIEWED THE ABOVE THOROUGHFARE CLOSURE REQUEST AND FIND IT TO BE:



SATISFACTORY



UNSATISFACTORY

(explain

below:



SATISFACTORY WITH CONDITIONS

THE FOLLOWING CONDITIONS AND/OR CORRECTIONS ARE RECOMMENDED:

NO COMMENTS

02/17/2020

David L. Mundschek

DATE

SIGNED: DIRECTOR / REPRESENTATIVE

CITY OF ABILENE

THOROUGHFARE CLOSURE COMMENT FORM

03/23/2020

CASE # TC-2020-05

THOROUGHFARE LOCATION: 60' wide right-of-way for South 23rd Street extending approximately 500' between the east line of right-of-way for S. Treadaway Boulevard and the west line of right-of-way for Abilene Southern Railroad.

CITY DEPARTMENT/PVT. UTILITY CO.: _Fire

REPRESENTATIVE: ____Justin Tiemann

TITLE: __Fire Marshal

I HAVE REVIEWED THE ABOVE THOROUGHFARE CLOSURE REQUEST AND FIND IT TO BE:



SATISFACTORY



UNSATISFACTORY

(explain

below:



SATISFACTORY WITH CONDITIONS

THE FOLLOWING CONDITIONS AND/OR CORRECTIONS ARE RECOMMENDED:

No Comments

____2-12-20
DATE

____Justin Tiemann
SIGNED: DIRECTOR / REPRESENTATIVE

CITY OF ABILENE

THOROUGHFARE CLOSURE COMMENT FORM

2/12/2020

CASE # TC-2020-05

THOROUGHFARE LOCATION: 60' wide right-of-way for South 23rd Street extending approximately 500' between the east line of right-of-way for S. Treadaway Boulevard and the west line of right-of-way for Abilene Southern Railroad.

CITY DEPARTMENT/PVT. UTILITY CO.: Suddenlink Communications

REPRESENTATIVE: Josh Lunsford

TITLE: Construction Supervisor

I HAVE REVIEWED THE ABOVE THOROUGHFARE CLOSURE REQUEST AND FIND IT TO BE:



SATISFACTORY



UNSATISFACTORY (explain below:



SATISFACTORY WITH CONDITIONS

THE FOLLOWING CONDITIONS AND/OR CORRECTIONS ARE RECOMMENDED:

2/12/2020
DATE

Josh Lunsford
SIGNED: DIRECTOR REPRESENTATIVE

CITY OF ABILENE

THOROUGHFARE CLOSURE COMMENT FORM

03/23/2020

CASE # TC-2020-05

THOROUGHFARE LOCATION: 60' wide right-of-way for South 23rd Street extending approximately 500' between the east line of right-of-way for S. Treadaway Boulevard and the west line of right-of-way for Abilene Southern Railroad.

CITY DEPARTMENT/PVT. UTILITY CO.: Water Administration

REPRESENTATIVE: Kevin Jaeger

TITLE: Utility Engineer

I HAVE REVIEWED THE ABOVE THOROUGHFARE CLOSURE REQUEST AND FIND IT TO BE:



SATISFACTORY



UNSATISFACTORY (explain below:



SATISFACTORY WITH CONDITIONS

THE FOLLOWING CONDITIONS AND/OR CORRECTIONS ARE RECOMMENDED:

2/12/20

Kevin Jaeger

DATE

SIGNED: DIRECTOR / REPRESENTATIVE



FIRST STATE BANK
2118 S TREADAWAY BLVD
ABILENE, TX 79602-5906

NOTICE OF PUBLIC HEARING

RE: Thoroughfare Closure Application Number TC-2020-05

02/19/2020

The Planning and Zoning Commission will hold a public hearing on **Tuesday, March 3, 2020 at 1:30 PM**, in City Council Chambers, 2nd Floor, City Hall, N. 5th and Walnut Streets, to recommend approval or denial to City Council on a request from Jeff Prince Operating, L.P., to abandon public right-of-way within an unimproved 60' wide segment of South 23rd Street extending approximately 500 feet between the east line of right-of-way for South Treadaway Boulevard and the east line of right-of-way for the Abilene & Southern Railway.

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

The attached map shows the area of the request. Only that area which is bounded by the cross-hatched line on the map is being considered for Thoroughfare Closure. The solid boundary line around the subject area is only a notification area. If approved by the Planning and Zoning Commission or if denied and appealed to Abilene's City Council within the specified ten-day period, this case will be heard by City Council for 2nd and Final Reading with a public hearing on **April 9, 2020, at 8:30 AM** in Council Chambers on the second floor of City Hall, 555 Walnut Street.

If you have any questions, please contact Jared Smith, Planner II at (325) 676-6490 or jared.smith@abilenetx.gov

For the PLANNING & ZONING COMMISSION

Please call (325) 676-6490 if you have any questions about this notice.

CASE #: TC 2020-05

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

Name: FIRST STATE BANK
Address: 2118 S TREADAWAY BL

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

Email: planning@abilenetx.gov

I am in favor ☒
Additional Comments: _____

I am opposed ☐

Signature: _____

[Handwritten Signature]
PRESIDENT

THOROUGHFARE ABANDONMENT REQUEST

Case: TC-2020-05

Owner: Jeff Prince Operating, LP

Requests: Abandon the unimproved 60' wide segment of South 23rd Street extending approximately 500 feet between the east line of right-of-way for South Treadaway Blvd. and the west line of right-of-way for the Abilene Southern Railway.

Notification: 1 in Favor, 0 Opposed

Planning & Zoning Recommendation: Approval



TC-2020-05 LOCATION MAP



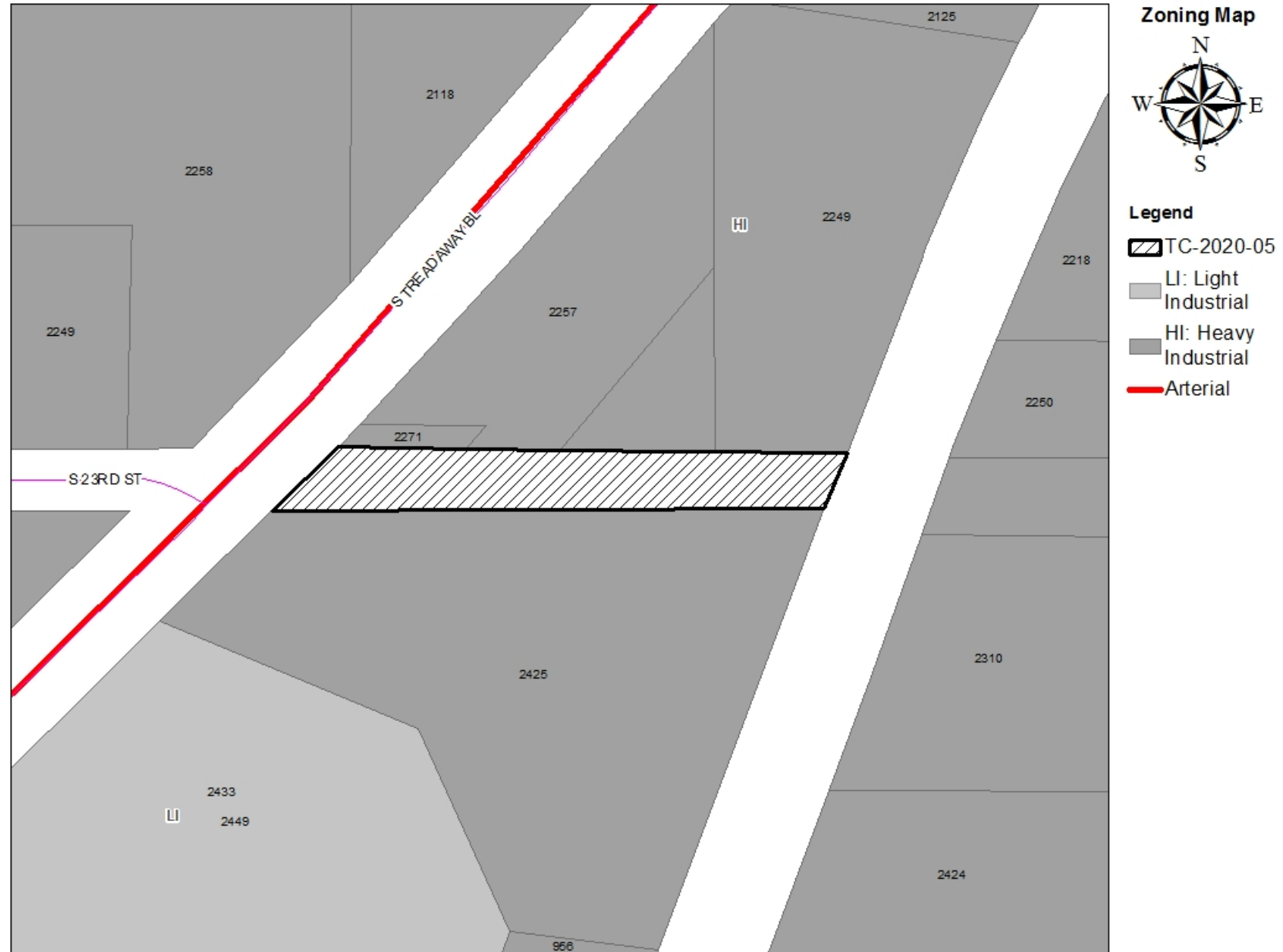
Location Map



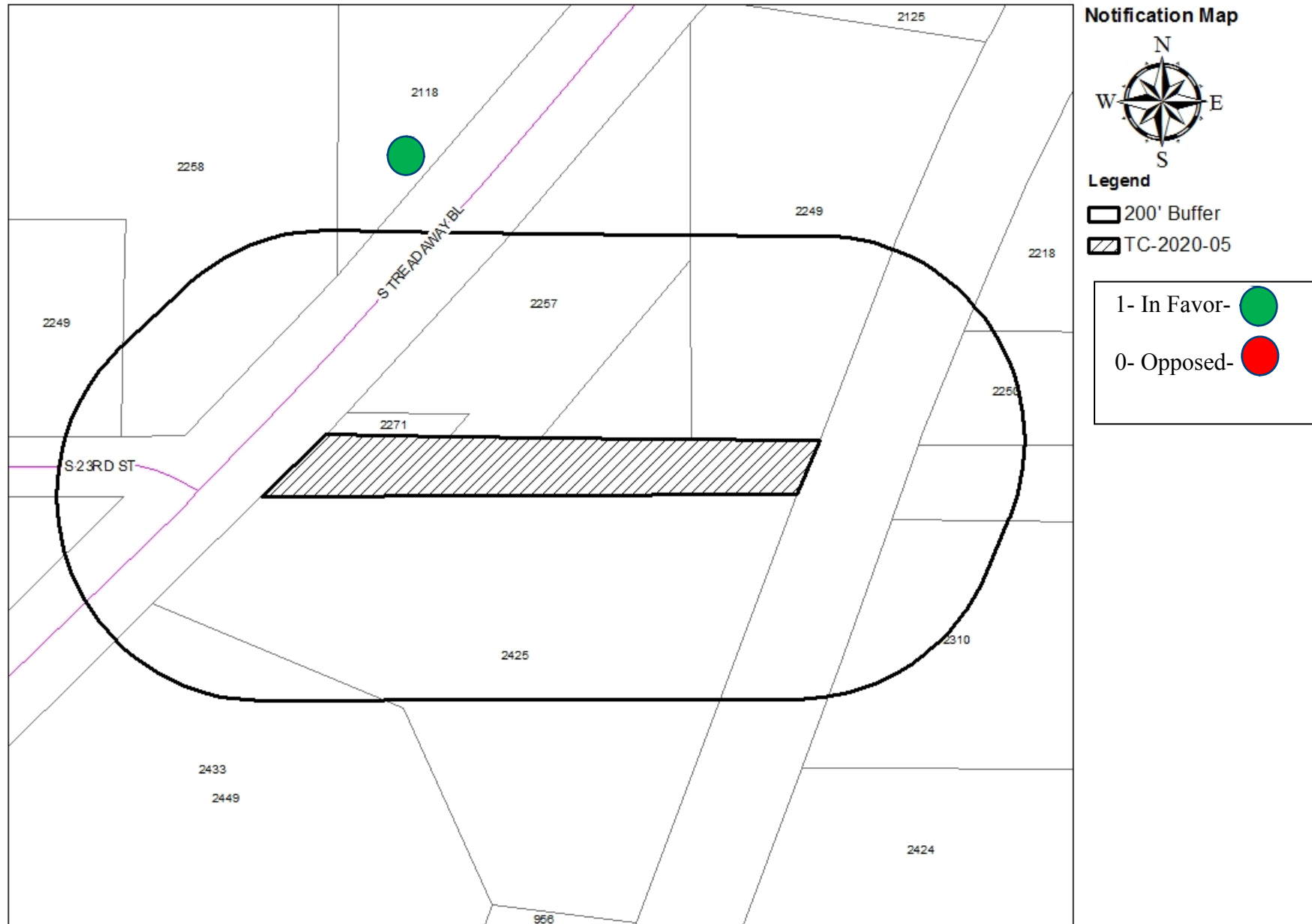
Legend

 TC-2020-05

TC-2020-05 ZONING MAP



TC-2020-02 NOTIFICATION AREA MAP



TC-2020-05 VIEWS OF SUBJECT PROPERTY AND ADJACENT PROPERTIES

East View S. 23rd Across S. Treadaway



West View toward S. 23rd Street



Overview of closure



East View from S. 23rd Street



Existing Fence Line



FINDINGS AND RECOMMENDATIONS

- DRC Recommendation: **Satisfactory**
- Staff Recommendation: **Approval**



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 3/26/2020

TO: Mayor and City Council Members

FROM: Stanley Smith, City Attorney

SUBJECT: 9. Ordinance (Final Reading): Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Amending the Abilene Code of Ordinances, Chapter 7, Civil Defense (Stanley Smith)

GENERAL INFORMATION

Section 418.173 of the Texas Government Code provides that a local emergency management plan may provide that failure to comply with the plan or with a rule, order, or ordinance adopted under the plan is an offense. The plan may prescribe a punishment for the offense but may not prescribe a fine that exceeds \$1,000 or confinement in jail for a term that exceeds 180 days.

SPECIAL CONSIDERATIONS

Pursuant to Section 18, Charter, City of Abilene, the requirements for reading of ordinances upon two separate days may be waived by the council in cases where such ordinances relate to the immediate preservation of the public peace, health, safety or welfare, if adopted by the affirmative votes of at least five council members and contains a statement of the emergency.

The emergency is the current COVID-19 pandemic, the local state of disaster, and need to enforce violations of rules, orders, and ordinances adopted to contain the virus.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends amending Chapter 7, Civil Defense, Code of Ordinances to provide for failure to comply with the City of Abilene's emergency management plan to be an offense, punishable by fine up to \$1000, or confinement in jail for a term that does not exceed 180 days.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Enacting Ordinance
2. Chapter_7__CIVIL_DEFENSE amendment Redline
3. Chapter_7__CIVIL_DEFENSE amendment Final
4. Item 9

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 7, “CIVIL DEFENSE,” OF THE CODE OF THE CITY OF ABILENE BY AMENDING THE CHAPTER AS SET OUT BELOW, PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY.

WHEREAS, Chapter 7 of the Abilene Code of Ordinances regulates civil defense and emergency management of the City of Abilene; and

WHEREAS, pursuant to Section 418.173, Texas Government Code, a local emergency plan may provide that failure to comply with the plan or with a rule, order, or ordinance adopted under the plan is an offense which may be punishable by fine not to exceed \$1,000, or confinement in jail for a term not to exceed 180 days; and

WHEREAS, pursuant to Section 418.015 Texas Government Code, during a local state of disaster and the following recovery period, the Mayor has the authority to issue orders to in response to the local state of disaster; and

WHEREAS, it is in the best interest of the residents of the city of Abilene to amend Chapter 7, Civil Defense, Code of Ordinances, to specify authority of the Mayor to issue orders during a local state of disaster, and to provide for effective enforcement of issued orders; and

WHEREAS, this ordinance amendment relates to the immediate preservation of the public peace, health, safety or welfare, and the nature of the emergency is the COVID-19 pandemic and state of local disaster.

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

PART 1: That Chapter 7, “Civil Defense,” of the Code of Ordinances of the City of Abilene, Texas, is hereby amended by adding new Section 7-9, “Public Orders,” and new Section 7-10, “Offenses and Penalties”, to read 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: Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense.

PART 4: That pursuant to Section 18, Charter, City of Abilene, the requirement for reading this Ordinance upon two separate readings is hereby waived by the affirmative vote of at least five City Council members, because such ordinance relates to the immediate preservation of the public peace, health, safety or welfare, and the nature of the emergency is the COVID-19 pandemic and state of local disaster.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 22nd day of March, 2020, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 4:30 p.m. on the 26th day of March, 2020, to permit the public to be heard. 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 26th day of March, 2020.

ATTEST:

CITY SECRETARY

MAYOR

CITY ATTORNEY

Chapter 7

CIVIL DEFENSE*

Sec. 7-1. Organization.

There exists the office of Emergency Management Director of the City of Abilene, which shall be held by the mayor in accordance with the state law.

- (a) An emergency management coordinator may be appointed by and serve at the pleasure of the director.
- (b) The director shall be responsible for a program of comprehensive emergency management within the city and for carrying out the duties and responsibilities set forth in this chapter. He/she may delegate authority for execution of these duties to the coordinator, but ultimate responsibility for such execution shall remain with the director.
- (c) The operational emergency management organization of the City of Abilene shall consist of the officers and employees of the city so designated by the director in the emergency management plan, as well as organized volunteer groups. The functions and duties of this organization shall be distributed among such officers and employees in accordance with the terms of the emergency management plan.

(Ord. No. 8-1994, pt. 1(Exh. A), 3-10-94)

Sec. 7-2. Emergency management director; powers and duties.

The duties and responsibilities of the emergency management director shall include the following:

- (a) Conduct an on-going survey of actual or potential hazards which threaten life and property within the city and an on-going program of identifying and requiring or recommending the implementation of measures which would tend to prevent the occurrence or reduce the impact of such hazards if a disaster did occur.
- (b) Supervision of the development and approval of an emergency management plan for the City of Abilene, and shall recommend for adoption by the city council all mutual aid arrangements deemed necessary for the implementation of such plan.
- (c) Authority to declare a local state of disaster. The declaration may not be continued or renewed for a period in excess of seven (7) days except by or with the consent of the city council. Any order or proclamation declaring, continuing, or terminating a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the city secretary.
- (d) Issuance of necessary proclamations, regulations, or directives which are necessary for carrying out the purposes of this chapter. Such proclamations, regulations, or directives shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless circumstances attendant on the disaster prevent or impede, promptly filed with the city secretary.
- (e) Direction and control of the operations of the Abilene Emergency Management organization as well as the training of emergency management personnel.
- (f) Determination of all questions of authority and responsibility that may arise within the emergency management organization of the city.
- (g) Maintenance of liaison with other municipal, county, district, state, regional or federal emergency management organizations.
- (h) Marshaling of all necessary personnel, equipment, or supplies from any department of the city to aid in the carrying out of the provisions of the emergency management plan.
- (i) Supervision of the drafting and execution of mutual aid agreements, in cooperation with the representatives of the state and of other local political subdivisions of the state, and the drafting and execution, if deemed desirable, of an agreement with the county in which said city is located and with other municipalities within the county, for the countywide coordination of emergency management efforts.

(j) Supervision of, and final authorization for the procurement of all necessary supplies and equipment, including acceptance of private contributions which may be offered for the purpose of improving emergency management within the city.

(k) Authorizing of agreements, after approval by the city attorney, for use of private property for public shelter and other purposes.

(l) Survey of the availability of existing personnel, equipment, supplies, and services which could be used during a disaster, as provided for herein.

(m) Other requirements as specified in the Texas Disaster Act of 1975, Texas Government Code Annotated section 418.001 et seq. (Vernon 1987), as amended.

(Ord. No. 8-1994, pt. 1(Exh. A), 3-10-94)

Sec. 7-3. Emergency management plan.

(a) A comprehensive emergency management plan shall be developed and maintained in a current state. The plan shall set forth the form of the organization; establish and designate divisions and functions; assign responsibilities, tasks, duties, and powers; and designate officers and employees to carry out the provisions of this chapter. As provided by state law, the plan shall follow the standards and criteria established by the State Division of Emergency Management of the State of Texas.

(b) Insofar as possible, the form of organization, titles, and terminology shall conform to the recommendations of the state division of emergency management. When approved, it shall be the duty of all departments and agencies to perform the functions assigned by the plan and to maintain their portion of the plan in a current state of readiness at all times. The emergency management plan shall be considered supplementary to this chapter and have the effect of law during the time of a disaster.

(Ord. No. 8-1994, pt. 1(Exh. A), 3-10-94)

Sec. 7-4. Interjurisdictional program.

The mayor is hereby authorized to join with the County Judge of the County of Taylor and the mayors of the other cities in said county in the formation of an interjurisdictional emergency management program for the County of Taylor, and shall have the authority to cooperate in the preparation of an interjurisdictional emergency management plan and in the appointment of a joint emergency management coordinator, as well as all powers necessary to participate in a countywide program of emergency management insofar as said program may affect the City of Abilene.

(Ord. No. 8-1994, pt. 1(Exh. A), 3-10-94)

Sec. 7-5. Conflicting ordinances, orders, rules and regulations suspended.

At all times when the orders, rules, and regulations made and promulgated pursuant to this chapter shall be in effect, they shall supersede and override all existing ordinances, orders, rules, and regulations insofar as the latter may be inconsistent therewith.

(Ord. No. 8-1994, pt. 1(Exh. A), 3-10-94)

Sec. 7-6. No municipal or private liability.

(a) This chapter is an exercise by the city of its governmental functions for the protection of the public peace, health, and safety and neither the City of Abilene, the agents and representatives of said city, nor any individual, receiver, firm, partnership, corporation, association, or trustee, nor any of the agents thereof, in good faith carrying out, complying with or attempting to comply with, any order, rule, or regulation promulgated pursuant to the provisions of this chapter shall be liable for any damage sustained to persons as the result of said activity.

(b) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants to the City of Abilene a license of privilege, or otherwise permits the city to inspect, designate, and use the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual, impending, or practice enemy attack or natural or manmade disaster shall, together with his successors in interest, if any, not be civilly liable for the death of, or injury to, any person on or about such real estate or premises under such license, privilege or other permission or for loss of, or damage to, the property of such person.

(Ord. No. 8-1994, pt. 1(Exh. A), 3-10-94)

Sec. 7-7. Commitment of funds.

No person shall have the right to expend any public funds of the City in carrying out any Emergency Management activity authorized by this chapter without prior approval by the City Council, nor shall any person have any right to bind the City by contract, agreement, or otherwise without prior and specific approval of the City Council unless during a declared disaster. During a declared disaster, the Mayor may expend and/or commit public funds of the City when deemed prudent and necessary for the protection of health, life, or property.

(Ord. No. 8-1994, pt. 1(Exh. A), 3-10-94)

Sec. 7-8. Certain conduct unlawful.

- (a) It shall be unlawful for any person willfully to obstruct, hinder, or delay any member of the emergency management organization in the enforcement of any rule or regulation issued pursuant to this chapter.
- (b) It shall likewise be unlawful for any person to wear, carry, or display any emblem, insignia, or any other means of identification as a member of the emergency management organization of the City of Abilene, unless authority to do so has been granted to such person by the proper officials.
- (c) Any unauthorized person who shall operate a siren or other device so as to simulate a warning signal, or the termination of a warning, shall be deemed guilty of a violation of this chapter and shall be subject to the penalties imposed by this chapter.

Sec. 7-9. Public Orders

If a local disaster is declared by the mayor under Texas Government Code Section 418.108

(*Declaration of Local Disaster*), the mayor may issue public orders and direct the City Manager to take action necessary to:

- (1) implement the emergency management program;
- (2) comply with this chapter and Texas Government Code Chapter 418 (*Emergency Management*); and
- (3) protect public health, safety, and welfare.

Sec. 7-10 Offenses and Penalties.

- (a) A person who fails to obey an order adopted under an emergency management program, this chapter, or Texas Government Code Chapter 418 (*Emergency Management*) commits an offense.
- (b) An offense is punishable by a fine of not more than \$1,000, by confinement in jail for a term of not more than 180 days, or by both a fine and confinement.

Chapter 7

CIVIL DEFENSE*

Sec. 7-1. Organization.

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- (b) The director shall be responsible for a program of comprehensive emergency management within the city and for carrying out the duties and responsibilities set forth in this chapter. He/she may delegate authority for execution of these duties to the coordinator, but ultimate responsibility for such execution shall remain with the director.
- (c) The operational emergency management organization of the City of Abilene shall consist of the officers and employees of the city so designated by the director in the emergency management plan, as well as organized volunteer groups. The functions and duties of this organization shall be distributed among such officers and employees in accordance with the terms of the emergency management plan.

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- (b) Supervision of the development and approval of an emergency management plan for the City of Abilene, and shall recommend for adoption by the city council all mutual aid arrangements deemed necessary for the implementation of such plan.
- (c) Authority to declare a local state of disaster. The declaration may not be continued or renewed for a period in excess of seven (7) days except by or with the consent of the city council. Any order or proclamation declaring, continuing, or terminating a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the city secretary.
- (d) Issuance of necessary proclamations, regulations, or directives which are necessary for carrying out the purposes of this chapter. Such proclamations, regulations, or directives shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless circumstances attendant on the disaster prevent or impede, promptly filed with the city secretary.
- (e) Direction and control of the operations of the Abilene Emergency Management organization as well as the training of emergency management personnel.
- (f) Determination of all questions of authority and responsibility that may arise within the emergency management organization of the city.
- (g) Maintenance of liaison with other municipal, county, district, state, regional or federal emergency management organizations.
- (h) Marshaling of all necessary personnel, equipment, or supplies from any department of the city to aid in the carrying out of the provisions of the emergency management plan.
- (i) Supervision of the drafting and execution of mutual aid agreements, in cooperation with the representatives of the state and of other local political subdivisions of the state, and the drafting and execution, if deemed desirable, of an agreement with the county in which said city is located and with other municipalities within the county, for the countywide coordination of emergency management efforts.

(j) Supervision of, and final authorization for the procurement of all necessary supplies and equipment, including acceptance of private contributions which may be offered for the purpose of improving emergency management within the city.

(k) Authorizing of agreements, after approval by the city attorney, for use of private property for public shelter and other purposes.

(l) Survey of the availability of existing personnel, equipment, supplies, and services which could be used during a disaster, as provided for herein.

(m) Other requirements as specified in the Texas Disaster Act of 1975, Texas Government Code Annotated section 418.001 et seq. (Vernon 1987), as amended.

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(a) A comprehensive emergency management plan shall be developed and maintained in a current state. The plan shall set forth the form of the organization; establish and designate divisions and functions; assign responsibilities, tasks, duties, and powers; and designate officers and employees to carry out the provisions of this chapter. As provided by state law, the plan shall follow the standards and criteria established by the State Division of Emergency Management of the State of Texas.

(b) Insofar as possible, the form of organization, titles, and terminology shall conform to the recommendations of the state division of emergency management. When approved, it shall be the duty of all departments and agencies to perform the functions assigned by the plan and to maintain their portion of the plan in a current state of readiness at all times. The emergency management plan shall be considered supplementary to this chapter and have the effect of law during the time of a disaster.

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(a) This chapter is an exercise by the city of its governmental functions for the protection of the public peace, health, and safety and neither the City of Abilene, the agents and representatives of said city, nor any individual, receiver, firm, partnership, corporation, association, or trustee, nor any of the agents thereof, in good faith carrying out, complying with or attempting to comply with, any order, rule, or regulation promulgated pursuant to the provisions of this chapter shall be liable for any damage sustained to persons as the result of said activity.

(b) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants to the City of Abilene a license of privilege, or otherwise permits the city to inspect, designate, and use the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual, impending, or practice enemy attack or natural or manmade disaster shall, together with his successors in interest, if any, not be civilly liable for the death of, or injury to, any person on or about such real estate or premises under such license, privilege or other permission or for loss of, or damage to, the property of such person.

(Ord. No. 8-1994, pt. 1(Exh. A), 3-10-94)

Sec. 7-7. Commitment of funds.

No person shall have the right to expend any public funds of the City in carrying out any Emergency Management activity authorized by this chapter without prior approval by the City Council, nor shall any person have any right to bind the City by contract, agreement, or otherwise without prior and specific approval of the City Council unless during a declared disaster. During a declared disaster, the Mayor may expend and/or commit public funds of the City when deemed prudent and necessary for the protection of health, life, or property.

(Ord. No. 8-1994, pt. 1(Exh. A), 3-10-94)

Sec. 7-8. Certain conduct unlawful.

- (a) It shall be unlawful for any person willfully to obstruct, hinder, or delay any member of the emergency management organization in the enforcement of any rule or regulation issued pursuant to this chapter.
- (b) It shall likewise be unlawful for any person to wear, carry, or display any emblem, insignia, or any other means of identification as a member of the emergency management organization of the City of Abilene, unless authority to do so has been granted to such person by the proper officials.
- (c) Any unauthorized person who shall operate a siren or other device so as to simulate a warning signal, or the termination of a warning, shall be deemed guilty of a violation of this chapter and shall be subject to the penalties imposed by this chapter.

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- (1) implement the emergency management program;
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and
- (3) protect public health, safety, and welfare.

Sec. 7-10 Offenses and Penalties.

- (a) A person who fails to obey an order adopted under an emergency management program, this chapter, or Texas Government Code Chapter 418 (*Emergency Management*) commits an offense.
- (b) An offense is punishable by a fine of not more than \$1,000, by confinement in jail for a term of not more than 180 days, or by both a fine and confinement.

Item 9

Amending the Abilene Code of Ordinances, Chapter 7, Civil Defense





**City Council
Agenda Memo**

City Council Meeting Date: 3/26/2020

TO: Honorable Mayor and City Council Members

FROM: Stanley Smith, City Attorney

SUBJECT: 10. 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, Texas v. Aurora Bumgarner; 104th Judicial District Court, Taylor County, Texas; filed November 17, 2011
2. Chad Carter v. City of Abilene, Texas; Cause No. 10138-D, In the 350th Judicial District Court, Taylor County, Texas, filed June 17, 2014
3. Susan Lewis King & Austin King MD vs Ken Paxton, Attorney General of Texas and the City of Abilene, Cause No. D-1-GN-16-001160, filed March 16, 2016
4. Ruby Flores and Cory Almanza v. Jesus Verastegui, Alfredo Verastegui, Rosalva Verastegui, and City of Abilene, Cause No. 49368-A, 42nd District Court, Abilene, Taylor County, Texas, filed April 13, 2016
5. Robert Steven Reitz v. City of Abilene, Texas, et al., Case No. 1:16-cv-00181-BL; In the U.S. District Court, Northern District of Texas, Abilene Division, filed October 10, 2016
6. Officer Patrick Sumrall and City of Abilene, Case No. 01-18-000-8653; Appeal of Indefinite Suspension to Arbitration, filed February 6, 2018
7. Tracy Kennedy and Richard Kennedy v. Katie Snell, Richard Perez, Thomas Bryant, John Doe 1, and John Doe 2; Case No. 1:18-cv-162, In the United States District Court, Northern District of Texas, Abilene Division, filed October 16, 2018

8. Alfredo Valencia v. Corey Davis and City of Abilene; Case No. 1:19-cv-00017-C; In the United States District Court, Northern District of Texas, Abilene Division, filed February 4, 2019.
9. City of Abilene v. Patrick Sumrall; Cause No. 27,733-B, In the 104th Judicial District Court, Taylor County, Texas, filed May 28, 2019
10. Ovation Services, LLC v. Blanca Cortez, et al.; Case No. 11875-D; In the 350th Judicial District Court, Taylor County, Texas; filed July 15, 2019
11. 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
12. The State of Texas v. The Unknown Heirs of B.E. Caffey, Senior, et al., Cause No. 6939, Condemnation Proceeding filed in the County Court at Law No. 2, Taylor County, Texas, filed August 20, 2019
13. City of Abilene, Texas and Garfield Public/Private LLC v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-20-000900, In the 261st Judicial District Court, Travis County, Texas, filed February 13, 2020
14. Sanctuary City for the Unborn

B. 551.072 (Deliberations about Real Property)

1. Clyde Water

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. Abilene Convention Center Hotel Project
2. 101 Oak Streets - Matera Gardens, LLC

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

None