



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 April 9, 2020, at 8:30 a.m., at City Hall, 555 Walnut Street, Council Chambers, Abilene, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action. The City Council reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

CALL TO ORDER

INVOCATION

1. Councilmember Jack Rentz

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 or Citizen so requests, in which event the item will be removed from the Consent Agenda and considered separately.

2. **Minutes:** Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Special Meeting Held on March 23, 2020, the Regular Meeting Held on March 26, 2020, and the Special Meeting Held on March 30, 2020 (**Shawna Atkinson**)
3. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Approve the Purchase of One Vacuum Truck from Lonestar Truck Group through BuyBoard Contract 601-19 (**Tim Cass**)

4. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving a Service Contract with Black Plumbing, Inc. for Plumbing Services **(Lesli Andrews)**
5. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Bid No. CB 2043 to Bontke Brothers Construction for John Knox and Village Drive Reconstruction Project **(Greg McCaffery)**
6. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding a Construction Contract to Barr Roofing Company for the National Guard Armory Roof Replacement & Miscellaneous Work **(Michael Rice)**
7. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding a Construction Contract to Lydick Hooks Roofing for the Environmental Laboratory Roof Replacement & Miscellaneous Work **(Michael Rice)**

REGULAR AGENDA - ORDINANCES AND PUBLIC HEARINGS - RESOLUTIONS

8. **Ordinance (Final Reading) TC-2020-04:** Receive a Report, Hold a Discussion and Public Hearing, 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)**
9. **Ordinance (Final Reading) TC-2020-05:** Receive a Report, Hold a Discussion and Public Hearing, 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)**

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.

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

RECONVENE

REGULAR AGENDA

11. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Appointing Members to Various Boards and Commissions per the City Charter **(Shawna Atkinson)**
 - Development Corporation of Abilene
 - Mayor's Downtown Task Force
 - West Central Texas Municipal Water District Board
12. **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 ISO. **(Misty Mayo)**
13. **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 Windmill. **(Misty Mayo)**
14. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Funding Request from United Way of Abilene for Pass Through Funding for Partner Agencies Under the City's Chapter 380 Agreement **(Robert Hanna)**
15. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving a Amendment to the Bylaws of the Development Corporation of Abilene, Inc., Section 7.11, Expenditures of Corporation Money for Projects or Borrow Money **(Robert Hanna)**
16. **Emergency Resolution:** *Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Postponing the May 2, 2020, General Election for Mayor and City Council Place 3 & 4*

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 Amended meeting notice was posted on the bulletin board at the City Hall of the City of Abilene, Texas, on the 6th day of April, 2020, at 4:50 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 30, 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.

There are two phone numbers to call for this meeting:

1) To call in to a Listen Only version of the meeting, call 888-475-4499. The meeting ID is 810-815-591

2) To call in to Speak on a public hearing on an agenda item please call 877-853-5257. The meeting ID is 513-873-0228. Please note, this line needs to be used only when the agenda item you wish to speak on is being presented.

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: 4/9/2020

TO:

FROM: Shawna Atkinson, City Secretary

SUBJECT: 2. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Special Meeting Held on March 23, 2020, the Regular Meeting Held on March 26, 2020, and the Special Meeting Held on March 30, 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. 03-23-2020 Minutes - Special - Declaration of Disaster
2. 03-26-2020 Minutes - Regular - Evening
3. 03-30-2020 Minutes - Special - Extension of Disaster Declaration

SPECIAL CALLED MEETING
March 23, 2020 at 11:15 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 Special Session on the March 23, 2020, at 11:15 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.

Mayor Pro-tem Weldon Hurt delivered the invocation.

Councilmember Craver led the Pledge of Allegiance to the Flag of the United States of America and State of Texas Flag.

AGENDA ITEMS

2. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Extending the Mayor's Declaration of Local Disaster Issued March 16, 2020.
[ASSIGNED RESOLUTION NO. 61-2020]

Robert Hanna, City Manager presented the item. Adoption of the item would extend the Mayor's Disaster Declaration issued on March 16, 2020, for another seven days. Mr. Hanna stated that another meeting would need to be held in seven days to extend the declaration further, should the need arise.

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

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

3. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Temporarily Suspending the Requirements of the public Information Act
[NOT CONSIDERED]

Mayor Williams stated that this item was pulled from consideration prior to the meeting, but wanted the City Attorney to let the public know the intention of the Resolution. Stanley Smith, City Attorney, stated that the Public Information Act has a provision for emergency situations that allows for governmental entities to suspend their response on public information requests for a period of 14 days. He clarified that is not stopping public information from being released, just putting all the requests in a holding pattern until there is adequate staffing to address them.

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

As this item was pulled before the start of the meeting, no votes or action were taken at this time.

4. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving a Chapter 380 Agreement with the United Way of Abilene
[ASSIGNED RESOLUTION NO. 63-2020]

Robert Hanna, City Manager presented the item. Adoption of the item would approve a Chapter 380 agreement with the United Way of Abilene, to assist with personnel and other city resources that may be required in their response to the local disaster.

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

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

ADJOURNMENT

There being no further business, the meeting adjourned at 11:33 a.m.

Shawna Atkinson
City Secretary

Anthony Williams
Mayor

Minutes approved on: _____

**CITY COUNCIL MEETING
March 26, 2020 at 4:30 p.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 March 26, 2020, at 4:30 p.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, and City Secretary Shawna Atkinson.

This meeting was broadcast over a teleconference to allow the public to call in via telephone, since the meeting and City Hall were closed to the public during the current disaster situation.

EXECUTIVE SESSION

Mayor Williams recessed into Executive Session at 4:30 p.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:

- 10. A. 551.071 (Consultation with Attorney)
 - 1. Chad Carter v. City of Abilene
 - 2. Officer Patrick Sumrall & City of Abilene
 - 3. Sanctuary City for the Unborn
- 10.D. 551.074 (Personnel Matters)
 - 1. City Council Appointees – City Manager
- 10. F. 551.087 (Business Prospect/Economic Development)
 - 1. Abilene Convention Center Hotel Project
 - 2. 101 Oak Street – Matera Gardens, LLC

The Executive Session ended at 5:05 p.m. and reconvened to Open Session at 5:30 p.m. as noted on the posted agenda. Mayor Williams reported no votes or action were taken in Executive Session.

Mayor Anthony Williams delivered the invocation.

Councilmember Craver led the Pledge of Allegiance to the Flag of the United States of America and State of Texas Flag.

CONSENT AGENDA

The Consent Agenda consisted of items 3-8. There were no items pulled for individual consideration.

Councilmember McAlister moved to approve the Consent Agenda. Mayor Pro-tem Hurt 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

- 3. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the City Council Workshop Meeting Held on March 6, 2020, and the Regular Meeting Held on March 12, 2020

4. Resolution: Receive a Report, Hold a Discussion and Public Hearing, 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
[ASSIGNED RESOLUTION NO. 64-2020]
5. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding the Bid to Lupe Rubio Construction Company, Inc. for the Baylor Drive Lift Station Replacement Project
[ASSIGNED RESOLUTION NO. 65-2020]
6. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Authorizing a Professional Services Contract with Enprotec/Hibbs & Todd, Inc. for the NEWTP SCADA System Improvements
[ASSIGNED RESOLUTION NO. 66-2020]
7. Ordinance (First Reading) TC-2020-04: Receive a Report, Hold a Discussion and Public Hearing, 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
8. Ordinance (First Reading) TC-2020-05: Receive a Report, Hold a Discussion and Public Hearing, 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

REGULAR AGENDA

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
[ASSIGNED ORDINANCE NO. 13-2020]

Stanley Smith, City Attorney, presented the item. Adoption of the item would Amend Chapter 7 of the Abilene Code of Ordinances, Civil Defense, and provide a punishment for the offense of a fine not to exceed \$1,000 or confinement in jail for a term no more than 180 days, during a local state of disaster. He stated that there is one change from the way the ordinance appears in the agenda packet – striking through “a fine and confinement in jail” and leaving only “a fine or confinement in jail”.

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

- David Swart – stated that he is concerned if this is constitutional or not. Questioned if it was for a limited time only and described some situations in other areas of people being taking into custody for this sort of thing.

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

Stanley Smith, City Attorney, addressed Mr. Swart's concerns and stated that it would only be good as long as the Mayor's Disaster Declaration is in place, and that the Texas Government Code allows this, so it is not unconstitutional.

Councilmember Price moved to approve the item with the corrections that City Attorney Smith pointed out. 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 Williams opened the public comment period. The following addressed the city council via teleconference:

- David Swart – stated that he appreciates what Council is doing but doesn't want to move to more extreme measures in the current crisis. Also spoke about the severe weather season coming up and the tornado that occurred last week. He encouraged everyone to buy a NOAA weather radio, sign up for Code Red alerts, and to enable the severe weather alerts on smart phones.

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

ADJOURNMENT

There being no further business, the meeting adjourned at 5:48 p.m.

Shawna Atkinson
City Secretary

Anthony Williams
Mayor

Minutes approved on: _____

SPECIAL CALLED MEETING
March 30, 2020 at 11:26 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 Special Session on the March 23, 2020, at 11:15 a.m. in the Council Chambers, 555 Walnut St. Due to technical difficulties, the actual meeting did not begin until 11:26 a.m. 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, and City Secretary Shawna Atkinson.

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

This meeting was broadcast over a teleconference to allow the public to call in via telephone, since the meeting and City Hall were closed to the public during the current disaster situation.

AGENDA ITEMS

2. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Extending the Mayor's Declaration of Local Disaster Issued March 23, 2020.
[ASSIGNED RESOLUTION NO. 67-2020]

Mayor Williams read through the proposed Resolution that extends the Disaster Declaration issued on March 23, 2020, and issues a limited Shelter In Place order, valid until April 14, 2020 at 11:59 p.m. City Manager Robert Hanna reiterated the Resolution, clarified which businesses/activities need to close or cease, and why this needs to happen in order to preserve public health and safety. Council and Staff discussed the order in further detail.

Mayor Williams opened the public hearing. Citizens addressed Council and Staff via telephone conference and asked questions regarding the Limited Shelter in Place order and what is and isn't allowed. Council and Staff answered questions to the best of their ability. When no other speakers came forward, the public hearing was closed.

Councilmember Craver moved to approve the item as presented. Councilmember Rentz 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

ADJOURNMENT

There being no further business, the meeting adjourned at 1:17 p.m.

Shawna Atkinson
City Secretary

Anthony Williams
Mayor

Minutes approved on: _____



**City Council
Agenda Memo**

City Council Meeting Date: 4/9/2020

TO: Robert Hanna, City Manager

FROM: Don Green, Director

SUBJECT: 3. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Approve the Purchase of One Vacuum Truck from Lonestar Truck Group through BuyBoard Contract 601-19 (*Tim Cass*)

GENERAL INFORMATION

Fleet Management seeks approval to purchase One 2021 Western Star Vacuum Truck to replace a unit that is in need of replacement for Sewage Collection through BuyBoard Cooperative, Contract Number 601-19.

SPECIAL CONSIDERATIONS

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

FUNDING/FISCAL IMPACT

Funds for the purchase are to be provided by the Fleet Replacement fund at a total of \$461,772.00 and were budgeted in FY20.

STAFF RECOMMENDATION

Staff recommends the purchase of the vacuum truck.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 2020 Vacuum Truck Resolution (1)
2. CO-Op Vacuum Truck Budget vs Actual
3. Co-Op Vacuum Truck Addtl Info
4. Vacuum Truck Pricing
5. CO-OP Vacuum Truck Presentation

RESOLUTION NO _____

**A RESOLUTION OF THE CITY COUNCIL, CITY OF ABILENE, TEXAS
TO PURCHASE ONE VACUUM TRUCK FOR WATER SEWAGE COLLECTION FROM LONESTAR TRUCK
GROUP, LLC - ABILENE**

WHEREAS, City of Abilene's Water Sewage Collection Division has a need for one Vacuum Truck; and

WHEREAS, City of Abilene budgeted this purchase for Fiscal Year 2020; and

WHEREAS, City of Abilene received pricing to purchase one Vacuum Truck through BuyBoard Co-Op Contract 601-19; and

WHEREAS, the unit is to be a 2021 Western Star 4700SB chassis with a Vactor 2100i Vacuum body; and

WHEREAS, Lonestar Truck Group, LLC - Abilene is the BuyBoard approved vendor for the cab and chassis and is using BuyBoard vendor Kinloch Equipment & Supply of Texas to supply the vacuum body and system components.

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

PART 1: That the City Council approves this purchase from Lonestar Truck Group, LLC - Abilene in the amount of Four Hundred Sixty One Thousand Seven Hundred Seventy Two Dollars and No Cents (\$461,772.00) for one complete Vacuum Truck.

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

ADOPTED this 9th day April, 2020

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

BUDGET vs ACTUAL COSTS
Vacuum Truck

Repl For Unit #	Division #	Division Name	Type Equipment	Budgeted Cost	Actual Cost	Budgeted vs Actual Variance
4086	8060	Water Utilities	Vacuum Truck	\$406,000.00	\$461,772.00	\$55,772.00 \$55,772.00

Over Budget

ADDITIONAL INFORMATION FOR COUNCIL MEETING ITEM
VACUUM TRUCK

Unit #	Assignment	Year	Make	Model	Mileage	Hours	Total Maintenance Costs	Disposal Method	Replacement Reasoning
4086	WATER UTILITIES	2009	INTERNATIONAL/ VACCON	7400SFA/VC09	38,327	4,625	\$139,065.06	Auction	Meets age requirement.

CUSTOMER PURCHASE ORDER/BILL OF SALE

LONESTAR FREIGHTLINER GROUP, LLC - Abilene

502 W Overland Tr

Abilene, TX 79601

(325)677-8187



Customer Name: City of Abilene
Address: 555 Walnut
City, State, Zip: Abilene, TX 79601
Phone #'s.: 325-677-6226

Date: 01/16/2020

Sales Rep: Josh Duwe

N/U	YEAR	MAKE	MODEL	VIN	PRICE
New	2021	Western Star	4700SB		\$ 123,306.00
			Vactor 2100i Body		\$ 338,466.00
			Buyboard Fee Included: \$400		Included
			Contract Number 601-19		
					\$
					\$
					\$
TOTAL					\$ 461,772.00

Extras:	\$
TOTAL EXTRAS	\$ -

Insurance Included:	(Customer Initial Below)	Taxes and Fees:
Physical Damage	_____	F.E.T. (If Used or Exempt, Enter 0) Exempt _____
Credit Life	_____	Sales Tax (If Apportioned Tags, Enter 0) Exempt _____
GAP Insurance	_____	Title Fee Exempt _____
Disability	_____	License (If Apportioned Tags, Enter 0) Exempt _____
		Extended Warranty Included _____
		Documentary Fee \$ 250.00 Exempt _____
		Other DOT INSPECTION Exempt _____
		Other ROAD/BRIDGE FEE _____
		TOTAL TAXES AND FEES \$ -

				TOTAL SALES PRICE	\$ 461,772.00
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Trade-in:	Year	Make	Model	VIN
TRADE ALLOWANCE:				
PAYOFF AMOUNT: \$				
NET TRADE ALLOWANCE (EQUITY) \$ -				
Pay-off to: _____				
Address: _____				
This PAY-OFF is good through: _____				

Payment:	Cash With Order (non-refundable pending financing)	Quantity	1
	Cash Down At Delivery	\$	
		TOTAL DOWN	\$ -
		BALANCE DUE AT DELIVERY	\$ 461,772.00

This contract is subject to additional provisions set forth on page two of this document, which is incorporated here in by inference, **AND WHICH TERMS INCLUDE A COMPLETE DISCLAIMER OF ALL WARRANTIES.** The purchaser agrees that this order includes all the terms and conditions on both pages of this order and that this order cancels and supercedes any prior agreement and as of the date hereof comprises the complete and exclusive statement of the terms of this agreement, relating to the subject matters covered hereby, and that **THIS ORDER SHALL NOT BECOME BINDING UNTIL ACCEPTED BY THE DEALER PRINCIPAL OR HIS/HER AUTHORIZED REPRESENTATIVE.** Purchaser by his/her execution of this order acknowledges the he/she has read its terms and conditions and has received a copy of the order. **A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS AND PERFORMING SERVICES RELATING TO THE CLOSING OF A SALE. A DOCUMENTARY FEE MAY NOT EXCEED \$50.00 FOR A MOTOR VEHICLE CONTRACT OR A REASONABLE AMOUNT AGREED TO BY THE PARTIES FOR A HEAVY COMMERCIAL VEHICLE CONTRACT. THIS NOTICE IS REQUIRED BY LAW.** IF THE PURCHASED VEHICLE(S) SOLD TO PURCHASER BY DEALER UNDER THIS ORDER IS SOLD AS A USED VEHICLE, THE VEHICLE IS SOLD "AS IS" AND "WITH ALL FAULTS." **DEALER MAKES NO GUARANTEE OR WARRANTY OF ANY NATURE WHATSOEVER IN CONNECTION WITH THE PURCHASED VEHICLE(S), EXPRESS OR IMPLIED, (INCLUDING NO WARRANTY THAT THE ODOMETER READING ON THE PURCHASED VEHICLE(S) REPRESENTS THE ACTUAL MILEAGE TRAVELED) OR ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY NATURE WHATSOEVER. PURCHASER AGREES TO USE THE PURCHASED VEHICLE(S) AND/OR CHASSIS AT PURCHASER'S OWN RISK AND HEREBY RELEASES SELLER, ITS AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS, FROM ANY AND ALL CLAIMS FOR ANY DAMAGES OR INJURIES OR ANY NATURE WHATSOEVER TO THE FULL EXTENT PERMITTED BY LAW.**

Purchaser Name: _____	By: _____
	Signature Required Date
Dealer: LONESTAR FREIGHTLINER GROUP, LLC	
By: _____	By: _____
Sales Rep.	General Manager's Approval Date

City Council Meeting

March 12, 2020



Vacuum Truck

- CO-OP Purchase for One Vacuum Truck Assigned to Sewage Collection.
- One replacement unit.
- Unit to be a 2021 Western Star 4700SB with a Vactor 2100i Body
- BuyBoard Cooperative purchase to coordinate the build and delivery process.







**City Council
Agenda Memo**

City Council Meeting Date: 4/9/2020

TO: Robert Hanna, City Manager

FROM: Lesli Andrews, Director

SUBJECT: 4. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving a Service Contract with Black Plumbing, Inc. for Plumbing Services (Lesli Andrews)

GENERAL INFORMATION

The City of Abilene from time to time has the need to hire a plumbing company for plumbing maintenance and repair services beyond the scope of what City staff have the ability to complete. City staff issued a Request for Proposals to establish a term contract with the possibility of multiple contractors for the City of Abilene for labor, materials and equipment necessary to provide plumbing maintenance and repairs for City owned facilities on an "as needed" basis. The City intends to have a primary contractor with one or more backup contractors to perform the services.

The maintenance and repair will include labor, parts, tools, equipment, miscellaneous materials and supervision to facilitate the general maintenance, standard repair and emergency repair. All work must be performed in compliance with the applicable laws, regulations and codes. The Contractor will be responsible for obtaining any necessary permits.

SPECIAL CONSIDERATIONS

This contract may not be used for plumbing needs that are part of a project that is bid for service.

The intended use of this contract is:

1. General Maintenance - preventative maintenance activities for existing plumbing systems at

City owned facilities

2. Standard Service and Repair - maintenance and repair activities to address failures or stoppages for existing plumbing systems at City owned facilities
3. Emergency Service & Repair - reactive maintenance and repair activities during after-hours or weekends to address failures or stoppages for existing plumbing systems at City owned facilities
4. Medical Air/Gas Endorsement
5. Pipe Relining Services
6. Turn Key Site Repair - to return the work site to original condition, including, but not limited to: concrete, ceramic tile, painting, sheetrock, and electrical.

FUNDING/FISCAL IMPACT

The financial impact will be on a case-by-case basis from the City Council approved General Fund, but has the potential to accumulate to \$50,000 or more annually.

STAFF RECOMMENDATION

Staff recommends approval of the Maintenance Service Contract with Black Plumbing for plumbing maintenance and repairs of City owned facilities.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 2020 Resolution Black Plumbing
2. Black Plumbing Contract 492020
3. Plumbing On Demand Annual Maintenance Contract Presentation

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
AUTHORIZING THE CITY MANAGER TO ENTER INTO A MAINTENANCE SERVICE
CONTRACT WITH BLACK PLUMBING, INC. FOR GENERAL MAINTENANCE, STANDARD
REPAIR AND EMERGENCY REPAIR PLUMBING SERVICES**

WHEREAS, on an as needed basis the City of Abilene needs to have a plumbing company facilitate the general maintenance, standard repair and emergency repair plumbing services of City facilities; and

WHEREAS, the City of Abilene issued a Request for Proposals, and Black Plumbing, Inc. provided the proposal with the best value for the City of Abilene; and

WHEREAS, the City of Abilene desires to enter into a contract with Black Plumbing, Inc. for plumbing services on an as-needed basis.

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

Part 1: The City Manager is hereby authorized to enter into a contract with Black Plumbing, Inc. for general maintenance, standard repair and emergency repair plumbing services.

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

ADOPTED this 9th day of April 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney



SERVICES CONTRACT

This contract, dated the 9th day of April, 2020, is between the City of Abilene, a home rule municipal corporation of the State of Texas ("City"), and Black Plumbing Inc. a corporation organized under the laws of the State of Texas ("Contractor").

The purpose of this Contract is to state the terms and conditions under which Contractor will provide plumbing services to the City during the term stated herein.

In consideration of the mutual promises contained in this Contract, City and Contractor agree as follows:

I. TERMS

Contractor must provide all services as described in Attachment A, which is incorporated by reference for all purposes within (see attachment A) calendar days after the effective date of this Contract.

II. PAYMENT

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

III. MATERIALS AND SUPPLIES

The Contractor will furnish all materials and equipment necessary to perform the services agreed to under this Contract, which are to be supplied by the Contractor.

IV. TERMINATION

This agreement may be canceled or terminated by either party for (1) the other party's violation or failure to comply with any terms or conditions contained herein, or (2) upon the giving of sixty (60) days written notice by either party of the desire to terminate the same. Upon the termination of this agreement as provided herein, an accounting shall be made between the parties and payments made to the parties as provided for herein to the day of termination.

V. ASSIGNMENT

The Contractor 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 Contractor's successors and assigns and may be enforced by the City against such successors and assigns.

VI. STATUS OF CONTRACTOR

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

VII. 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.

VIII. INDEMNITY

A. Definitions

For the purpose of this section the following definitions apply:

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

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

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

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

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

- (i) injury or damage to any property or right

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

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

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

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

B. Indemnity

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

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

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

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

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

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

IX. INSURANCE

A. GENERAL REQUIREMENTS

The Contractor agrees to maintain the type and amounts of insurance required in this contract throughout the term of the agreement. The Contractor is solely responsible for providing the required certificates of insurance. The City may terminate this agreement if the Contractor 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 Contractor 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 Contractor 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 shall:

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

C. TYPES AND AMOUNT OF INSURANCE

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

<u>Type</u>	<u>Amount</u>
<u>X</u> 1. Workers' Compensation Employer's Liability	Statutory \$100,000 per occurrence
<u>X</u> 2. Commercial (Public) Liability including, but not limited to: • Premises/Operations • Independent Contractors • Products/Completed Operations • Contractual Liability (Insuring above indemnity) and where the exposures exist • Explosion Collapse and Underground	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
<u>X</u> 3. Business Automobile Liability to include coverage for: • Owned/Leased Autos • Non-Owned Autos • Hired Cars	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
<u> </u> 4. Professional Liability	\$500,000 combined single limit (per occurrence)
<u> </u> 5. See Addendum for Special Coverages and/or revisions	
<u> </u> 6. No Insurance Required	

X. VENUE, CHOICE OF LAW AND INTERPRETATION

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

XI. NOTICE

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

City - ATTN: Lesli Andrews
 PO Box 60
 Abilene TX 79604

Contractor - ATTN: Darrin Black
 1173 CR 297
 Abilene TX 79606

XII. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES

Contractor, 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. Contractor must obtain all necessary permits and licenses required in completing the work contracted for in this agreement.

XIII. NO INDEBTEDNESS

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 and interest. Contractor 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.

XIV. 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.

XV. VERIFICATION OF EMPLOYMENT ELIGIBILITY

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

XVI. 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.

XVII. SALES TAX

The City qualifies as an exempt agency under the Texas Limited Sales, Excise and Use Tax Act (the "Tax Act"), and is not subject to any State or City sales taxes on materials incorporated into the project. Labor used in the performance of this contract is also not subject to State or City sales taxes. The City will provide an exemption certificate to the Professional. The Service Contractor 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 Service Contractor 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.

XVIII. 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.

XIX. 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.

XX. 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.

XXI. 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 have entered into this agreement as of the date written above.

CITY OF ABILENE

By:

Title:

SERVICE CONTRACTOR

By: DARRIN BLACK

Title: PRESIDENT

Address: 4640 S. TREADAWAY
ABILENE, TX. 79602

Phone Number: 325-675-8391

Federal Tax ID #: 20-041587

ATTEST:

City Secretary

APPROVED:

City Attorney

ATTEST: (If Corporation)

Corporation's Secretary

Corporate Seal (If available):

ATTACHMENT A
SCOPE OF SERVICES

The contractor shall furnish all labor, equipment, tools, parts, materials and supplies required to repair, replace, remove stoppages, and install existing and new plumbing systems as required. This includes the provision of all replacement parts and component systems required for existing building plumbing systems in accordance with all original equipment manufacturer specifications. The services shall include, but not be limited to:

1. General Maintenance – preventative maintenance activities for existing plumbing systems at City owned facilities.
2. Standard Service & Repair – reactive maintenance and repair activities to address failures or stoppages for existing plumbing systems at City owned facilities.
3. Emergency Service & Repair – reactive maintenance and repair activities during after-hours or weekends to address failures or stoppages for existing plumbing systems at City owned facilities.
4. Medial Air/Gas Endorsement
5. Pipe Relining Services
6. Turn Key Site Repair-(In House or Subcontractor) to return the work site to original condition, including, but not limited to: concrete, ceramic tile, painting, sheetrock, and electrical.

The City of Abilene intends to award a contract for one (1) year with the option to extend for four (4) additional one (1) year terms at the same terms and conditions.

The City of Abilene intends to award a contract for one (1) year with the option to extend for four (4) additional one (1) year terms at the same terms and conditions.

ATTACHMENT B

PAYMENT SCHEDULE

OPTION 1 X

Compensation is based on actual hours of work/time devoted to providing the described services and will be paid at a rate of \$(see attached fee schedule) per hour not to exceed \$300,000.

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

OPTION 2

Payment is in a lump sum amount of \$Click or tap here to enter text. upon completion of the work and written acceptance by 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 Contractor must execute and provide City with an Affidavit that all bills for labor, materials and incidentals incurred by subcontractors, materialmen, mechanics and suppliers under this agreement have been paid in full, and that there are no claims pending of which Contractor has been notified.

OPTION 3

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

ATTACHMENT C

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 contractors'/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 contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, 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 Contractor 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 contractor providing services on the project, for the duration of the project.
- c. The Contractor must provide a certificate of coverage to the City prior to being awarded the contract.
- d. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor 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. Contractor 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 Contractor, 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 Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.
- g. The Contractor shall notify the City in writing by certified mail or personal delivery, within ten (10) days after the Contractor 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 Contractor 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 Contractor 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 Contractor, 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 Contractor, 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 Contractor:

(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 Contractor is representing to the City that all employees of the Contractor 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 Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- k. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the City to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the City.

(End of Document)



SET RATES:

HOURLY RATE PLUMBER:	\$110.00 per hour minimum of 1-hour then 30 minute increments
HOURLY RATE HELPERS:	\$30.00 per hour
OVERTIME RATE PLUMBER:	\$165.00 per hour
OVERTIME RATE HELPERS:	\$45.00 per hour
HOLIDAY RATE PLUMBER:	\$220.00 per hour
HOLIDAY RATE HELPER:	\$60.00 per hour
MILEAGE RATE:	\$0.75 cents per mile (to and from location)
DRIVETIME:	\$110.00 per hour/ Overtime \$165.00 per hour
PERMITS: (Sourrounding areas)	\$50.00 ea.
PERMITS: (Abilene)	\$100.00 ea.
TRIP CHARGES (IF APPLY)	\$25.00 ea.

EQUIPMENT CHARGES:

CAMERA:	\$200.00 per hour @ 1-hour minimum
JETTER:	\$350.00 per hour @ 2-hour minimum \$700.00
JETTER OVERTIME:	\$525.00 per hour@ 2-hour minimum \$1050.00
SUITCASE-JETTER:	\$150.00 per hour
HYDRO EXCAVATOR:	\$1200.00 per day/ Overtime \$1800.00 per day
HYDRO EXCAVATOR DELIVERY:	\$110.00 per hour plus mileage
EXCAVATOR:	\$400.00 per day
TRAILER:	\$50.00 per day
DUMPBED:	\$100.00 per day
TRACK-HOE:	\$350.00 per day
SKID STEER:	\$350.00 per day
CAMERA CRAWLER	\$450.00 Per hour @2-hour minimum

TOOL CHARGES:

SEWER MACHINE:	\$25.00 per job
PROPRESS:	\$25.00 per job
SMOKE MACHINE:	\$200.00 per job
THREADER:	\$100.00 per job
FUSION MACHINE:	\$100.00 per job
GENERATOR:	\$100.00 per job
AIR COMPRESSOR:	\$50.00 per job

RETESTING OF NEW OR EXISTING BACKFLOW:

RETESTING OR EXISTING:	\$110.00 per hour plus mileage and drivetime
OVERTIME RATE:	\$165.00 per hour plus mileage and drivetime
BACK FLOW NEW INSTALL:	\$250.00 for Test (mileage & drivetime outside of Abilene) REGULAR RATE:
	\$110.00 per hour Overtime Rate: \$165.00 per hour

City Council Meeting



Maintenance Service Contract with Black Plumbing for plumbing maintenance and repairs of City owned facilities.

- City staff issued a Request for Proposals to establish a term contract to provide plumbing maintenance and repairs for City owned facilities on an "as needed" basis.
- The City intends to have a primary contractor with one or more backup contractors to perform the services.
- The maintenance and repair will include labor, parts, tools, equipment, miscellaneous materials and supervision to facilitate the general maintenance, standard repair and emergency repair.
- The financial impact will be on a case by case basis from the City Council approved General Fund but has the potential to accumulate to \$50,000 or more annually.



Staff Recommendation:

- Staff recommends approval of the Maintenance Service Contract with Black Plumbing for plumbing maintenance and repairs of City owned facilities.

Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 4/9/2020

TO: Robert Hanna, City Manager

FROM: Greg McCaffery

SUBJECT: 5. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Bid No. CB 2043 to Bontke Brothers Construction for John Knox and Village Drive Reconstruction Project (Greg McCaffery)

GENERAL INFORMATION

This Project was advertised as a Public Notice on March 1, 2020 and on March 8, 2020 with a bid opening dated March 17, 2020. This contract involves the removal of the existing asphalt pavement and the replacement with a concrete pavement section on John Knox and Village Drive. John Knox will be reconstructed from Ridgemont Drive to Curry Lane, and Village Drive will be reconstructed from Curry Lane to South Clack Street.

The John Knox and Village Drive Reconstruction project is on the approved DCOA fund list for 2020.

The Street Maintenance Advisory and Appeals Board has reviewed and recommended this construction project during their review of projects for 2020. Development Corporation of Abilene (DCOA) funding will be used towards this project.

The "Best Value" competitive bidding method was used for this project selection.

SPECIAL CONSIDERATIONS

This project has a contract completion time of 60 working days (approx. 3 months, weather permitting)

FUNDING/FISCAL IMPACT

Funding for this project is allocated through DCOA funds within the Street Maintenance Fund.

STAFF RECOMMENDATION

Staff recommends bid award to Bontke Brothers Construction Co., Inc. of Abilene, Texas in the amount of \$926,371.90.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. REV_John Knox and Village Proj Resolution
2. Signed_Contract_Bontke - John Knox & Village Dr
3. CB2043 TABSHEET
4. Scope_of_Work_John_Knox_Village_Drives
5. PROJECT LOCATION MAP
6. REV_John Knox and Village Dr ppt

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AWARDING
BID TO BONTKE BROTHERS CONSTRUCTION, INC., ABILENE, TEXAS**

WHEREAS, the City of Abilene duly advertised and gave such notice, as required by law, for bids for the reconstruction of John Knox Drive from Ridgemont Drive to Curry Lane and Village Drive from Curry Lane to South Clack Street; and

WHEREAS, the project involves the reconstruction of John Knox Drive from Ridgemont Drive to Curry Lane and Village Drive from Curry Lane to South Clack Street; and

WHEREAS, the following bids were received and opened on the March 17, 2020:

Bontke Brothers Construction Co., Inc., Abilene, Texas	\$926,371.90
Nobles Road Construction Inc., Abilene, Texas	\$1,085,906.68
Contract Paving Co. Inc., Abilene, Texas	\$1,581,335.28

WHEREAS, Bontke Brothers Construction Co., Inc., Abilene, Texas submitted the best value bid in the amount of \$926,371.90 with the bid meeting specifications. Staff recommends awarding the bid to the best value bidder, Bontke Brothers Construction, Inc., Abilene, Texas.

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

PART 1: That the City Council approves this bid in the amount of \$926,371.90.

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

ADOPTED this 9th day of April, 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

CONSTRUCTION CONTRACT

BACKGROUND

THIS CONTRACT, made on the 9th day of April, 2020 is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and Bontke Brothers Construction Company, Inc. of the City of Abilene, State of Texas. ("Contractor").

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

THE AGREEMENT

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

JOHN KNOX AND VILLAGE DRIVE RECONSTRUCTION

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

In consideration of this Work, the City will pay the Contractor the sum of \$926,371.90 (Nine hundred twenty-six thousand three hundred seventy-one dollars and ninety cents).

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

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

6. **Indemnity.**

A. Definitions

For the purpose of this section the following definitions apply:

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

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

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

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

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

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

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

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

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

B. Indemnity

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

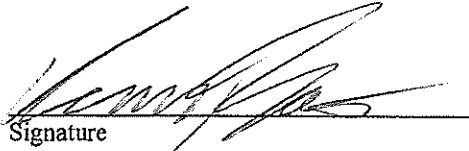
13. **Contract Copies.** Each of the two executed copies is an original.

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

CONTRACTOR

Name of Contractor:

Bontke Brothers Construction


Signature

Kenneth Bontke
Name - Typed or Printed

President
Title - Typed or Printed

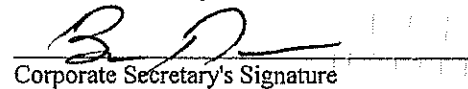
Business Address:

102 College Dr
Abilene, TX 79601

325-677-6276
Business Phone No.

75-13325
Federal Tax I.D.#

ATTEST: (If Corporation)


Corporate Secretary's Signature

Corporate Seal
(if none, write "None")

CITY OF ABILENE

Authorized Signature

APPROVED:

City Attorney

ATTEST:

City Secretary

Seal: |

**CITY OF ABILENE
PURCHASING DIVISION
TABULATION OF BIDS**

PAGE
1 OF 1

DEPARTMENT: ENGR
BID NO.: CB-2043
TIME OF OPENING: 11:00 A.M.
DATE OF OPENING: MARCH 17, 2020

BONTKE BROTHERS
ABILENE, TX

NOBLES ROAD
CONSTRUCTION
ABILENE, TX

CONTRACT PAVING
TYE, TX

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION
1.	JOHN KNOX AND VILLAGE DRIVE RECONSTRUCTION				926,371.90		1,085,906.68		1,581,335.28						
BASE BID					926,371.90		1,085,906.68		1,581,335.28						
DISCOUNT															
TOTAL BID					926,371.90		1,085,906.68		1,581,335.28						

*NOTES: INDICATES RECOMMENDED AWARD

SCOPE OF PROJECT

This construction contract involves removing the existing pavement on both John Knox Drive and Village Drive and replacing with 10" of concrete pavement the full length and width. New thermoplastic pavement marking will then be placed the entire roadways.

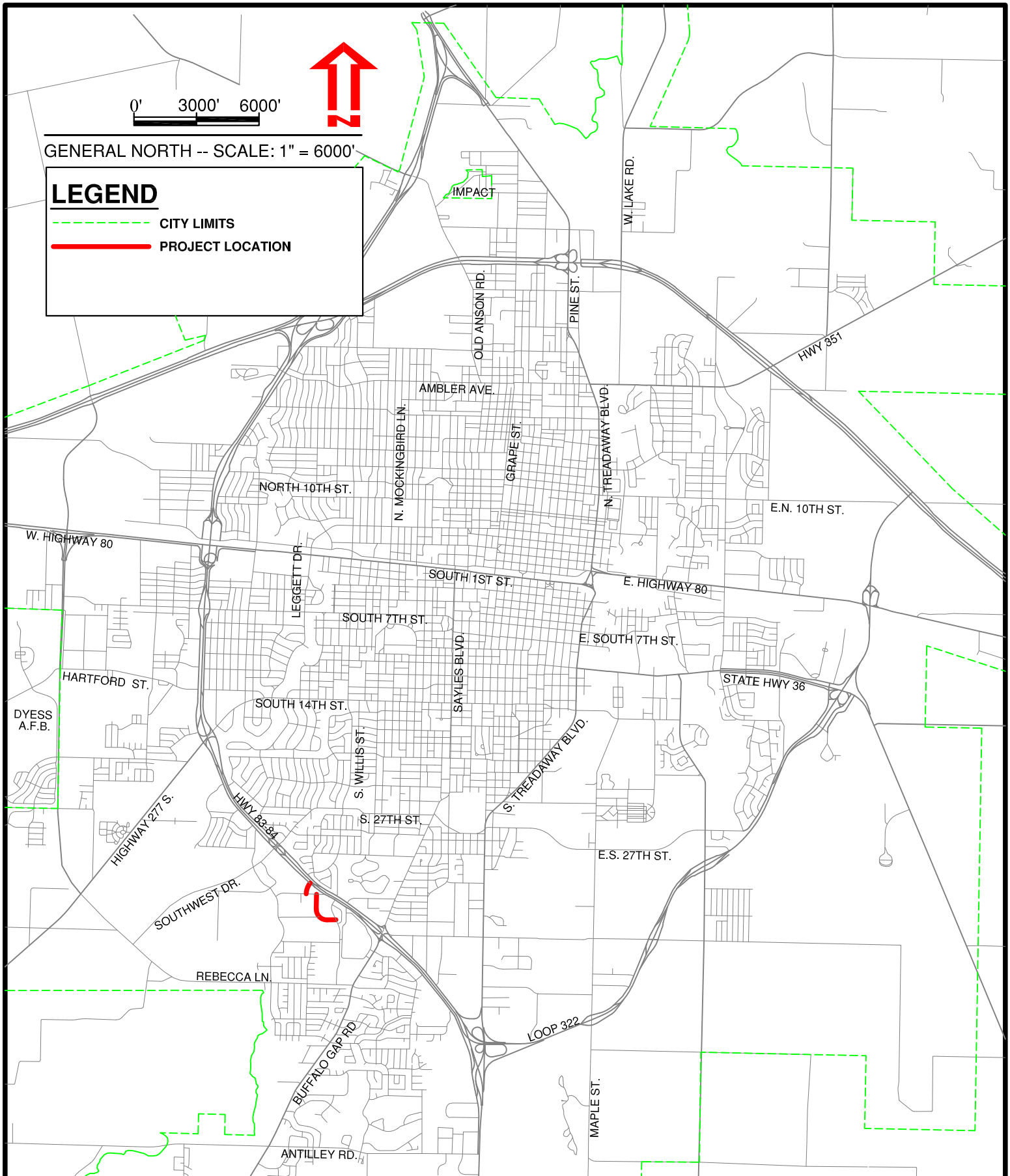
0' 3000' 6000'



GENERAL NORTH -- SCALE: 1" = 6000'

LEGEND

- CITY LIMITS
- PROJECT LOCATION



Sheet
1
of
1

CITY OF ABILENE, TEXAS
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION

JOHN KNOX AND VILLAGE DRIVE RECONSTRUCTION

Designed By: C. THOMAS

Drawn By: T. MATTHEWS

Checked By: C. THOMAS

Horizontal Scale: 1"=6000'

Vertical Scale: N.T.S.

Computer File Name:
Project Location Map

Date: MARCH 2020

Agenda Item: John Knox and Village Drive Reconstruction

**Resolution: Bid Award #CB-2043 John Knox and Village
Drive Reconstruction
(McCaffery)**



Project Location Map

Streets

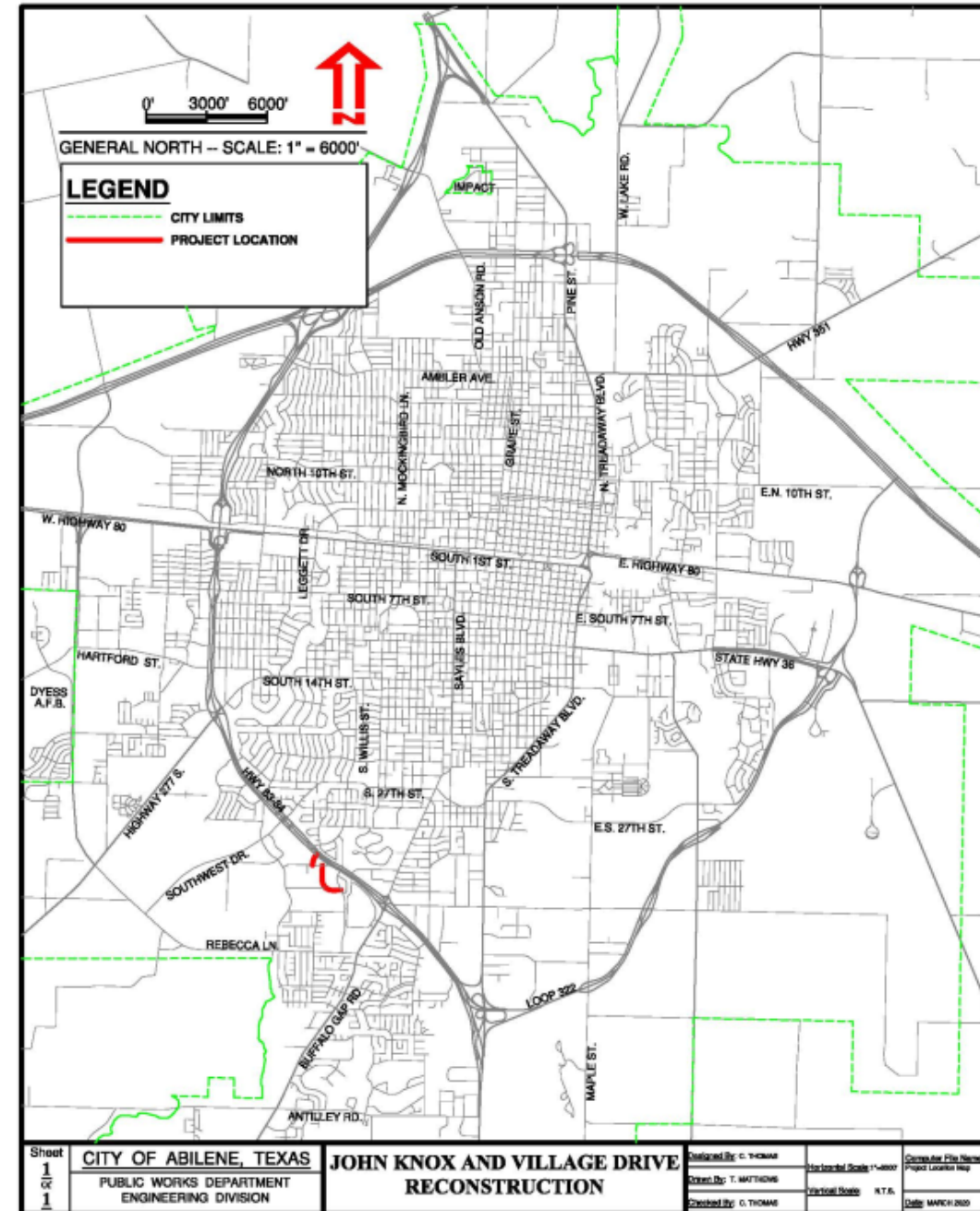
John Knox Dr
Village Dr

From

Ridgemont Dr
Curry Ln

To

Curry Ln
S Clack St



Agenda Item:

John Knox and Village Drive Reconstruction

- Construction Contract includes the removal of existing asphalt pavement and the replacement with concrete pavement on both John Knox Drive and Village Drive.
- Project Advertised March 1st 2020 & March 8th 2020, Bids Opened March 17th 2020.
- Three bids were received.
- The “Best Value” competitive bidding method was used.
- Staff recommends award of contract to Bontke Brothers Construction, Inc. in the amount of \$926,371.90.



Questions?

To Speak on this Agenda Item Please call 833--773--2663, Participant Code is 5918781





**City Council
Agenda Memo**

City Council Meeting Date: 4/9/2020

TO: Robert Hanna, City Manager

FROM: Michael Rice, Assistant City Manager

**SUBJECT: 6. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding a Construction Contract to Barr Roofing Company for the National Guard Armory Roof Replacement & Miscellaneous Work
(*Michael Rice*)**

GENERAL INFORMATION

Proposals were received on March 6, 2020, for the Roof Replacement and Miscellaneous Work for the National Guard Armory building. Six proposals were received and evaluated by Crenshaw Consulting Group LLC. Crenshaw Consulting Group LLC recommends award to Barr Roofing Company in the amount of \$346,085.00.

SPECIAL CONSIDERATIONS

The contract requires substantial completion within 45 calendar days from the date of commencement of the work. This contract also includes structural repairs to the building that are required prior to the roof replacement.

FUNDING/FISCAL IMPACT

Funding is available in the Self Insurance Fund.

STAFF RECOMMENDATION

Staff recommends award to Barr Roofing Company in the amount of 346,085.00.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Armory Building Roof Contract Resolution.2020.04.09
2. Award Recommendation Letter - Armory
3. Contract - Barr Roofing - Armory Roof
4. Presentation-Armory Roof Repairs.2020.04.09

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH BARR
ROOFING COMPANY FOR THE ARMORY BUILDING ROOF REPLACEMENT &
MISCELLANEOUS WORK**

WHEREAS, The National Guard Armory building was damaged during the 2014 hail storm event; and,

WHEREAS, The City is working with Crenshaw Consulting Group, LLC to provide design services and inspection for roofing repairs; and,

WHEREAS, proposals were received on March 6, 2020 and six proposals were received and evaluated; and,

WHEREAS, the best final proposal was received from Barr Roofing Company in the amount of \$346,085.00.

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

PART 1: The City Council authorizes the City Manager to execute an agreement with Barr Roofing Company in the amount of \$346,085.00.

PART 2: That this resolution will take effect immediately upon its adoption.

ADOPTED this 9th day of April, 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

616 S. Coppell Rd.
Coppell, TX 75019



Phone (214) 758-0785
Fax (214) 792-9548

March 19, 2020

Mr. Michael Rice
Assistant City Manager
City of Abilene
Abilene, TX 79604

Tel: 325.676.6386
EM: michael.rice@abilenetx.gov

RE: Award Recommendation
City of Abilene
Roof Replacement & Misc. Work
National Guard Armory
CCG 1-131-9

Dear Mr. Rice:

Proposals were received for the referenced project on March 6, 2020. Six (6) contractors submitted qualifications and cost proposals. Crenshaw Consulting Group, LLC (CCG) evaluated each proposal based on the evaluation criteria listed in the Request for Proposals. CCG assigned each proposer a score based on qualifications and cost.

CONTRACTOR	QUALIFICATIONS SCORE	PROPOSAL AMOUNT	COST PROPOSAL SCORE	TOTAL SCORE
Roofs Inc.	60	\$536,737.00	25	85
Barr Roofing Company	67	\$346,085.00	30	97
Lydick Hooks Roofing	57	\$433,000.00	28	85
TDR Commercial Roofing	39	\$477,200.00	26	65
J Reynolds & Co, Inc.	69	\$449,455.00	27	96
Choice One Restoration	39	\$381,265.00	29	68

The above tables summarizes the results of the proposal evaluation. Exhibit No. 1 includes the completed Proposal Evaluation and Proposal Tabulation.

CCG recommends award to Barr Roofing Company in the amount of \$346,085.00. Upon approval, CCG will prepare contracts between the City of Abilene and Barr Roofing Company.

If you have any questions, please call. Thank you.

Respectfully,



Vickie Crenshaw, P.E., RRC, RRO
President

VAC/ds

Enclosure

cc: Melissa Denson, City of Abilene, Melissa.Denson@abilenetx.gov

EXHIBIT 1



PROPOSAL EVALUATION
CB-2038

	PRICE		FIRM EXPERIENCE		PERSONNEL EXPERIENCE		PROJECT APPROACH		PAST EXPERIENCE WITH PROJECTS OF SIMILAR SIZE & COMPLEXITY WITH CITIES/MUNICIPALITIES		TOTAL SCORE
	30% of Score		20% of Score		20% of Score		20% of Score		10% of Score		
CONTRACTOR	Eval Ranking	30%	Eval Ranking	20%	Eval Ranking	20%	Eval Ranking	20%	Eval Ranking	10%	
Roofs Inc.	6	25	4	17	4	17	2	18	3	8	85
Barr Roofing Company	1	30	2	19	2	19	3	19	2	10	97
Lydick Hooks Roofing	3	28	3	18	3	18	5	15	5	6	85
TDR Commercial Roofing	5	26	6	0	5	16	4	16	4	7	65
J Reynolds & Co, Inc.	4	27	1	20	1	20	1	20	1	9	96
Choice One Restoration	2	29	5	10	6	10	6	14	6	5	68

	CONTRACTOR NAME: <i>Roofs Inc.</i>		CONTRACTOR NAME: <i>Barr Roofing Company</i>		CONTRACTOR NAME: <i>Lydick Hooks Roofing</i>		CONTRACTOR NAME: <i>TDR Commercial Roofing</i>		CONTRACTOR NAME: <i>J Reynolds & Co, Inc.</i>		CONTRACTOR NAME: <i>Choice One Restoration</i>	
ITEM	SF	COST PROPOSAL	SF	COST PROPOSAL	SF	COST PROPOSAL	SF	COST PROPOSAL	SF	COST PROPOSAL	SF	COST PROPOSAL
Roofing	-	\$393,108.00	27,000	\$286,835.00	27,700	\$379,000.00	-	\$265,500.00	28,200	\$371,220.00	27,712	\$324,515.00
Steel Pier Work	-	\$143,629.00	-	\$59,250.00		\$54,000.00	-	\$211,700.00	-	\$78,235.00	-	\$56,750.00
TOTAL	-	\$536,737.00	27,000	\$346,085.00	27,700	\$433,000.00	-	\$477,200.00	28,200	\$449,455.00	27,712	\$381,265.00

UNIT PRICES

Wood Nailers, 1 x 2	\$ 2.25 /lin. ft.	\$ 2.50 /lin. ft.	\$ 2.50 /lin. ft.	\$ 3.00 /lin. ft.	\$ 2.75 /lin. ft.	\$ 1.25 /lin. ft.
Wood Nailers, 2 x 4	\$ 2.25 /lin. ft.	\$ 5.00 /lin. ft.	\$ 3.00 /lin. ft.	\$ 3.50 /lin. ft.	\$ 3.00 /lin. ft.	\$ 2.15 /lin. ft.
Wood Nailers, 2 x 6	\$ 3.25 /lin. ft.	\$ 7.00 /lin. ft.	\$ 3.50 /lin. ft.	\$ 4.00 /lin. ft.	\$ 3.50 /lin. ft.	\$ 3.00 /lin. ft.
Wood Nailers, 2 x 8	\$ 6.25 /lin. ft.	\$ 9.50 /lin. ft.	\$ 4.00 /lin. ft.	\$ 4.50 /lin. ft.	\$ 4.00 /lin. ft.	\$ 3.50 /lin. ft.
Wood Nailers, 2 x 10	\$ 7.25 /lin. ft.	\$ 11.75 /lin. ft.	\$ 4.50 /lin. ft.	\$ 6.00 /lin. ft.	\$ 4.50 /lin. ft.	\$ 3.75 /lin. ft.
Wood Nailers, 2 x 12	\$ 8.25 /lin. ft.	\$ 14.50 /lin. ft.	\$ 5.00 /lin. ft.	\$ 8.00 /lin. ft.	\$ 5.00 /lin. ft.	\$ 4.35 /lin. ft.
CDX Plywood, 4 x 8 x 1/2"	\$ 30.00 /ea.	\$ 150.00 /ea.	\$ 40.00 /ea.	\$ 55.00 /ea.	\$ 165.00 /ea.	\$ 75.00 /ea.

CONSTRUCTION DURATION

Acknowledgement - 45 days	YES	YES	YES	YES	YES	YES
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ADDENDUM ACKNOWLEDGEMENT

Addendum #1	YES	YES	YES	YES	YES	YES
Addendum #2	YES	YES	YES	YES	YES	YES

NUMBER OF COPIES TO BE SUBMITTED

One (1) Original Hard Copy	YES	YES	YES	YES	YES	YES
One (1) Duplicate Hard Copy	YES	YES	YES	YES	YES	YES
One (1) Digital Copy	YES	YES	NO	YES	YES	YES

REQUIRED DOCUMENTS INCLUDED

AIA A305 - Qualification Statement	YES	YES	YES	YES	YES	YES
Contractor's Qualification Affidavit	YES	YES	YES	YES	YES	YES
Resumes of Key Personnel	YES	NO	YES	YES	YES	YES
Project Management Plan	YES	YES	YES	YES	YES	YES
Project Experience & Reference	YES	YES	YES	YES	YES	YES
Subcontractor Listing	YES	YES	YES	YES	YES	YES
Anti-Trust Form	YES	YES	YES	YES	YES	YES
Proposal / Bid Bond	YES	YES	YES	YES	YES	YES
Completed W-9 Form	YES	YES	YES	YES	YES	YES
Sample Certificate of Insurance	YES	YES	YES	YES	YES	YES

AIA[®] Document A104[™] – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the Ninth day of April in the year 2020
(In words, indicate day, month and year.)

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

City of Abilene
555 Walnut Street, Suite 203
Abilene, TX 79601
Telephone Number: 325.676.6206
Fax Number: 325.676.6229

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

Barr Roofing Company
3602 S. Treadaway
Abilene, TX 79602
Telephone Number: 325.672.8417
Fax Number: 325.672.9002

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

Roof Replacement & Miscellaneous Work
City of Abilene
National Guard Armory
2641 S. 9th St.
Abilene, TX

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

Crenshaw Consulting Group, LLC
616 S. Coppel Rd.
Coppell, TX 75019
Telephone Number: 214.758.0785
Fax Number: 214.792.9548

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

TABLE OF ARTICLES

- 1 THE WORK OF THIS CONTRACT
- 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 3 CONTRACT SUM
- 4 PAYMENT
- 5 DISPUTE RESOLUTION
- 6 ENUMERATION OF CONTRACT DOCUMENTS
- 7 GENERAL PROVISIONS
- 8 OWNER
- 9 CONTRACTOR
- 10 ARCHITECT
- 11 SUBCONTRACTORS
- 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 13 CHANGES IN THE WORK
- 14 TIME
- 15 PAYMENTS AND COMPLETION
- 16 PROTECTION OF PERSONS AND PROPERTY
- 17 INSURANCE AND BONDS
- 18 CORRECTION OF WORK
- 19 MISCELLANEOUS PROVISIONS
- 20 TERMINATION OF THE CONTRACT
- 21 CLAIMS AND DISPUTES

EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

☐ The date of this Agreement.

Init.

☒ A date set forth in a notice to proceed issued by the Owner.

☐ Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check the appropriate box and complete the necessary information.)

☒ Not later than forty-five (45) calendar days from the date of commencement of the Work.

☐ By the following date:

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work
N/A

Substantial Completion Date

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

☒ Stipulated Sum, in accordance with Section 3.2 below

☐ Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

☐ Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be Three Hundred Forty-Six Thousand Eighty-Five Dollars (\$ 346,085.00), subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

N/A

§ 3.2.2 Unit prices, if any:

(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
Wood Nailers, 1 x 2	Lin. Ft.	\$2.50
Wood Nailers, 2 x 4	Lin. Ft.	\$5.00
Wood Nailers, 2 x 6	Lin. Ft.	\$7.00
Wood Nailers, 2 x 8	Lin. Ft.	\$9.50
Wood Nailers, 2 x 10	Lin. Ft.	\$11.75
Wood Nailers, 2 x 12	Lin. Ft.	\$14.50
CDX Plywood, 4 x 8 x ½"	Ea.	\$150.00

§ 3.2.3 Allowances, if any, included in the stipulated sum:

(Identify each allowance.)

Item	Price
N/A	

(Paragraph Deleted)

§ 3.5 Liquidated damages, if any:

(Paragraph Deleted)

(Insert terms and conditions for liquidated damages, if any.)

Per Section 00 73 00, Paragraph 1.14, Liquidated Damages:

(Paragraphs Deleted)

A. The Work's beginning and completion dates are essential conditions of the Contract Documents. The Work must begin as stated in the Notice to Proceed.

(Paragraphs Deleted)

B. The Contractor must proceed with the Work at a rate of progress to ensure full completion within the Contract Time. The Contractor and Owner expressly agree that the Contract Time for completing the Work is a reasonable time, considering the average climatic conditions and other factors prevailing in the locale.

(Paragraphs Deleted)

C. Because time is of the essence, liquidated damages apply to its performance. For each working day that any Work remains uncompleted after the final completion time as stated in the Contract and Notice to Proceed, the Owner will deduct the following amounts from money due or to be due to the Contractor.

(Paragraphs Deleted)

1. \$500 per day

(Paragraphs Deleted)

D. The sums of money deducted for failure to complete any portions of the Work on time are not a penalty, but are reasonable liquidated damages, per working day, for defaulting on the contracted final completion time. The Owner

and Contractor agree to fixed amounts because it is impracticable and extremely difficult to ascertain actual damages the Owner would sustain. The Contractor or Contractor's Surety must promptly pay any additional damages the Owner would sustain. The Contractor or Contractor's Surety must promptly pay any additional amounts if the amount the Owner can withhold from money due the Contractor does not cover the amount of liquidated damages.

(Table Deleted)

(Paragraphs Deleted)

E. The Owner will not charge the Contractor with liquidated damages or any excess cost when the Contractor has given prompt written notice to the Owner and Design Professional, and the Owner confirms, that the delay in completion of the Work is due to:

(Table Deleted)

(Paragraph Deleted)

1. To any preference, priority, or allocation order issued by the Owner;

(Paragraph Deleted)

2. To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including acts of God, of the public enemy, of the Owner, of another Contractor in performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; or

(Paragraphs Deleted)

3. To any delays of subcontractors caused by the same occurrences listed above.

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the Tenth day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the Tenth day of the following month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than Forty-Five (45) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

5% of Completed Work and 5% of Stored Material

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

1.1 % per annum

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

Final payment issued upon completion of final inspection, completion of all punch list items, acceptance of Work by Owner and Design Professional, and following receipt of all close-out documents as outlined in Section 01 77 00, Close-Out Procedures.

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 21.6 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other (Specify)

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

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

Init.

§ 6.1.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203–2013 incorporated into this Agreement.)

N/A

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Section 00 73 00	Supplementary Conditions	02/14/2020	1/11

§ 6.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
Section 00 00 01	Request for Proposals	02/14/2020	1/14
Section 00 00 02	Instructions to Offerors	02/14/2020	1/12
Section 00 10 00	List of Drawings	02/14/2020	1/1
Section 00 31 00	Project Information	02/14/2020	1/3
Section 00 42 00	Proposal Form	02/14/2020	1/3
Section 00 45 13	Prequalification	02/14/2020	1/2
Section 00 46 00	Supplemental Information	02/14/2020	1/1
Section 00 51 00	Notice of Award	02/14/2020	1/1
Section 00 52 00	Agreement Forms	02/14/2020	1/1
Section 00 55 00	Notice to Proceed	02/14/2020	1/1
Section 00 61 00	Bond Forms	02/14/2020	1/1
Section 00 62 00	Certificates and Other Forms	02/14/2020	1/6
Section 00 64 00	Prevailing Wage Rates	02/14/2020	1/1
Section 00 73 00	Supplementary Conditions	02/14/2020	1/11
Section 01 10 01	Hierarchy of Information	02/14/2020	1/1
Section 01 11 00	Summary of Work	02/14/2020	1/1
Section 01 20 00	Warranty Period	02/14/2020	1/1
Section 01 23 00	Alternates	02/14/2020	1/1
Section 01 26 00	Contract Modification Procedures	02/14/2020	1/1
Section 01 29 00	Payment Procedures	02/14/2020	1/1
Section 01 30 00	Administrative Provisions	02/14/2020	1/3
Section 01 31 00	Project Management and Coordination	02/14/2020	1/2
Section 01 31 01	Job Site Administration	02/14/2020	1/1
Section 01 33 00	Submittal Procedures	02/14/2020	1/1
Section 01 33 01	Shop Drawings, Product Data, and Samples	02/14/2020	1/4
Section 01 35 00	Special Procedures	02/14/2020	1/2
Section 01 45 00	Quality Control	02/14/2020	1/3
Section 01 47 00	Project Meetings	02/14/2020	1/2

Init.

Section 01 48 00	Construction Progress Schedules / Schedule of Values	02/14/2020	1/2
Section 01 50 00	Temporary Facilities and Control	02/14/2020	1/2
Section 01 60 00	Product Requirements	02/14/2020	1/4
Section 01 74 00	Cleaning	02/14/2020	1/2
Section 01 77 00	Closeout Procedures	02/14/2020	1/2
Section 02 41 00	Selective Demolition	02/14/2020	1/4
Section 06 10 00	Miscellaneous Carpentry	02/14/2020	1/5
Section 07 54 23	Thermoplastic Polyolefin Single-Ply Roofing	02/14/2020	1/17
Section 07 60 00	Sheet Metal Flashing & Trim	02/14/2020	1/8
Section 07 92 00	Joint Sealants	02/14/2020	1/3

§ 6.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
Sheet G-001	Cover Sheet, Location Map, Sheet Index	02/14/2020
A-001	General Notes, Roof Systems	02/14/2020
AS-100	Aerial Site Plan	02/14/2020
AD-100	Roof Plan (Demolition)	02/14/2020
A-100	Roof Plan (New Work)	02/14/2020
A-101	Roof Fastening Plan (New Work)	02/14/2020
A-500	Details	02/14/2020
A-501	Details	02/14/2020
A-502	Details	02/14/2020
A-503	Details	02/14/2020
S-01	Steel Pier Plan and Typical Details	08/05/2019

§ 6.1.6 The Addenda, if any:

Number	Date	Pages
1	03/03/2020	1/2
2	03/04/2020	1/1

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

(Paragraphs Deleted)

(Table Deleted)

(Paragraph Deleted)

Init.

(Table Deleted)

(Paragraphs Deleted)

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3 The Work

The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

§ 7.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect’s consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

§ 7.6 Digital Data Use and Transmission

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

Init.

§ 7.7 Building Information Models Use and Reliance

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

§ 7.8 Severability

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

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic
(Paragraph Deleted)

transmission.

§ 7.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 7.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.3 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

Init.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification.

§ 9.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

§ 9.5 Taxes

The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect.

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field

measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project.

§ 9.13 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce

other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10 ARCHITECT

§ 10.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 10.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 10.3 The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.4 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 10.5 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.6 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.8 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 10.9 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

§ 13.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 21.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 6, including all Modifications thereto;
- .2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information,

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- schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and
- .5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.

§ 15.3 Applications for Payment

§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 15.4 Certificates for Payment

§ 15.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount

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certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 15.4.4 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

§ 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 15.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 15.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;

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- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

(Paragraph Deleted)

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

Coverage shall be maintained for the duration of the contract and the warranty period.

§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars and Zero Cents (\$ 1000000.00) each occurrence, Two Million Dollars and Zero Cents (\$ 2000000.00) general aggregate, and One Million Dollars and Zero Cents (\$ 1000000.00) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal and advertising injury;

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- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 9.15.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than One Million Dollars and Zero Cents (\$ 1000000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation at statutory limits.

§ 17.1.6 Employers' Liability with policy limits not less than One Million Dollars and Zero Cents (\$ 1000000.00) each accident, One Million Dollars and Zero Cents (\$ 1000000.00) each employee, and One Million Dollars and Zero Cents (\$ 1000000.00) policy limit.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than Zero Dollars and Zero Cents (\$ 0.00) per claim and Zero Dollars and Zero Cents (\$ 0.00) in the aggregate.

§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than Zero Dollars and Zero Cents (\$ 0.00) per claim and Zero Dollars and Zero Cents (\$ 0.00) in the aggregate.

§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than Zero Dollars and Zero Cents (\$ 0.00) per claim and Zero Dollars and Zero Cents (\$ 0.00) in the aggregate.

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.14 Other Insurance Provided by the Contractor

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits
Workers' Compensation Coverage	Per Statutory Limits
Builder's Risk Insurance	100% of Contract Amount
Contractor and Subcontractor insurance shall comply with the insurance requirements outlined in Section 00 62 00.	

(Paragraphs Deleted)

Contractor and subcontractors must indemnify, hold harmless, and defend the
(Paragraph Deleted)

Owner from and against liability for any claims arising out of Contractor and subcontractors' work and activities conducted in connection with this Agreement. The Contractor is an independent contractor and is not, with respect to its acts or omissions, an agent or employee of the Owner. Contractor and subcontractor must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Contractor's and subcontractor's employees while in the vicinity where work is being done. The Owner is not liable or responsible for the negligence or intentional acts or omissions of the Contractor or its subcontractors, nor Contractor's or subcontractor's employees. The Owner 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 and its subcontractors. The
(Paragraph Deleted)

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

BOTH THE OWNER AND CONTRACTOR EXPRESSLY INTEND THIS CONTRACT'S INDEMNITY PROVISION TO REQUIRE CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE OWNER'S OWN NEGLIGENCE WHILE THE OWNER 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 OWNER.

§ 17.2 Owner's Insurance

§ 17.2.1 Owner's Liability Insurance

The Owner is self-insured as authorized under Texas statute.

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§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.

§ 17.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such

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procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 19.4 The Owner's representative:

(Name, address, email address and other information)

Robert Hanna
City of Abilene
555 Walnut Street, Suite 203
Abilene, TX 79601
Telephone Number: 325.676.6206
Email Address: Robert.Hanna@abilenetx.gov

§ 19.5 The Contractor's representative:

(Name, address, email address and other information)

Jim Barr
Barr Roofing Company
3602 S. Treadaway
Abilene, TX 79602
Telephone Number: 325.672.8417
Fax Number: 325.672.9002
Email Address: jim@barroofing.com

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Architect fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:

(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)

N/A

(Paragraphs Deleted)

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

OWNER *(Signature)*

Robert Hanna, City Manager

(Printed name and title)



CONTRACTOR *(Signature)*

Jim Barr, President

(Printed name and title)

Resolution: Award

Armory Building Roof Replacement &
Miscellaneous Work



- Proposals were received on March 6, 2020 for Roof Replacement and Miscellaneous Work for the Armory Building
- Six proposals were received and evaluated by Crenshaw Consulting Group LLC
- The best final proposal was received from Barr Roofing Company in the amount of \$346,085.00
- Crenshaw Consulting Group LLC recommends and Staff supports Award of this project to Barr Roofing Company



Questions





**City Council
Agenda Memo**

City Council Meeting Date: 4/9/2020

TO: Robert Hanna, City Manager

FROM: Michael Rice, Assistant City Manager

SUBJECT: 7. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding a Construction Contract to Lydick Hooks Roofing for the Environmental Laboratory Roof Replacement & Miscellaneous Work
(*Michael Rice*)

GENERAL INFORMATION

Proposals were received on March 6, 2020, for the Roof Replacement and Miscellaneous Work for the Environmental Laboratory. Three proposals were received and evaluated by Crenshaw Consulting Group LLC. Crenshaw Consulting Group LLC recommends award to Lydick Hooks Roofing in the amount of \$167,695.00.

SPECIAL CONSIDERATIONS

The contract requires substantial completion within 30 Calendar days from the date of commencement of the work.

FUNDING/FISCAL IMPACT

Funding is available in the Self Insurance Fund.

STAFF RECOMMENDATION

Staff recommends award to Lydick Hooks Roofing in the amount of \$167,695.00.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Environmental Lab Roof Contract Resolution.2020.04.09
2. Award Rec Letter - Environmental Lab.2020.04.02
3. Contract - Lydick Hooks - Environmental Lab Roof
4. Presentation-Env Lab Roof Repairs.2020.04.09

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH LYDICK
HOOKS ROOFING FOR THE ENVIRONMENTAL LABORATORY ROOF REPLACEMENT &
MISCELLANEOUS WORK**

WHEREAS, The Abilene Environmental Laboratory was damaged during the 2014 hail storm event; and,

WHEREAS, The City is working with Crenshaw Consulting Group, LLC to provide design services and inspection for roofing repairs; and,

WHEREAS, proposals were received on March 6, 2020 and three proposals were received and evaluated; and,

WHEREAS, the best final proposal was received from Lydick Hooks Roofing in the amount of \$167,695.00.

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

PART 1: The City Council authorizes the City Manager to execute an agreement with Lydick Hooks Roofing in the amount of \$167,695.00.

PART 2: That this resolution will take effect immediately upon its adoption.

ADOPTED this 9th day of April, 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

616 S. Coppel Rd.
Coppell, TX 75019



Phone (214) 758-0785
Fax (214) 792-9548

April 3, 2020

Mr. Michael Rice
Assistant City Manager
City of Abilene
Abilene, TX 79604

Tel: 325.676.6386
EM: michael.rice@abilenetx.gov

RE: Award Recommendation
City of Abilene
Replacement & Misc. Work
Environmental Laboratory Roof
CCG 1-131-9

Dear Mr. Rice:

Proposals were received for the referenced project on March 6, 2020. Three (3) contractors submitted qualifications and cost proposals. Crenshaw Consulting Group, LLC (CCG) evaluated the responsiveness of each proposal based on the evaluation criteria listed in the Request for Proposals. CCG assigned each proposer a score based on qualifications and cost.

CONTRACTOR	QUALIFICATIONS SCORE	PROPOSAL AMOUNT	COST PROPOSAL SCORE	TOTAL SCORE
J Reynolds & Co., Inc.	69	\$237,880.00	10	79
Barr Roofing Company	67	\$204,430.00	20	87
Lydick Hooks Roofing	62	\$167,695.00	30	92

The above tables summarizes the results of the proposal evaluation. Exhibit No. 1 includes the completed Proposal Evaluation and Proposal Tabulation.

CCG recommends award to Lydick Hooks Roofing in the amount of \$167,695.00. Upon approval, CCG will prepare contracts between the City of Abilene and Lydick Hooks Roofing.

If you have any questions, please call. Thank you.

Respectfully,



Vickie Crenshaw, P.E., RRC, RRO
President

VAC/ds

Enclosure

cc: Melissa Denson, City of Abilene, Melissa.Denson@abilenetx.gov

EXHIBIT 1



PROPOSAL EVALUATION
CB-2039

	PRICE		FIRM EXPERIENCE		PERSONNEL EXPERIENCE		PROJECT APPROACH		PAST EXPERIENCE WITH PROJECTS OF SIMILAR SIZE & COMPLEXITY WITH CITIES/MUNICIPALITIES		TOTAL SCORE
	30% of Score		20% of Score		20% of Score		20% of Score		10% of Score		
	Eval Ranking	30%	Eval Ranking	20%	Eval Ranking	20%	Eval Ranking	20%	Eval Ranking	10%	
CONTRACTOR											
J Reynolds & Co, Inc.	3	10	1	20	1	20	1	20	2	9	79
Barr Roofing Company	2	20	2	19	2	19	2	19	3	10	87
Lydick Hooks Roofing	1	30	3	18	3	18	3	18	1	8	92

		CONTRACTOR NAME: <i>J Reynolds & Co., Inc</i>			CONTRACTOR NAME: <i>Barr Roofing Company</i>			CONTRACTOR NAME: <i>Lydick Hooks Roofing Co.</i>
ITEM	SF	COST PROPOSAL	SF	COST PROPOSAL	SF	COST PROPOSAL	SF	COST PROPOSAL
Roofing	10,300	\$237,880.00	10,000	\$204,430.00	10,300	\$167,695.00		
TOTAL	10,300	\$237,880.00	10,000	\$204,430.00	10,300	\$167,695.00		

UNIT PRICES

Metal Deck Repair, x 12'	\$	7.50 /sqft	\$	720.00 /ea.	\$	216.00 /ea.
Metal Deck Rust Prep & Inhibitor, x 12'	\$	5.00 /sqft	\$	100.00 /ea.	\$	120.00 /ea.
Wood Nailers, 1 x 2	\$	2.75 /lin. ft.	\$	2.50 /lin. ft.	\$	2.00 /lin. ft.
Wood Nailers, 2 x 4	\$	3.00 /lin. ft.	\$	5.00 /lin. ft.	\$	2.50 /lin. ft.
Wood Nailers, 2 x 6	\$	3.50 /lin. ft.	\$	7.00 /lin. ft.	\$	3.00 /lin. ft.
Wood Nailers, 2 x 8	\$	4.00 /lin. ft.	\$	9.50 /lin. ft.	\$	3.50 /lin. ft.
Wood Nailers, 2 x 10	\$	4.50 /lin. ft.	\$	11.75 /lin. ft.	\$	4.00 /lin. ft.
Wood Nailers, 2 x 12	\$	5.00 /lin. ft.	\$	14.50 /lin. ft.	\$	4.50 /lin. ft.
CDX Plywood, 4 x 8 x 1/2"	\$	165.00 /ea.	\$	150.00 /ea.	\$	42.50 /ea.

CONSTRUCTION DURATION

Acknowledgement - 30 days	YES	YES	YES
---------------------------	-----	-----	-----

NUMBER OF COPIES TO BE SUBMITTED

One (1) Original Hard Copy	YES	YES	YES
One (1) Duplicate Hard Copy	YES	YES	YES
One (1) Digital Copy	YES	YES	NO

REQUIRED DOCUMENTS INCLUDED

AIA A305 - Qualification Statement	YES	YES	YES
Contractor's Qualification Affidavit	YES	YES	YES
Resumes of Key Personnel	YES	NO	YES
Project Management Plan	YES	YES	YES
Project Experience & References	YES	YES	YES
Subcontractor Listing	YES	YES	YES
Anti-Trust Form	YES	YES	YES
Proposal / Bid Bond	YES	YES	YES
Completed W-9 Form	YES	YES	YES
Sample Certificate of Insurance	YES	YES	YES

AIA® Document A104™ – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the Ninth day of April in the year 2020
(In words, indicate day, month and year.)

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

City of Abilene
555 Walnut Street, Suite 203
Abilene, TX 79601
Telephone Number: 325.676.6206
Fax Number: 325.676.6229

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

Lydick Hooks Roofing
401 China St.
Abilene, TX 79602
Telephone Number: 325.673.6408
Fax Number: 325.673.1438

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

Roof Replacement & Miscellaneous Work
City of Abilene
Environmental Laboratory
4209 East Lake Road
Abilene, TX

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

Crenshaw Consulting Group, LLC
616 S. Coppell Rd.
Coppell, TX 75019
Telephone Number: 214.758.0785
Fax Number: 214.792.9548

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

TABLE OF ARTICLES

- 1 THE WORK OF THIS CONTRACT
- 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 3 CONTRACT SUM
- 4 PAYMENT
- 5 DISPUTE RESOLUTION
- 6 ENUMERATION OF CONTRACT DOCUMENTS
- 7 GENERAL PROVISIONS
- 8 OWNER
- 9 CONTRACTOR
- 10 ARCHITECT
- 11 SUBCONTRACTORS
- 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 13 CHANGES IN THE WORK
- 14 TIME
- 15 PAYMENTS AND COMPLETION
- 16 PROTECTION OF PERSONS AND PROPERTY
- 17 INSURANCE AND BONDS
- 18 CORRECTION OF WORK
- 19 MISCELLANEOUS PROVISIONS
- 20 TERMINATION OF THE CONTRACT
- 21 CLAIMS AND DISPUTES

EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

☐ The date of this Agreement.

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User Notes:

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☒ A date set forth in a notice to proceed issued by the Owner.

☐ Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check the appropriate box and complete the necessary information.)

☒ Not later than thirty (30) calendar days from the date of commencement of the Work.

☐ By the following date:

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

N/A

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

☒ Stipulated Sum, in accordance with Section 3.2 below

☐ Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

☐ Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be One Hundred Sixty-Seven Thousand Six Hundred Ninety-Five Dollars (\$ 167,695.00), subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

N/A

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§ 3.2.2 Unit prices, if any:

(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
Metal Deck Repair, x 12'	Ea.	\$216.00
Metal Deck Rust Prep & Inhibitor, x 12'	Ea.	\$120.00
Wood Nailers, 1 x 2	Lin. Ft.	\$2.00
Wood Nailers, 2 x 4	Lin. Ft.	\$2.50
Wood Nailers, 2 x 6	Lin. Ft.	\$3.00
Wood Nailers, 2 x 8	Lin. Ft.	\$3.50
Wood Nailers, 2 x 10	Lin. Ft.	\$4.00
Wood Nailers, 2 x 12	Lin. Ft.	\$4.50
CDX Plywood, 4 x 8 x ½"	Ea.	\$42.50

§ 3.2.3 Allowances, if any, included in the stipulated sum:

(Identify each allowance.)

Item	Price
N/A	

(Paragraph Deleted)

§ 3.5 Liquidated damages, if any:

(Paragraph Deleted)

(Insert terms and conditions for liquidated damages, if any.)

Per Section 00 73 00, Paragraph 1.14, Liquidated Damages:

(Paragraphs Deleted)

A. The Work's beginning and completion dates are essential conditions of the Contract Documents. The Work must begin as stated in the Notice to Proceed.

(Paragraphs Deleted)

B. The Contractor must proceed with the Work at a rate of progress to ensure full completion within the Contract Time. The Contractor and Owner expressly agree that the Contract Time for completing the Work is a reasonable time, considering the average climatic conditions and other factors prevailing in the locale.

(Paragraphs Deleted)

C. Because time is of the essence, liquidated damages apply to its performance. For each working day that any Work remains uncompleted after the final completion time as stated in the Contract and Notice to Proceed, the Owner will deduct the following amounts from money due or to be due to the Contractor.

(Paragraphs Deleted)

1. \$500 per day

(Paragraphs Deleted)

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D. The sums of money deducted for failure to complete any portions of the Work on time are not a penalty, but are reasonable liquidated damages, per working day, for defaulting on the contracted final completion time. The Owner and Contractor agree to fixed amounts because it is impracticable and extremely difficult to ascertain actual damages the Owner would sustain. The Contractor or Contractor's Surety must promptly pay any additional damages the Owner would sustain. The Contractor or Contractor's Surety must promptly pay any additional amounts if the amount the Owner can withhold from money due the Contractor does not cover the amount of liquidated damages.

(Table Deleted)

(Paragraph Deleted)

E. The Owner will not charge the Contractor with liquidated damages or any excess cost when the Contractor has given prompt written notice to the Owner and Design Professional, and the Owner confirms, that the delay in completion of the Work is due to:

(Paragraph Deleted)

(Table Deleted)

(Paragraph Deleted)

1. To any preference, priority, or allocation order issued by the Owner;

(Paragraph Deleted)

2. To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including acts of God, of the public enemy, of the Owner, of another Contractor in performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; or

(Paragraphs Deleted)

3. To any delays of subcontractors caused by the same occurrences listed above.

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the Tenth day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the Tenth day of the following month. If an Application for Payment is received by the Architect after the date fixed above, payment

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shall be made by the Owner not later than Forty-Five (45) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

5% of Completed Work and 5% of Stored Material

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

1.1 % per annum

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

Final payment issued upon completion of final inspection, completion of all punch list items, acceptance of Work by Owner and Design Professional, and following receipt of all close-out documents as outlined in Section 01 77 00, Close-Out Procedures.

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 21.6 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

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

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

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(3B9ADA43)

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203–2013 incorporated into this Agreement.)

N/A

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Section 00 73 00	Supplementary Conditions	02/14/2020	1/11

§ 6.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
Section 00 00 01	Request for Proposals	02/14/2020	1/14
Section 00 00 02	Instructions to Offerors	02/14/2020	1/13
Section 00 10 00	List of Drawings	02/14/2020	1/1
Section 00 31 00	Project Information	02/14/2020	1/3
Section 00 42 00	Proposal Form	02/14/2020	1/3
Section 00 45 13	Prequalification	02/14/2020	1/2
Section 00 46 00	Supplemental Information	02/14/2020	1/1
Section 00 51 00	Notice of Award	02/14/2020	1/1
Section 00 52 00	Agreement Forms	02/14/2020	1/1
Section 00 55 00	Notice to Proceed	02/14/2020	1/1
Section 00 61 00	Bond Forms	02/14/2020	1/1
Section 00 62 00	Certificates and Other Forms	02/14/2020	1/6
Section 00 64 00	Prevailing Wage Rates	02/14/2020	1/1
Section 00 73 00	Supplementary Conditions	02/14/2020	1/11
Section 01 10 01	Hierarchy of Information	02/14/2020	1/1
Section 01 11 00	Summary of Work	02/14/2020	1/2
Section 01 20 00	Warranty Period	02/14/2020	1/1
Section 01 23 00	Alternates	02/14/2020	1/1
Section 01 26 00	Contract Modification Procedures	02/14/2020	1/1
Section 01 29 00	Payment Procedures	02/14/2020	1/1
Section 01 30 00	Administrative Provisions	02/14/2020	1/3
Section 01 31 00	Project Management and Coordination	02/14/2020	1/2
Section 01 31 01	Job Site Administration	02/14/2020	1/1
Section 01 33 00	Submittal Procedures	02/14/2020	1/1
Section 01 33 01	Shop Drawings, Product Data, and Samples	02/14/2020	1/4
Section 01 35 00	Special Procedures	02/14/2020	1/2
Section 01 45 00	Quality Control	02/14/2020	1/3

Section 01 47 00	Project Meetings	02/14/2020	1/2
Section 01 48 00	Construction Progress	02/14/2020	1/2
	Schedules / Schedule of Values		
Section 01 50 00	Temporary Facilities and Control	02/14/2020	1/2
Section 01 60 00	Product Requirements	02/14/2020	1/4
Section 01 74 00	Cleaning	02/14/2020	1/2
Section 01 77 00	Closeout Procedures	02/14/2020	1/2
Section 02 41 19	Selective Demolition	02/14/2020	1/3
Section 06 10 00	Miscellaneous Carpentry	02/14/2020	1/4
Section 07 51 00	Built-Up Bituminous Roofing	02/14/2020	1/22
Section 07 60 00	Flashing and Sheet Metal	02/14/202	1/10

§ 6.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
Sheet G-001	Cover Sheet, Location Map, Sheet Index	02/14/2020
A-001	General Notes, Roof Systems	02/14/2020
AS-100	Aerial Site Plan	02/14/2020
AD-100	Roof Plan (Demolition)	02/14/2020
A-100	Roof Plan (New Work)	02/14/2020
A-500	Details	02/14/2020
A-501	Details	02/14/2020
A-502	Details	02/14/2020

§ 6.1.6 The Addenda, if any:

Number	Date	Pages
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Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

(Paragraphs Deleted)

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(Paragraphs Deleted)

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 7.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 7.6 Digital Data Use and Transmission

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

§ 7.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or

relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 7.8 Severability

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

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic
(Paragraph Deleted)

transmission.

§ 7.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 7.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.3 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated;

however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

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§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification.

§ 9.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

§ 9.5 Taxes

The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect.

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

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§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project.

§ 9.13 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the

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indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10 ARCHITECT

§ 10.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 10.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 10.3 The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.4 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 10.5 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.6 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.8 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 10.9 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or

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Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

§ 13.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

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§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 21.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 6, including all Modifications thereto;
- .2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and
- .5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.

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§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.

§ 15.3 Applications for Payment

§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 15.4 Certificates for Payment

§ 15.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed

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construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 15.4.4 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

§ 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 15.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of

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items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 15.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

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The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

(Paragraph Deleted)

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

Coverage shall be maintained for the duration of the contract and the warranty period.

§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars and Zero Cents (\$ 1000000.00) each occurrence, Two Million Dollars and Zero Cents (\$ 2000000.00) general aggregate, and One Million Dollars and Zero Cents (\$ 1000000.00) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 9.15.

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§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than One Million Dollars and Zero Cents (\$ 1000000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation at statutory limits.

§ 17.1.6 Employers' Liability with policy limits not less than One Million Dollars and Zero Cents (\$ 1000000.00) each accident, One Million Dollars and Zero Cents (\$ 1000000.00) each employee, and One Million Dollars and Zero Cents (\$ 1000000.00) policy limit.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than Zero Dollars and Zero Cents (\$ 0.00) per claim and Zero Dollars and Zero Cents (\$ 0.00) in the aggregate.

§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than Zero Dollars and Zero Cents (\$ 0.00) per claim and Zero Dollars and Zero Cents (\$ 0.00) in the aggregate.

§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than Zero Dollars and Zero Cents (\$ 0.00) per claim and Zero Dollars and Zero Cents (\$ 0.00) in the aggregate.

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Contractor.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The

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furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.14 Other Insurance Provided by the Contractor

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits
Workers' Compensation Coverage	Per Statutory Limits
Builder's Risk Insurance	100% of Contract Amount
Contractor and Subcontractor insurance	
shall comply with the insurance	
requirements outlined in	
Section 00 62 00.	

(Paragraphs Deleted)

Contractor and subcontractors must indemnify, hold harmless, and defend the
(Paragraph Deleted)

Owner from and against liability for any claims arising out of Contractor and subcontractors' work and activities conducted in connection with this Agreement. The Contractor is an independent contractor and is not, with respect to its acts or omissions, an agent or employee of the Owner. Contractor and subcontractor must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Contractor's and subcontractor's employees while in the vicinity where work is being done. The Owner is not liable or responsible for the negligence or intentional acts or omissions of the Contractor or its subcontractors, nor Contractor's or subcontractor's employees. The Owner 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 and its subcontractors. The
(Paragraph Deleted)

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

BOTH THE OWNER AND CONTRACTOR EXPRESSLY INTEND THIS CONTRACT'S INDEMNITY PROVISION TO REQUIRE CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE OWNER'S OWN NEGLIGENCE WHILE THE OWNER 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 OWNER.

§ 17.2 Owner's Insurance

§ 17.2.1 Owner's Liability Insurance

The Owner is self-insured as authorized under Texas statute.

(Table Deleted)

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.

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§ 17.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 19.4 The Owner's representative:

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(Name, address, email address and other information)

Robert Hanna
City of Abilene
555 Walnut Street, Suite 203
Abilene, TX 79601
Telephone Number: 325.676.6206
Email Address: Robert.Hanna@abilenetx.gov

§ 19.5 The Contractor's representative:

(Name, address, email address and other information)

Jerry Siewert
Lydick Hooks Roofing
401 China Street
Abilene, TX 79602
Telephone Number: 325.673.6408
Fax Number: 325.673.1438
Email Address: lhrjerry@camalott.com

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Architect fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case

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may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:

(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)

N/A

(Paragraphs Deleted)

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

OWNER *(Signature)*

Robert Hanna, City Manager

(Printed name and title)



CONTRACTOR *(Signature)*

Jerry Siewert, President

(Printed name and title)

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Resolution: Award

Environmental Laboratory Roof
Replacement & Miscellaneous Work



- Proposals were received on March 6, 2020 for Roof Replacement and Miscellaneous Work for the Environmental Laboratory
- Three proposals were received and evaluated by Crenshaw Consulting Group LLC
- The best final proposal was received from Lydick Hooks Roofing in the amount of \$167,695.00
- Crenshaw Consulting Group LLC recommends and Staff supports Award of this project to Lydick Hooks Roofing Company



Questions





**City Council
Agenda Memo**

City Council Meeting Date: 4/9/2020

TO: Robert Hanna, City Manager

FROM: Mike Warrix, Director

SUBJECT: 8. Ordinance (Final Reading) TC-2020-04: Receive a Report, Hold a Discussion and Public Hearing, 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 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

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)

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.: ____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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REPRESENTATIVE: Josh Lunsford

TITLE: Construction Supervisor

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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

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.: 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(2of2)

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REPRESENTATIVE: Kevin Jaeger

TITLE: Utility Engineer

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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.

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: 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: 



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: 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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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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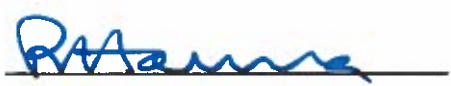
Name: CITY OF ABILENE
Address: 534 CYPRESS ST

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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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: 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 read "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

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: 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

RE: Thoroughfare Closure Application Number TC-2020-04

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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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

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For the PLANNING & ZONING COMMISSION

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CASE #: TC 2020-04

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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

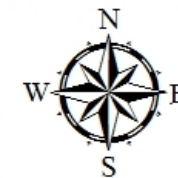
Case:	TC-2020-04
Owner:	City of Abilene
Request:	Thoroughfare abandonment and Alley abandonment for Abilene Downtown Convention Center Hotel
Location:	80' wide right-of-way for Cedar Street extending 300' between north line of right-of-way for North 5 th Street and south line of right-of-way for North 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**
- Planning and Zoning Recommendation: **Approval**



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 4/9/2020

TO: Robert Hanna, City Manager

FROM: Mike Warrix, Director

SUBJECT: **9. Ordinance (Final Reading) TC-2020-05:** Receive a Report, Hold a Discussion and Public Hearing, 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

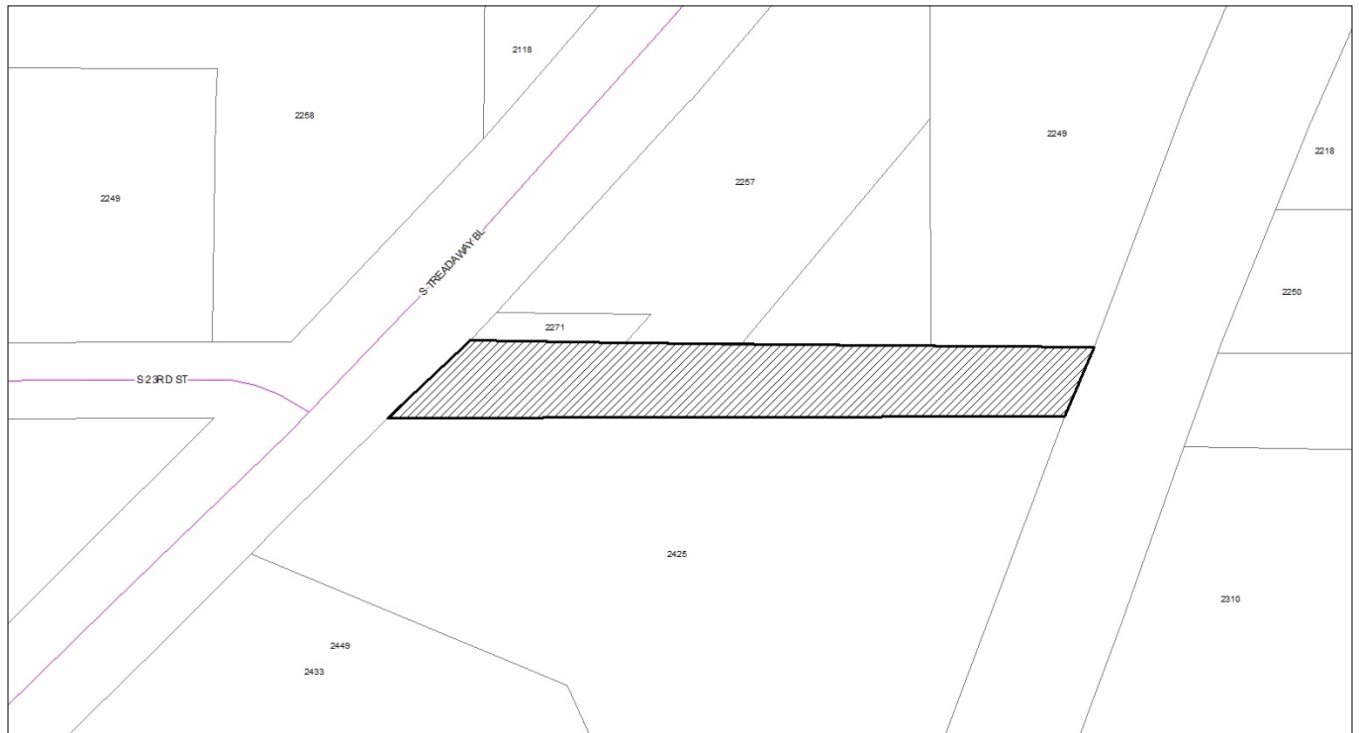
APPROVED:

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

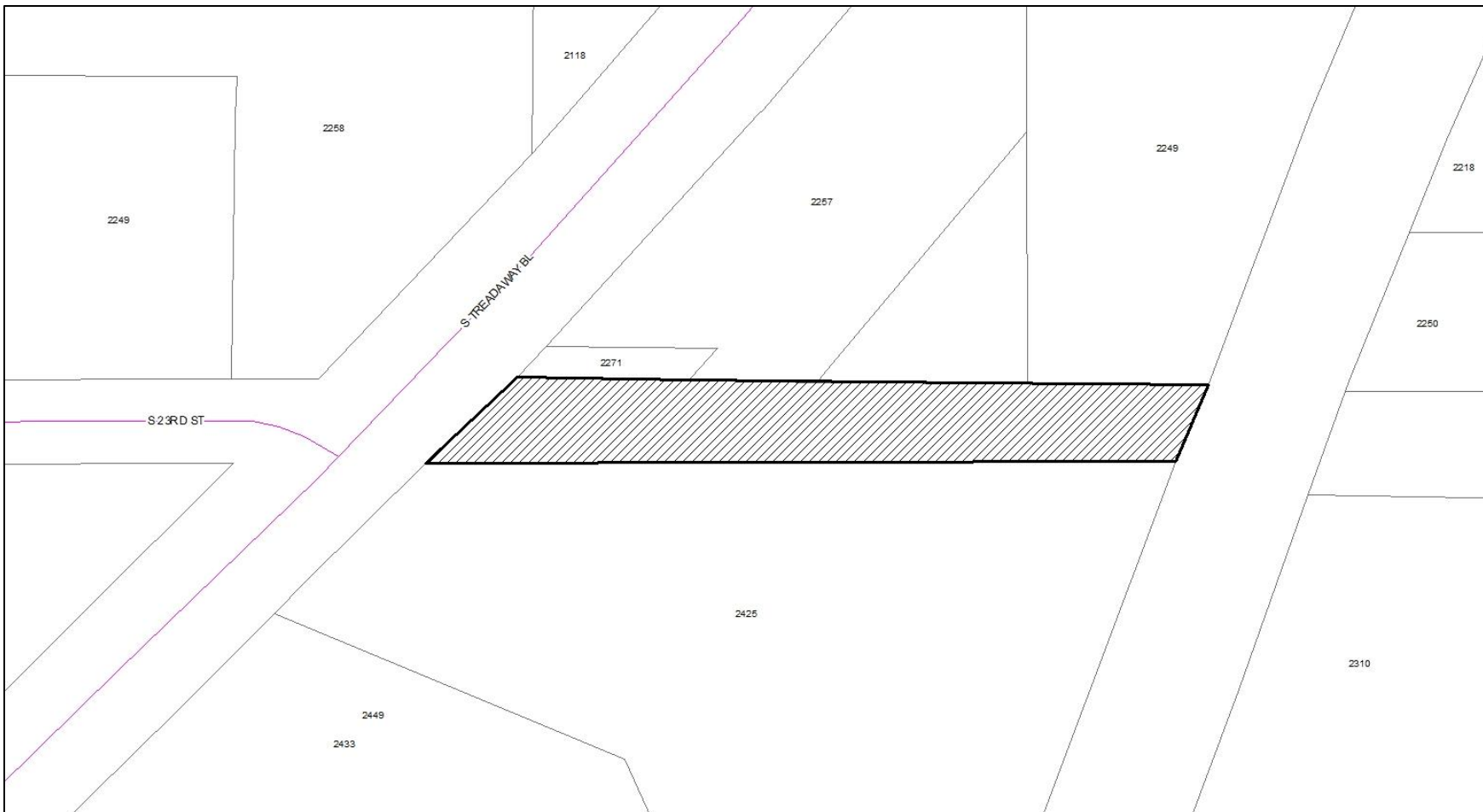
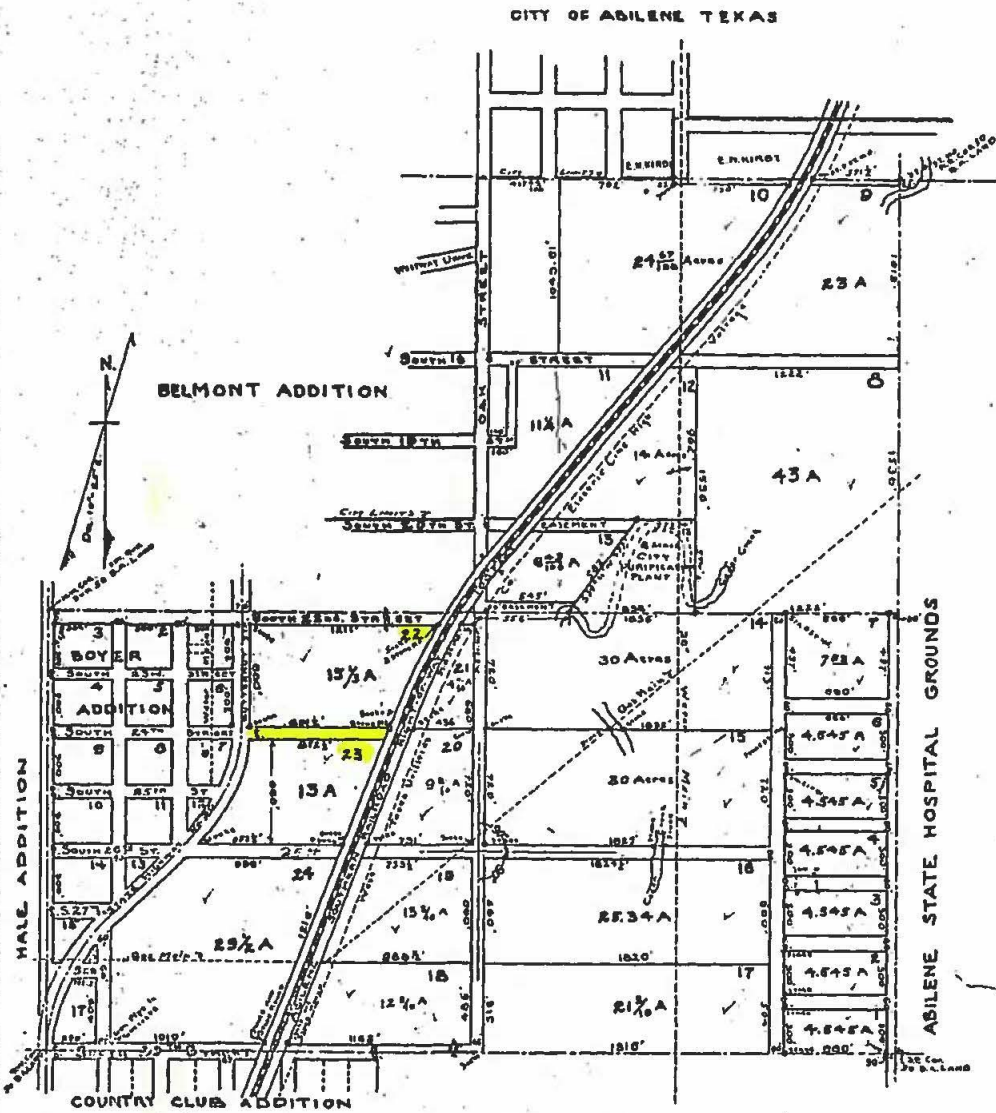


EXHIBIT 'A'

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 W. 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

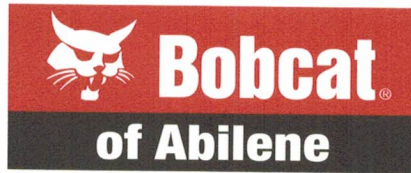
I hereby certify that I am the owner of the property and further certify that the information provided on this development application is true and correct. I hereby designate the aforementioned agent to act on my behalf for submittal, processing, representation, and/or presentation of this development 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: _____ 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, appearing to be "J. S.", written over 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 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

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

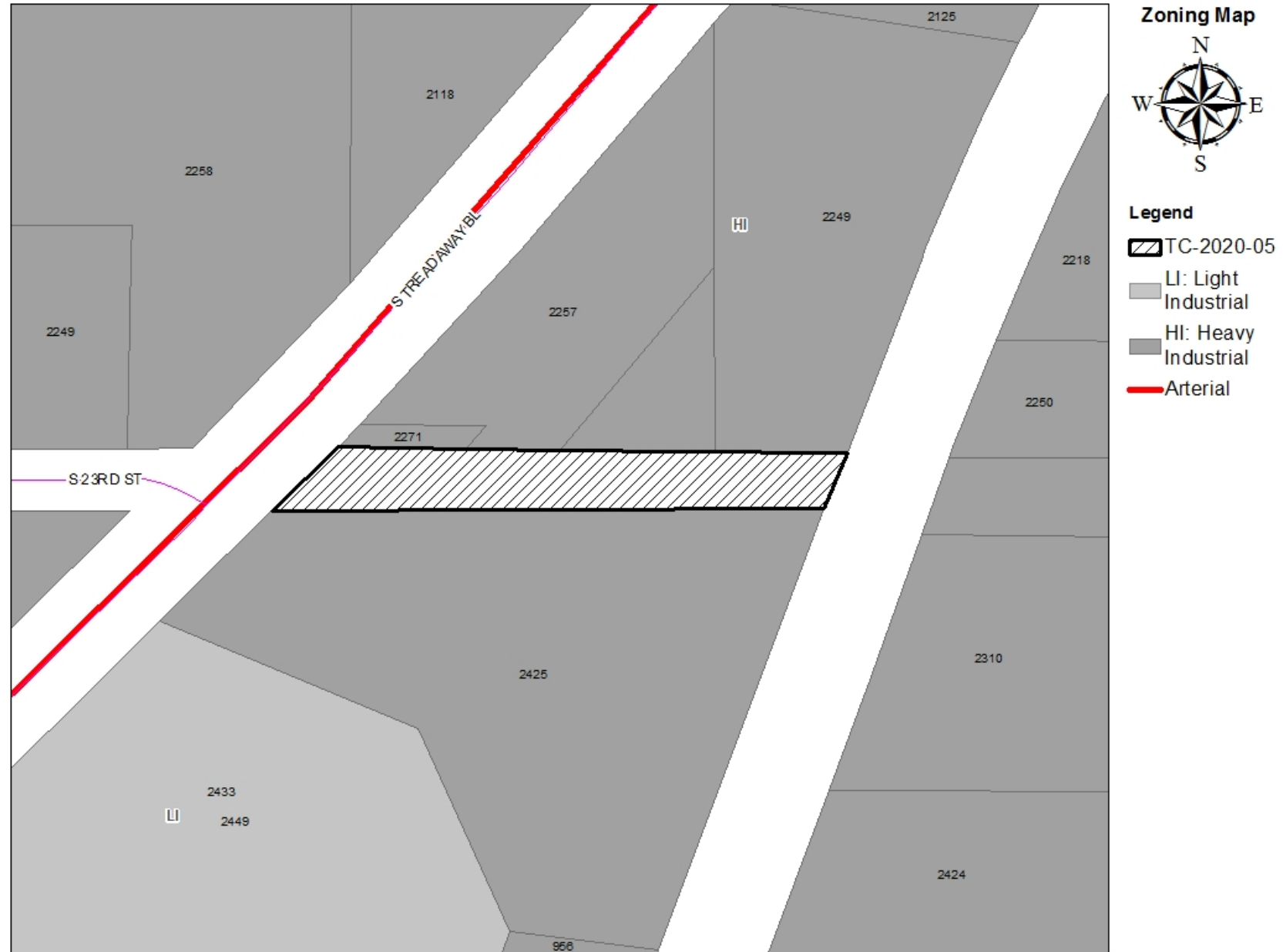


Legend

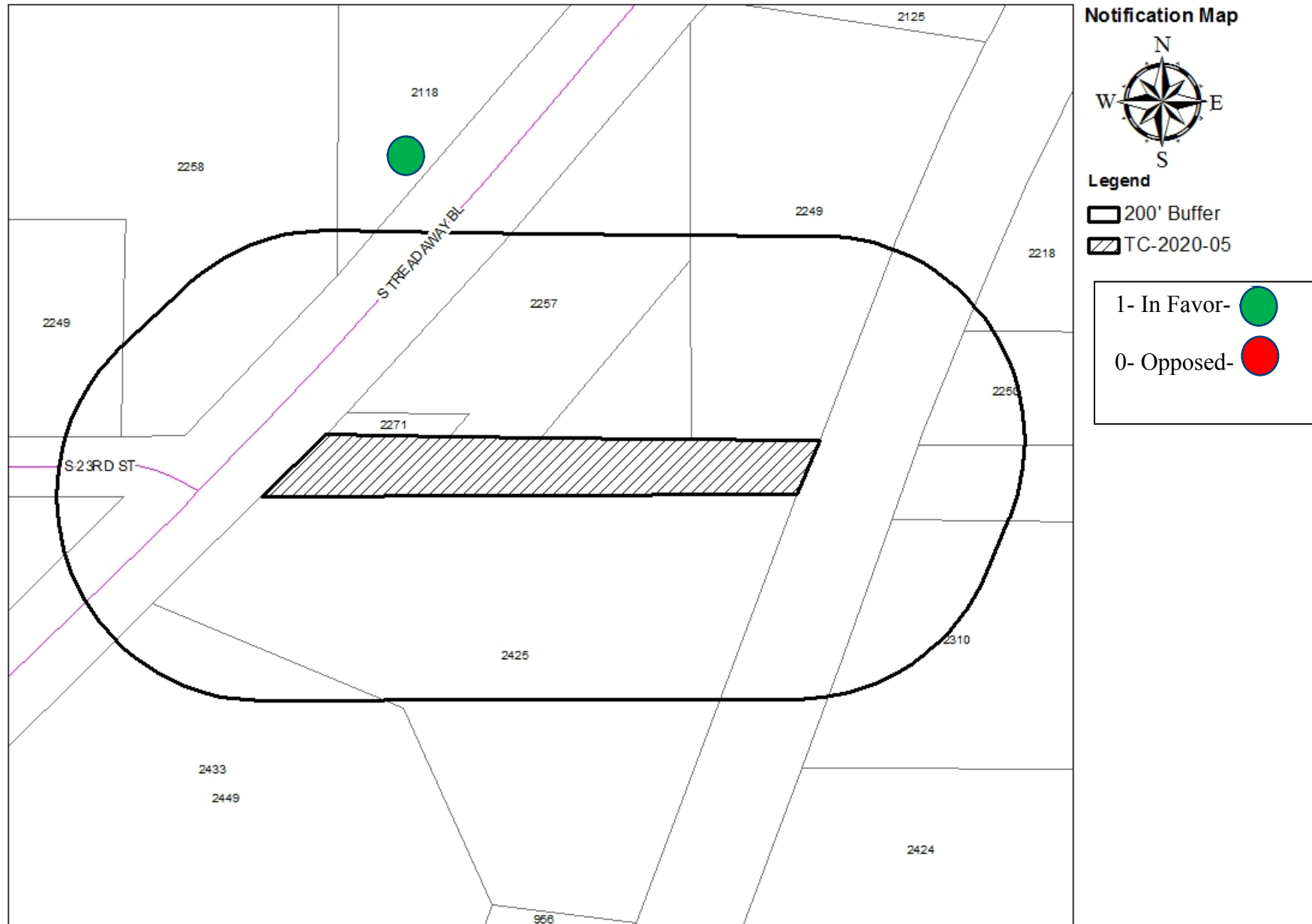
 TC-2020-05



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**
- Planning and Zoning Recommendation: **Approval**



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 4/9/2020

TO: Honorable Mayor and 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

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

None



**City Council
Agenda Memo**

City Council Meeting Date: 4/9/2020

TO:

FROM: Shawna Atkinson, City Secretary

SUBJECT: 11.

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

- Development Corporation of Abilene
- Mayor's Downtown Task Force
- West Central Texas Municipal Water District Board

GENERAL INFORMATION

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

SPECIAL CONSIDERATIONS

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

FUNDING/FISCAL IMPACT

No cost consideration to the city.

STAFF RECOMMENDATION

(Re)Appointment

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

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

RESOLUTION NO. _____

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

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

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

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

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

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

PASSED this 9th day of April, 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

RESOLUTION NO. _____
EXHIBIT "A"

Board	Term End Date
<i>Development Corporation of Abilene</i>	
Floyd Miller [New]	November 2022 (unexpired term)
<i>Mayor's Downtown Task Force</i>	
Cameron Wiley [New]	
Nichole Reno [New]	
<i>West Central Texas Municipal Water District Board</i>	
Joe Canon [Reappointment]	May 2022
Sam Chase [Reappointment]	May 2022

Resolution:

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

- Development Corporation of Abilene
- Mayor's Downtown Task Force
- West Central Texas Municipal Water District Board





**City Council
Agenda Memo**

City Council Meeting Date: 4/9/2020

TO: Honorable Mayor and Council Members

FROM: Misty Mayo

SUBJECT: 12. 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 ISO. (Misty Mayo)

GENERAL INFORMATION

Information will be provided during meeting.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. City Resolution - Project ISO (1)
2. Project ISO.City Council.4.9.20

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
APPROVING THE DEVELOPMENT CORPORATION OF ABILENE, INC.'S ("DCOA")
INCENTIVE, INCLUDING A CONTRACT FOR THE SALE OF A BUILDING, FOR
PROJECT ISO ("COMPANY").**

WHEREAS, Company provides "build-to-print" machining, fabrication, and manufacturing services for the aerospace, oilfield, medical, and automotive industries; and

WHEREAS, Company and the DCOA have determined that 1221 Fulwiler Road, Abilene, Texas 79603, described as Lot 301 (8.376 acres) in **Exhibit A**, attached hereto and fully incorporated herein, together with all improvements thereon (the "**Property**"), is suitable for the Company's expansion in Abilene; and,

WHEREAS, the boundary lines separating Lots 301, 302, 303, and 304 and the other changes shown on **Exhibit A** represent a proposed replat of the Property so that the buildings located thereon can be separated into separate tracts, as determined by the DCOA's Chief Executive Officer in her reasonable discretion; and,

WHEREAS, on March 27, 2020 the DCOA approved Resolution No. DCOA-2020.21 (the "**DCOA Resolution**") authorizing the DCOA's Chief Executive Officer to enter into an agreement with the Company for (i) the sale of the Property to the Company for \$2,500,000, with the DCOA financing the \$2,500,000 purchase price on a 10 year note with a 0% interest rate and (ii) an incentive for Project ISO in an amount not to exceed \$900,000 (the "**Incentive Package**") in exchange for the Company's retention of 27 full-time employees ("**FTEs**") and creation of 70 new FTEs for total employment of 97 FTEs at the end of a ten-year period; and,

WHEREAS, the DCOA requests that the City of Abilene approve the DCOA's Incentive Package with the Company as set forth in the DCOA Resolution.

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

PART 1. The City of Abilene hereby authorizes, in exchange for the Company's retention of 27 FTEs and creation of 70 new FTEs for total employment of 97 FTEs at the end of a ten-year period, the DCOA to (i) sell the Property to the Company for \$2,500,000, with the DCOA financing the \$2,500,000 purchase price on a 10 year note with a 0% interest rate and (ii) provide the Company with an incentive in an amount not to exceed \$900,000, under the terms and as set forth in the DCOA Resolution.

PART 2. The DCOA's budget is hereby amended to include the expenditures described herein.

PART 3. This Resolution takes effect immediately upon its adoption.

ADOPTED this ____ day of April, 2020.

ATTEST:

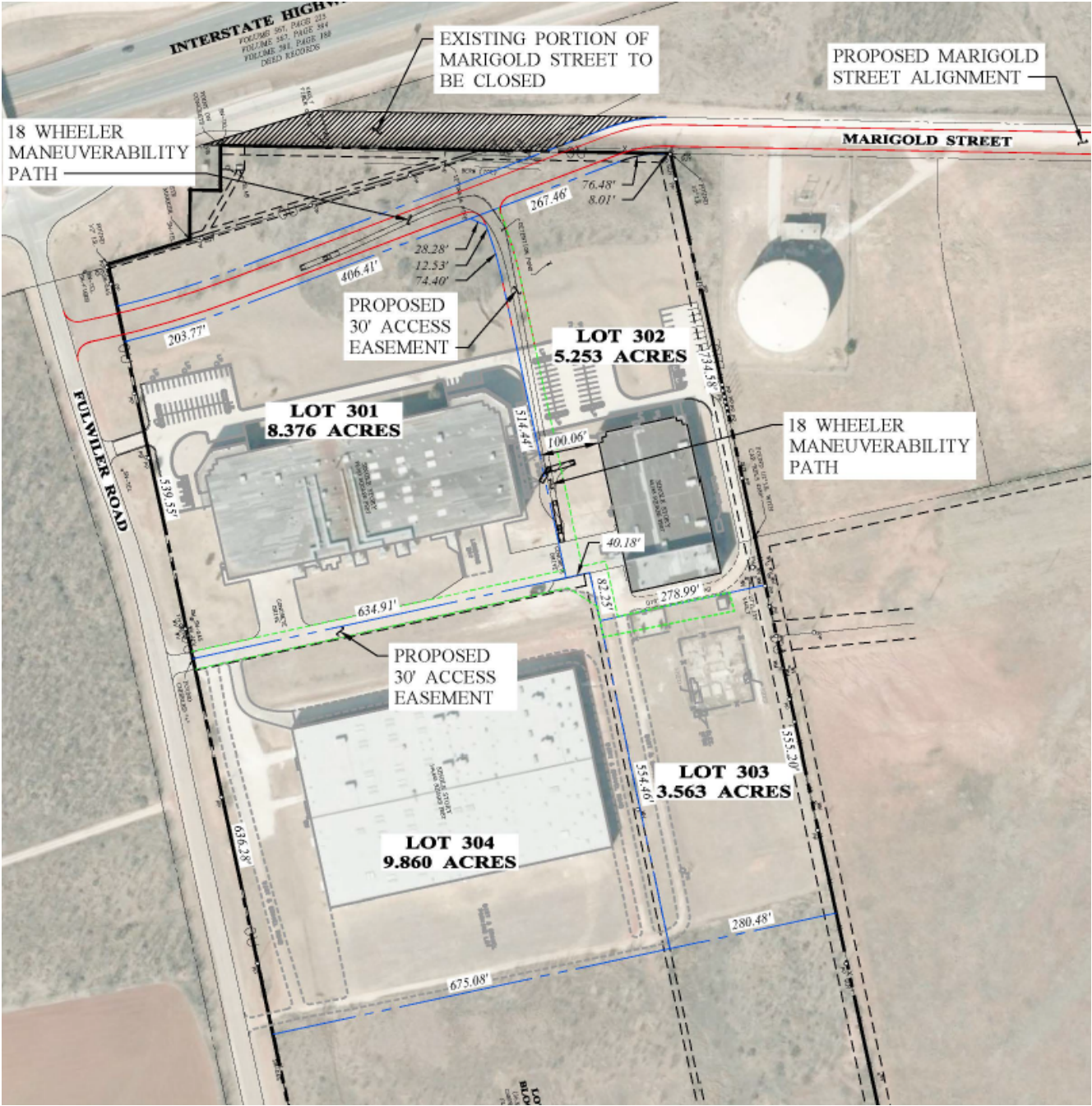
Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

Exhibit A





HARTMANN'S – PROJECT ISO
CITY COUNCIL MEETING
APRIL 9, 2020

ECONOMIC DEVELOPMENT STRATEGIC PLAN

I

BUSINESS ATTRACTION

*Aggressively market &
promote Abilene
as a destination for
new investment.*

II

BUSINESS RETENTION & EXPANSION

*Spur and facilitate the
growth and prosperity of
existing businesses.*

III

ENTREPRENEURSHIP

*Develop an ecosystem that
spawns and supports
innovative businesses.*

MARKETING &
BRAND AWARENESS

WORKFORCE &
TALENT DEVELOPMENT



Develop**Abilene**
DEVELOPMENT CORPORATION OF ABILENE

HARTMANN'S INC.

Company Background

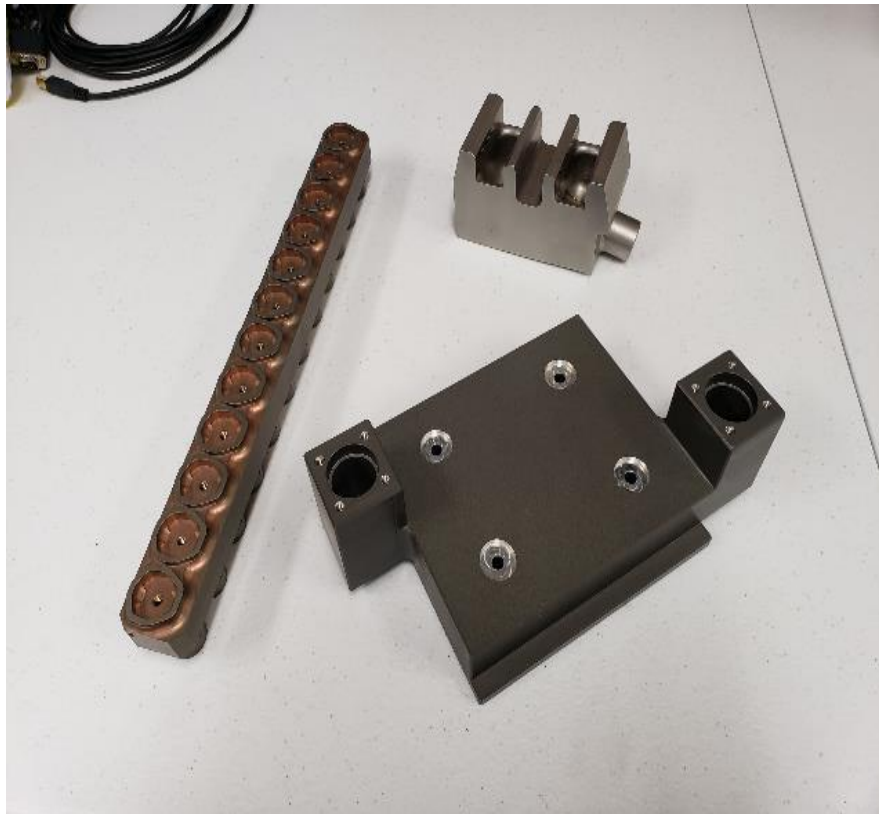
- Started in Abilene in 1955
- Currently 27 FTE's
- Manufactures a variety of parts from various metals
- 2018 - Enrolled into the Business Retention & Expansion (BRE) Program
- Experiencing strong growth; placing strain on current capacity



CUSTOMER BASE



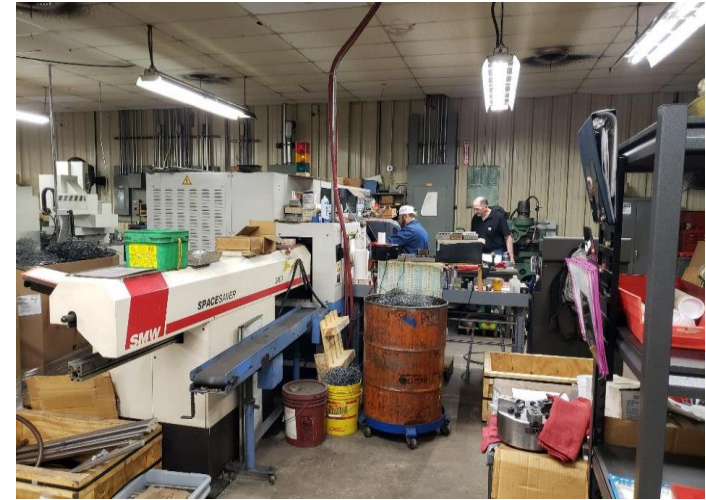
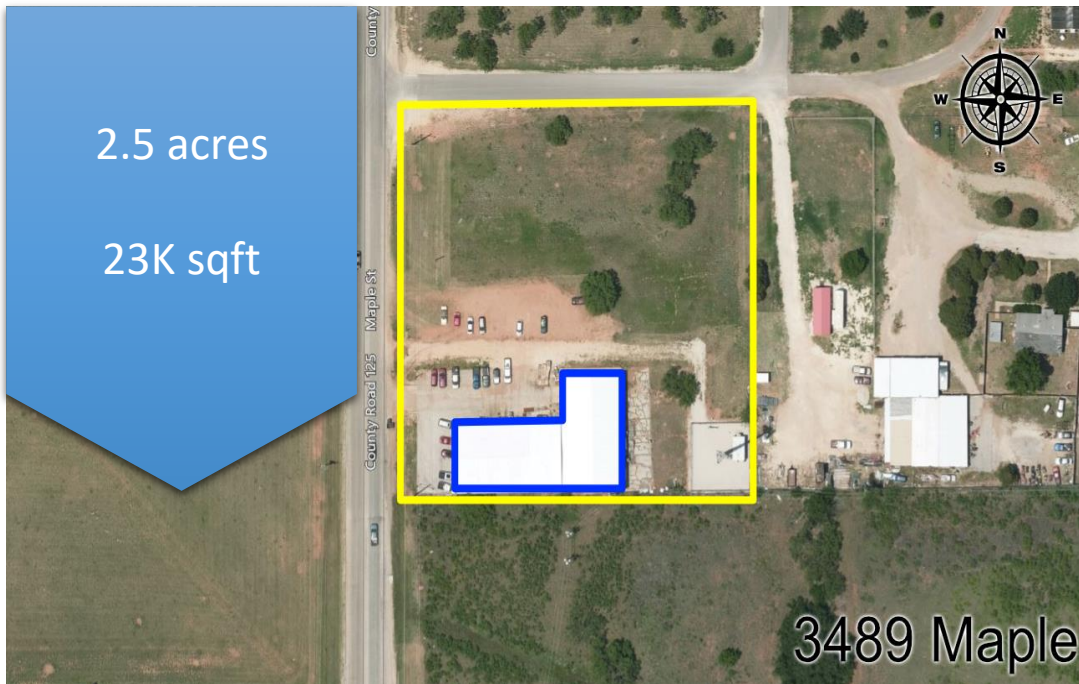
PRODUCT LINE



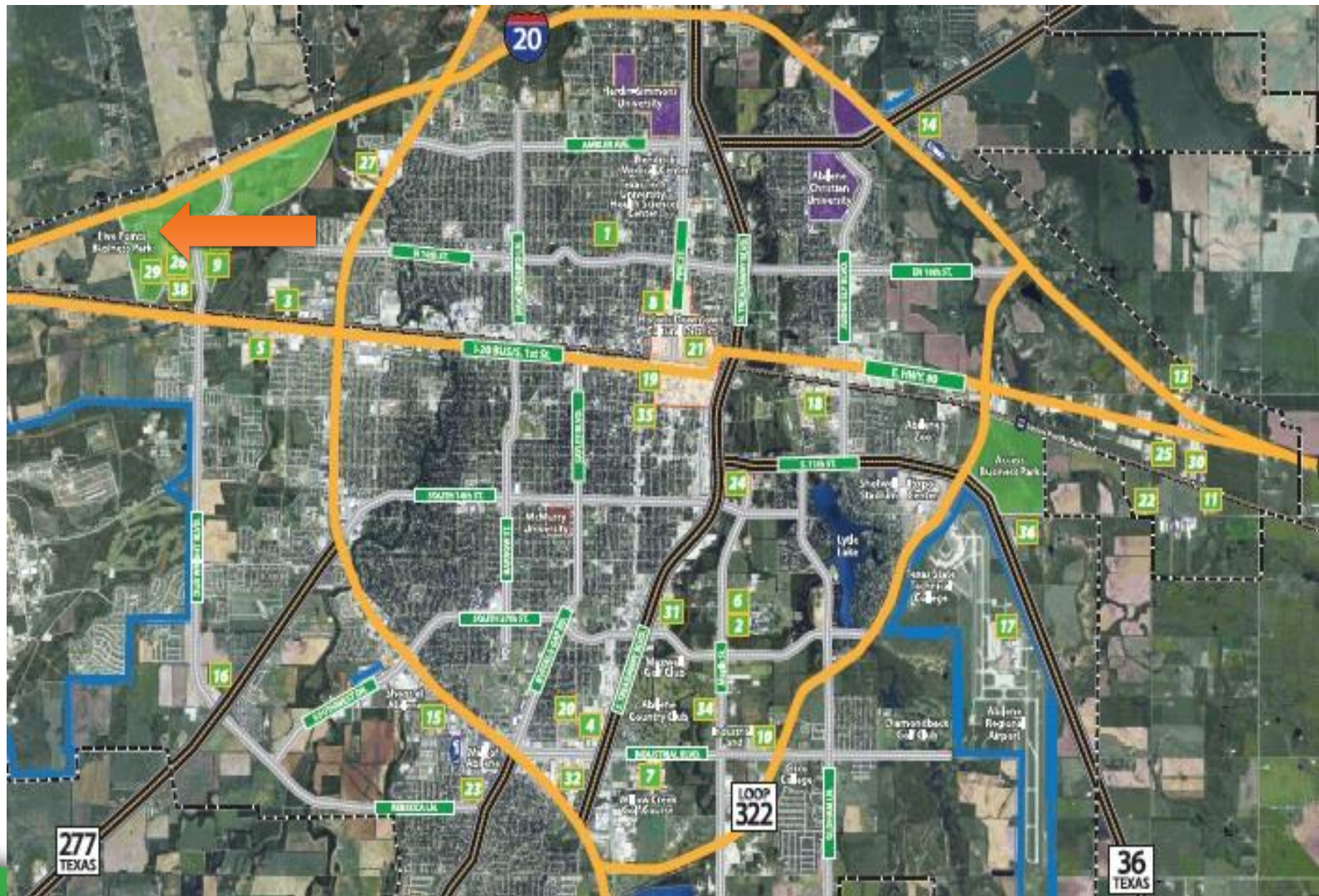
EXISTING FACILITY

2.5 acres

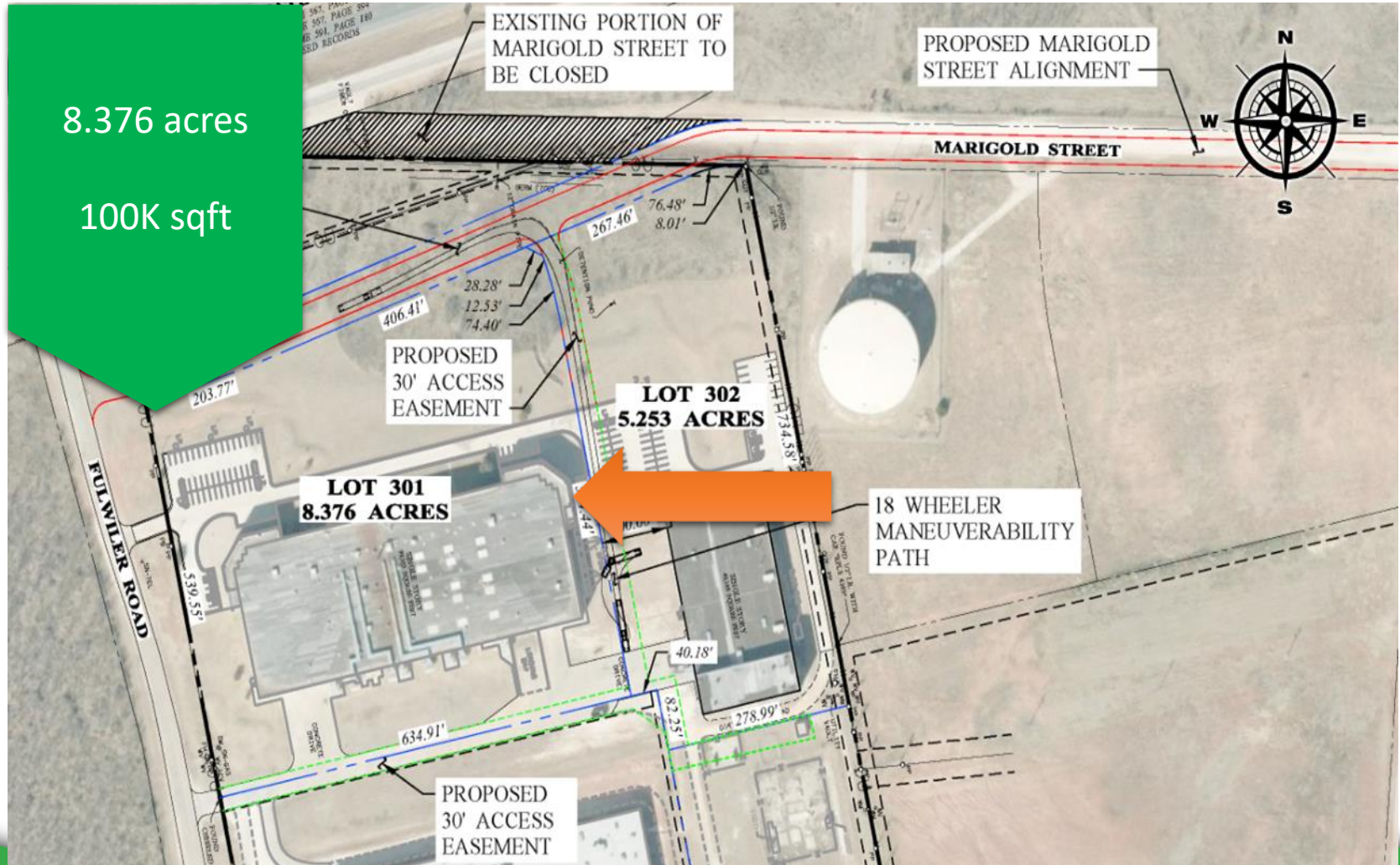
23K sqft



FIVE POINTS BUSINESS PARK – BUILDING LOCATION



NEW FACILITY AT FIVE POINTS BUSINESS PARK



PROJECT SUMMARY

- Purchase 100,000 sf Building A and 8.376 acres for \$2.5M
- Retain 27 FTE's
- Create 70 FTE's
- 70 New Jobs = \$48K avg annual wage
- 70 New Jobs = \$29.7M in new payroll over 10 years
- 97 Total Jobs = \$49.6M in payroll over 10 years



HARTMANN'S INC. – PROJECT ISO

- Building A with land valued at \$2.5M
- Purchase 100,000 sf building and 8.376 acres over 10 years
- Zero carrying costs for \$2.5M loan over 10 years
- Reimbursement of expenses related to building improvements & equipment & moving equipment, over 3 years = **\$900,000**
- **Incentive is \$900,000 = 7.5%**
- **Net Benefits to the community over 10 years = \$1,874,339** *(City, County & School District)*



**City Council
Agenda Memo**

City Council Meeting Date: 4/9/2020

TO: Honorable Mayor and Council Members

FROM: Misty Mayo

SUBJECT: 13. 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 Windmill. (Misty Mayo)

GENERAL INFORMATION

Information will be provided during meeting.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. City Resolution - Project Windmill (1)
2. 2020-02-28 Project Windmill

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
APPROVING THE DEVELOPMENT CORPORATION OF ABILENE, INC.'S ("DCOA")
INCENTIVE, INCLUDING A CONTRACT FOR THE SALE OF A BUILDING, FOR
PROJECT WINDMILL ("COMPANY").**

WHEREAS, Company is engaged in the commercial preparation, baking, and distribution of cookies and crackers; and

WHEREAS, Company and the DCOA have determined that 3901 Vine Street, 4009 Vine Street, 4109 Vine Street, 4125 Vine Street, 4141 Vine Street, and 1782 Industrial Boulevard, each of which represent one contiguous tract of land in Abilene (collectively the "**Property**"), is suitable for the Company's warehouse and office needs; and,

WHEREAS, the DCOA estimates the value of the Property to be \$3,000,000; and,

WHEREAS, on February 28, 2020 the DCOA approved Resolution No. DCOA-2020.19 (the "**DCOA Resolution**") authorizing the DCOA's CEO to enter into an agreement with the Company for (i) the sale of the Property to the Company for \$1,000,000, with the DCOA financing the purchase price on a 3 year note with an interest rate of 0% and (ii) an incentive for Project Windmill in an amount not to exceed \$2,000,000 (the "**Incentive Package**") in exchange for the Company's retention of 550 full-time employees ("**FTEs**") over a three-year period; and,

WHEREAS, the DCOA requests that the City of Abilene approve the DCOA's Incentive Package with the Company as set forth in the DCOA Resolution.

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

PART 1. The City of Abilene hereby authorizes, under the terms and as set forth in the DCOA Resolution, in exchange for the Company's retention of 550 FTEs over a three-year period, the DCOA to (i) sell the Property to the Company for \$1,000,000, with the DCOA financing the purchase price on a 3 year note with an interest rate of 0% and (ii) provide the Company with an incentive in an amount not to exceed \$2,000,000.

PART 2. The DCOA's budget is hereby amended to include the expenditures described herein.

PART 3. This Resolution takes effect immediately upon its adoption.

ADOPTED this ____ day of April, 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

BUSINESS RETENTION

PROJECT WINDMILL - ABIMAR



- Purchase Vine Street Property for \$1M
- 0% loan for three years
- 187,162 sqft building plus 9.95 acres
- Performance agreement for \$2M retention & enticement for warehouse expansion
- Abimar currently leases the building/warehouse facility
- Assumes Rider Lease and Billboard Lease
- Current employment 550 FTEs
- Possible expansion of Production Line (13 jobs + estimated \$2.5M Capex)



**City Council
Agenda Memo**

City Council Meeting Date: 4/9/2020

TO: Honorable Mayor & Members of City Council

FROM: Robert Hanna, City Manager

SUBJECT: 14. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Funding Request from United Way of Abilene for Pass Through Funding for Partner Agencies Under the City's Chapter 380 Agreement (*Robert Hanna*)

GENERAL INFORMATION

Information will be provided at the meeting.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. United Way - 2020 Resolution Supplement 380 Agreement United Way
2. 14

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
AUTHORIZING THE CITY MANAGER TO SUPPLEMENT THE CHAPTER 380
AGREEMENT WITH THE UNITED WAY OF ABILENE**

WHEREAS, on March 23, 2020, the City Council authorized the City Manager to execute a Chapter 380 Economic Development Agreement with the United Way of Abilene to provide staffing of city employees, and provide other economic incentives, to assist the United Way of Abilene to provide residential housing payment assistance, and to provide staffing of daycare facilities, food pantries and other United Way member entities during the COVID-19 pandemic and local state of disaster, which will allow the Abilene business community to focus on their local businesses; and

WHEREAS, the United Way of Abilene is requesting the sum of \$250,000 to assist the United Way of Abilene and its partner agencies with residential housing payment assistance, day care services, and such other basic needs that may be needed during the COVID-19 pandemic and local state of disaster; and

WHEREAS, the City hereby finds that supplementing the Chapter 380 economic development Agreement by providing United Way of Abilene with the sum of \$250,000 embodies an eligible “project” and clearly promotes economic development in the City and, as such, meets the requisite under Chapter 380 of the Texas Local Government Code and is in the best interests of the City.

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

Part 1: The City Council authorizes the City Manager to execute a supplement to the Chapter 380 Economic Development Agreement with the United Way of Abilene to provide the sum of \$250,000 to assist the United Way of Abilene and its partner agencies to provide residential housing payment assistance, day care services, and such other basic needs that may be needed during the COVID-19 pandemic and local state of disaster.

Part 2: That the statements and findings in the above WHEREAS clauses are hereby affirmed and adopted.

Part 3: That is Resolution takes effect immediately upon its adoption.

ADOPTED this 9th day of April, 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

Resolution:
**Funding Request from United Way of
Abilene for Pass Through Funding for
Partner Agencies Under the City's Chapter
380 Agreement**





**City Council
Agenda Memo**

City Council Meeting Date: 4/9/2020

TO: Honorable Mayor & Members of City Council

FROM: Robert Hanna, City Manager

SUBJECT: **15. Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving a Amendment to the Bylaws of the Development Corporation of Abilene, Inc., Section 7.11, Expenditures of Corporation Money for Projects or Borrow Money *(Robert Hanna)*

GENERAL INFORMATION

Information will be provided at the Meeting.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. City Resolution - Bylaws Amendment (4-9-20)
2. DCOA Bylaws 2015

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
APPROVING AN AMENDMENT TO THE BYLAWS OF THE DEVELOPMENT
CORPORATION OF ABILENE, INC (“DCOA”).**

WHEREAS, the DCOA is a “Type A” Economic Development Corporation that is generally charged with the promotion and development of new and expanded business enterprises pursuant to the Development Corporation Act, as set forth in the Texas Local Government Code; and

WHEREAS, the DCOA utilizes the ½ cent sales tax to fund the “Type A” expenditures described in the Development Corporation Act which enhance the economic development of the City of Abilene; and

WHEREAS, pursuant to the Development Corporation Act, the City of Abilene approves all programs and expenditures of the DCOA and as part of this approval, the City of Abilene, through its adoption of the DCOA’s Bylaws, has given the DCOA’s Board of Directors authority to spend up to \$249,999.99 on economic development programs and expenditures without obtaining any further consent from the City of Abilene (the “**Expenditure Limit**”); and

WHEREAS, DCOA expenditures over the Expenditure Limit currently require approval by both the DCOA’s Board of Directors and the Abilene City Council which can result in a delay in distribution of DCOA funds for qualified expenditures and consequently could result in lost economic development projects; and

WHEREAS, the City of Abilene approves an amendment to the DCOA’s Bylaws to increase the Expenditure Limit to \$2,000,000; and

WHEREAS, the DCOA’s expenditures under the increased Expenditure Limit will remain subject to approval by the DCOA’s Board of Directors who are nominated by Abilene’s Mayor and appointed by the City of Abilene.

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

PART 1. The City of Abilene hereby approves an amendment to the DCOA’s Bylaws so that Section 7.11 of the DCOA’s Bylaws titled “Expenditures of Corporation Money for Projects or Borrow Money” is deleted and replaced with the following:

For any specific project, job training, promotional expenditure, or borrowing of funds in the amount of **TWO MILLION DOLLARS (\$2,000,000)** or less, the Board has sole approval authority and may begin making expenditures or borrow monies upon approval by the Board. For any project, job training, promotional expenditure, or borrowing of funds which exceeds **TWO MILLION DOLLARS**

(\$2,000,000), the City Council shall also approve the expenditure or borrowing of funds by majority vote of the City Council. The Corporation shall not expend any funds for a project, job training, or promotional expenditure, or borrow monies which fail to receive the required City Council approval.

PART 2. Upon approval by the DCOA's Board of Directors, the City of Abilene hereby authorizes the DCOA to amend its Bylaws, as described in this Resolution, without further authorizations or resolutions from the City of Abilene; and

PART 3. This Resolution takes effect immediately upon its adoption.

ADOPTED this ____ day of April, 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

**BYLAWS
OF
DEVELOPMENT CORPORATION OF ABILENE, INC.
A TEXAS NON-PROFIT CORPORATION**

ABILENE, TEXAS

**SECTION I
OFFICES**

1.01 Registered Office and Registered Agent

The Development Corporation of Abilene, Inc. (hereinafter referred to as the "Corporation") shall have and continuously maintain in the State of Texas a registered office, and a registered agent whose office is identical with such registered office, as required by the Texas Non-Profit Corporation Act. The Board of Directors may, from time to time, change the registered agent and/or the address of the registered office, provided that such change is appropriately reflected in these Bylaws and in the Articles of Incorporation.

The registered office of the Corporation is located at 555 Walnut Street, Abilene, Texas 79601, and at such address is the Corporation, whose mailing address is P.O. Box 60, Abilene, Texas 79604.

1.02 Principal Office

The principal office of the Corporation in the State of Texas shall be located in the City of Abilene, County of Taylor, and it may be, but need not be, identical with the registered office of the Corporation.

**SECTION II
PURPOSES**

2.01 Purposes

The Corporation is a Type A economic development corporation, and a Texas non-profit corporation specifically governed by the Texas Development Corporation Act, as defined in Chapters 501 and 504 of the Texas Local Government Code, as amended (formerly Art. 5190.6 of the Texas Revised Civil Statutes). The purpose of the Corporation is to promote, assist, and enhance economic development in accordance with the Articles of Incorporation.

**SECTION III
MEMBERS**

3.01 Members

The Corporation shall have no members.

**SECTION IV
BOARD OF DIRECTORS**

4.01 Board of Directors

The business and affairs of the Corporation and all corporate powers shall be exercised by or under authority of the Board of Directors (the "Board"), appointed by the governing body of the City of Abilene (the "City Council"), and subject to applicable limitations imposed by the Texas Non-Profit Corporation Act, the Texas Business Corporation Act, the Articles of Incorporation, or these Bylaws. The Board may, by contract, resolution, or otherwise, give general or limited or special power and authority to the officers and employees of the Corporation to transact the general business or any special business of the Corporation, and may give powers of attorney to agents of the Corporation to transact any special business requiring such authorization.

The Board may plan and direct its work through a Chief Executive Officer (the "CEO"), who will be charged with the responsibility of carrying out the Corporation's programs as may be adopted and planned by the Board. The Board may contract with another entity for the services of a CEO.

4.02 Number and Qualifications

The authorized number of Directors of this Board shall be five (5).

The Mayor shall appoint the Directors of the Corporation with the approval of the City Council. The number of Directors shall be five (5). Each Director shall meet at least one (1) of the following qualifications:

1. serve, or have served as a Chief Executive Officer of a company; or
2. serve, or have served, in a position of executive management of a company; or
3. serve, or have served, in a professional capacity; or
4. have experience equivalent to any of the above qualifications.

The City Council shall consider an individual's experience, accomplishments, and educational background in appointing members to the Board to ensure that the interests and concerns of all segments of the community are considered.

4.03 Bonds

If the City of Abilene ceases to act as the fiscal agent for the Corporation, the President, Vice President, and Treasurer of the Board shall each give an official bond in the sum of not less than One Hundred Thousand Dollars (\$100,000.00). The bonds referred to in this section shall be considered for the faithful accounting of all monies and things of value coming into the hands of such officers. The bonds shall be procured from some regularly accredited surety company authorized to do business in the state. The premiums therefor shall be paid by the Corporation. A copy of each officer's bond shall be filed with the City Secretary.

4.04 General Duties of the Board

The Board is hereby required to perform the following duties:

1. The Board shall develop an overall economic development plan for the City which shall include and set forth intermittent and/or short term goals which the Board deems necessary to accomplish compliance with its overall economic development plan. Such plan shall be communicated to City Council. The overall plan developed by the Board shall be one that includes the following elements:
 - a. An economic development strategy to permanently bolster the business climate throughout the City.
 - b. Strategies to fully utilize the assets of the City which enhance economic development.
 - c. Identification of strategies to coordinate public, private, military and academic resources to develop and enhance business opportunities for all citizens of Abilene. This plan shall include methods to improve communication and cooperation between the above-mentioned entities.
 - d. Assurance of accountability of all tax moneys expended for its implementation of the overall economic development plan.
 - e. Identification of strategies and provide for implementation of identified strategies for direct economic development as defined in this Section.
 - f. To assist the Board in the implementation of the overall economic development plan, the Board may seek out and employ a CEO. The CEO shall be responsible to the Board and shall act as the Board's administrator and shall assist the Board in carrying out the duties of the Board as set forth in this section. The Board shall, in the annual budget, make provisions for the compensation to be paid to the CEO and such compensation so established by the Board shall comprise the salary and benefits paid to the CEO for his/her services.
 - g. The Board may employ or contract for such personnel as may be necessary to discharge the Corporation's assigned duties. The compensation for all such employees shall be set by the Board in its annual budget and such compensation so established by the Board shall comprise the salary and benefits for such employees, and provided further, no such employee shall be hired until such time as the Board has established such compensation for the position in question.
 - h. The CEO shall be hired by the Board with the consent of the City Council and may be removed by a majority vote of the Board.

2. The Board shall expend, in accordance with State law, the tax funds received by it on direct economic development where such expenditures will have a direct benefit to the citizens of Abilene.

As used in this Section, "direct economic development" shall mean the expenditure of such tax funds for programs that directly accomplish or aid in the accomplishment of creating identifiable new jobs or retaining identifiable existing jobs including job training and/or planning and research activities necessary to promote said job creation and expand the tax base. The Corporation's focus will be primarily in the areas of:

- a. Business retention and expansion
- b. Formation of new businesses
- c. Business attraction

4.05 Implied Duties

The Corporation is authorized to do that which the Board deems desirable to accomplish any of the purposes or duties set out or alluded to in Section 4.04 of these Bylaws and in accordance with State law.

4.06 Tenure

No member of the Board shall serve more than two (2) consecutive terms. The Mayor shall appoint the Directors of the Corporation with the approval of the City Council. The number of Directors shall be five (5). Directors shall serve for three (3) years. Directors shall be removable at any time by the City Council by a majority vote of five (5) council members.

4.07 Vacancies

Any vacancy occurring shall be filled by appointment by the Mayor with approval by City Council.

4.08 Meetings

The Board shall meet at least once each month at a place and time to be determined by the President. All meetings of the Board shall be posted and conducted in accordance with the Texas Open Meetings Act, as set forth in Chapter 551 of the Texas Government Code, as amended. Any member of the Board may request that an item be placed on the agenda by delivering the same in writing to the secretary of the Board no later than ten (10) days prior to the date of the Board meeting. The President of the Board shall set regular meeting dates and times at the beginning of his/her term.

Notice of any meeting shall contain information regarding the particular time, date, and location of the meeting and the agenda to be considered.

The annual meeting of the Board of Directors shall be during the first regularly scheduled Board meeting of each calendar year.

4.09 Attendance

Regular attendance of the Board meetings is required of all Directors. The following number of absences may constitute the need for replacement of a Director: three (3) consecutive absences, or attendance reflecting absences constituting fifty percent (50%) of the meetings over a 12-month period. In the event replacement is indicated, the member will be counseled by the President and, subsequently, the President shall submit in writing to the City Secretary the need to replace the Board member in question.

4.10 Quorum and Voting

A majority of the Board of Directors shall constitute a quorum for the conduct of the official business of the Corporation. The act of a majority of the Directors present at a meeting at which a quorum is in attendance shall constitute the act of the Board of Directors and of the Corporation unless the act of a greater number is required by law. A Director may not vote by proxy. Directors must be present in order to vote at any meeting.

4.11 Compensation

The duly appointed Directors of the Board shall serve without compensation, but shall be reimbursed for actual or commensurate cost of travel, lodging and incidental expenses while on official business of the Board in accordance with State law.

4.12 Conflicts of Interest

In the event that a Director is aware of a conflict of interest or potential conflict of interest, with regard to any particular vote, the Board's actions shall be governed by the Texas Business Organizations Code, Title 2 Corporations, Chapter 22 Non Profit Corporations, Section 22.230, as amended.

4.13 Board's Relationship with City Council

In accordance with State law, Section 501.073 of the Texas Local Government Code the City Council shall require that the Corporation be responsible to it for the proper discharge of its duties. All programs and expenditures shall be submitted for City Council approval, and the Board shall administer said programs accordingly. The Board shall determine its policies and direction within the limitations of the duties herein imposed by applicable laws, the Articles of Incorporation, these Bylaws, contracts entered into with the City, and budget and fiduciary responsibilities. The Corporation shall be regularly accountable to the City Council for all activities undertaken by them or on their behalf, and shall report on all significant activities of the Corporation to the City Council, whether discharged directly by the Board or by any person, firm, corporation, agency, association or other entity on behalf of the Corporation.

4.14 Board's Relationship with Administrative Departments of the City

Any request for services made to the administrative departments of the City shall be made by the Board or its designee in writing to the City Manager. The City Manager may approve such request for assistance from the Board when he finds such requested services are available within the administrative departments of the City and that the Board has agreed to reimburse the administrative department's budget for the costs of such services so provided.

Any requests for legal assistance shall be made by the Board or its designee to the City Attorney. The City Attorney may provide such assistance when such services are available and the Board has agreed to reimburse the City for cost providing the legal services.

SECTION V OFFICERS

5.01 Officers of the Corporation

The elected officers of the Corporation shall be a President, Vice President, Secretary, and Treasurer. The Board may resolve to elect one or more Assistant Secretaries or one or more Assistant Treasurers as it may consider desirable. Such officers shall have the authority and perform the duties of the office as the Board may from time to time prescribe or as the Secretary or Treasurer may from time to time delegate to his or her respective Assistant. One person may hold more than one office, except that the President shall not hold the office of Secretary.

5.02 Selection of the Officers

The initial President and Vice President shall be elected by the Board and shall serve a term of one (1) year. On the expiration of the term of office of the original President and Vice President, the Board shall select from among its members individuals to hold such office. The term of office of the President and Vice President shall always be for a period of one year; provided, however, that the President and Vice President continue to serve until the election of their successors.

The Secretary and Treasurer shall be selected by the members of the Board and shall hold office for a period of one (1) year; provided, however, that they shall continue to serve until the election of their successors. Elections shall be held at the annual meeting of the Board.

5.03 Vacancies

Vacancies in any office which occur by reason of death, resignation, disqualification, removal, or otherwise, may be filled by the Board of Directors for the unexpired portion of the term of that office, in the same manner as other officers are elected to the Board.

5.04 President

The President shall be the presiding officer of the Board with the following authority:

1. Shall preside over all meetings of the Board.

2. Shall have the right to vote on all matters coming before the Board.
3. Shall have the authority, upon notice to the members of the Board, to call a special meeting of the Board when in his judgment such meeting is required.
4. Shall have the authority to appoint standing committees to aid and assist the Board in its business undertakings or other matters incidental to the operation and functions of the Board.
5. Shall have the authority to appoint ad hoc committees which may address issues of a temporary nature of concern or which have a temporary effect on the business of the Board.

In addition to the above-mentioned duties, the President shall sign with the Secretary of the Board any deed, mortgage, bonds, contracts, or other instruments which the Board of Directors has approved and unless the execution of said document has been expressly delegated to some other officer or agent of the Corporation by appropriate Board resolution, by a specific provision of these Bylaws, or by statute. In general, the President shall perform all duties incident to the office, and such other duties as shall be prescribed from time to time by the Board of Directors.

5.05 Vice President

In the absence of the President, or in the event of his or her inability to act, the Vice President shall perform the duties of the President. When so acting, the Vice President shall have all power of and be subject to all the same restrictions as upon the President. The Vice President shall also perform other duties as from time to time may be assigned to him or her by the President.

5.06 Secretary

The Secretary shall keep, or cause to be kept, at the registered office a record of the minutes of all meetings of the Board and of any committees of the Board. The Secretary shall also file a copy of said Minutes with the City and the same to be given, in accordance with the provisions of these Bylaws, or as required by the Texas Open Meetings Act or the Texas Public Information Act or other applicable law. The Secretary shall be custodian of the corporate records and seal of the Corporation, and shall keep a register of the mailing address and street address, if different, of each director.

5.07 Treasurer

If the City of Abilene ceases to act as the fiscal agent for the Corporation, the Treasurer shall be bonded for the faithful discharge of his/her duties with such surety or sureties and in such sum as the Board of Directors shall determine by Board resolution, but in no event shall the amount of such bond be less than an amount equal to the average of the sums which the Treasurer has access to and the ability to convert during a twelve (12) month period of time. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation. The Treasurer shall receive and give receipt for money due and payable to the Corporation from any source whatsoever, and shall deposit all such moneys in the name of the Corporation in such bank, trust corporation, and/or other depositories as shall be specified in accordance with Section VII of these Bylaws. The Treasurer shall, in

general, perform all the duties incident to that office, and such other duties as from time to time may be assigned to him by the President of the Board.

5.08 Assistant Secretaries and Assistant Treasurers

The Assistant Secretaries and Assistant Treasurers, if any, shall in general, perform such duties as may be assigned to them by the Secretary or the Treasurer, or by the President or the Board of Directors.

5.09 Chief Executive Officer

The Corporation may employ a Chief Executive Officer. The CEO of the Corporation shall oversee all administrative functions of the Corporation. The CEO shall develop policies and procedures for the Corporation including financial, accounting, and purchasing policies and procedures to be approved by the Board.

5.10 Other Employees and Benefits

The Corporation may employ, or contract for, such full or part-time employees as needed to carry out the programs of the Corporation. These employees shall perform those duties as are assigned to them by the CEO. The CEO shall hire, direct, and control the work of all Corporation employees.

In accordance with Section 501.067 of the Texas Local Government Code, and subject to City Council approval, the Corporation may obtain:

- a. health benefits coverage, liability coverage, workers' compensation coverage, and property coverage under the City's insurance policies, through self-funded coverage, or under coverage provided under an interlocal agreement with a political subdivision; or
- b. retirement benefits under a retirement program the City participates in or operates.

Health benefits coverage may be extended to the Directors and employees, and to the dependents of the Directors and employees. Workers' compensation benefits may be extended to the Directors, employees, and volunteers. Liability coverage may be extended to protect the Corporation and the Directors and employees. Retirement benefits may be extended to the Corporation's employees. The Corporation must reimburse the City for any expense in providing said benefits.

5.11 Contract for Services

The Corporation may contract with any qualified and appropriate person, association, corporation or governmental entity to perform and discharge designated tasks which will aid or assist the Board in the performance of its duties. However, no such contract shall ever be approved or entered into which seeks or attempts to divest the Board of Directors of its discretion and policy-making functions in discharging the duties herein above set forth in this section.

SECTION VI COMMITTEES

6.01 Committees

The President may designate not more than two (2) directors to constitute an official committee of the Board of Directors, with such other non-Board members of the committee as may be appointed by the Board, to exercise such authority of the Board as may be specified in the resolution. It is provided, however, that all final, official actions of the Corporation may be exercised only by the Board. Each committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded in books kept for that purpose in the principal office of the Corporation.

6.02 Ex-Officio Members

The City Manager or his designee and the Mayor or his designee may attend all meetings of the Board of Directors or Committees. These representatives shall not have the power to vote in the meetings they attend. Their attendance shall be for the purpose of ensuring that information about the meetings are accurately communicated to the City Council and to satisfy the City Council obligation to control the powers of the Corporation.

SECTION VII FINANCIAL ADMINISTRATION

The Corporation may contract with the City for financial and accounting services. The Corporation's financing and accounting records shall be maintained according to the following guidelines.

7.01 Fiscal Year

The fiscal year of Corporation shall begin on October 1 and end on September 30 of the following year.

7.02 Budget

A budget for the forthcoming fiscal year shall be submitted to, and approved by, the Board of Directors, and the City Council. In submitting the budget to the City Council, the Board of Directors shall submit the budget on forms prescribed by the City Manager and in accordance with the annual budget preparation schedule as set forth by the City Manager. The budget shall be submitted to the City Manager for inclusion of it in the annual budget presentation to the City Council. The budget proposed for adoption shall include the projected operating expenses, and such other budgetary information as shall be useful to or appropriate for the Board of Directors and the City Council.

7.03 Contracts

As provided in Section V above, the President and Secretary shall execute any contracts or other instruments which the Board has approved and authorized to be executed, provided, however, that the Board may by appropriate resolution, authorize any other officer or officers or any other agent or

agents, including the CEO, to enter into contracts or execute and deliver any instrument in the name and on behalf of the Corporation. Such authority may be confined to specific instances or defined in general terms. When appropriate, the Board may grant a specific or general power of attorney to carry out some action on behalf of the Board, provided, however that no such power of attorney may be granted unless an appropriate resolution of the Board authorizes the same to be done.

7.04 Checks and Drafts

If the City of Abilene ceases to act as the fiscal agent for the Corporation, all checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed or bear the facsimile of the President or the Treasurer, or such other person as designated by the Board.

7.05 Deposits

All funds of the Corporation shall be deposited on a regular basis to the credit of the Corporation in a local bank which shall be federally insured and shall be selected following procedures and requirements for selecting a depository as set forth in Chapter 105 of the Texas Local Government Code.

7.06 Gifts

The Corporation may accept on behalf of the Corporation any contribution, gift, bequest, or device for the general purpose or for any special purposes of the Corporation.

7.07 Purchasing

All purchases made and contracts executed by the Corporation shall be made in accordance with the requirements of the Texas Constitution and statutes of the State of Texas.

7.08 Investments

Temporary and idle funds which are not needed for immediate obligations of the Corporation may be invested in any legal manner provided in the Public Funds Investment Act, Chapter 2256 of the Texas Government Code, as amended.

7.09 Bonds

Any bonds issued by the Corporation shall be in accordance with the statute governing this Corporation but in any event, no bonds shall be issued without approval of the City Council after review and comment by the City's bond counsel and financial advisor.

7.10 Uncommitted Funds

Any undesignated funds of the Corporation at the end of the fiscal year shall be considered a part of the Fund Balance. The Undesignated Fund Balance may be committed for any legal purpose.

7.11 Expenditures of Corporation Money for Projects or Borrow Money

For any specific project, job training, promotional expenditure, or borrowing of funds in the amount of TWO-HUNDRED FORTY-NINE THOUSAND NINE HUNDRED NINETY-NINE DOLLARS AND NINETY-NINE CENTS (\$ 249,999.99) or less, the Board of Directors has sole approval authority and may begin making expenditures or borrow monies upon approval by the Board. For any project, job training, promotional expenditure, or borrowing of funds which exceeds TWO-HUNDRED FORTY-NINE THOUSAND NINE HUNDRED NINETY-NINE DOLLARS AND NINETY-NINE CENTS (\$ 249,999.99), the City Council shall also approve the expenditure or borrowing of funds by majority vote of the City Council. The Corporation shall not expend any funds for a project, job training, or promotional expenditure, or borrow monies which fail to receive the required City Council approval.

SECTION VIII BOOKS AND RECORDS

8.01 Books and Records

The Corporation shall keep correct and complete books and records of all actions of the Corporation, including books and records of account and the minutes of meetings of the Board of Directors and of any committee having any authority of the Board and to the City Council. City Council is entitled to access of the Corporation's books and records at all times. All books and records of the Corporation may be inspected by Directors of the Corporation or his/her agent or attorney at any reasonable time; and any information which may be designated as public information by law shall be open to public inspection at any reasonable time. The Texas Public Information Act and Texas Open Meetings Act shall apply to disclosure of public information. The books, records, accounts, and financial statements of the Corporation shall be audited at least once each fiscal year by an outside, independent auditing and accounting firm approved by the Board of Directors. This audit may be prepared in conjunction with the annual financial audit of the City.

SECTION IX SEAL

9.01 Seal

The Board of Directors shall obtain a corporate seal which shall bear the words "Corporate Seal of Development Corporation of Abilene, Inc.". The Board may thereafter use the corporate seal and may later alter the seal as necessary without changing the corporate name; but these Bylaws shall not be construed to require the use of the corporate seal.

SECTION X PROGRAM

10.01 Authorization

The Corporation shall carry out its program subject to its Articles of Incorporation and these Bylaws, and such resolutions as the Board may from time to time authorize.

10.02 Program

The program of the Corporation shall be to assist, stimulate, and enhance economic development for the City of Abilene, Texas, subject to applicable state and Federal law, these Bylaws, and the Articles of Incorporation.

SECTION XI PRELIMINARY AUTHORITY

11.01 Effective Date

These bylaws shall become effective upon the occurrence of all of the following events: the adoption of these bylaws by the Board of Directors; and the approval and adoption of these bylaws by the City Council.

11.02 Amendments to Bylaws

These bylaws may be amended or repealed and amended bylaws may be adopted by an affirmative vote of at least three (3) Directors present at any regular meeting or any special meeting, if at least three (3) days written notice is given of an intention to amend, repeal, and/or adopt new bylaws. Any bylaw amendments will be effective upon approval of the City Council by resolution.

SECTION XII DISSOLUTION

12.01 Dissolution

On petition of ten percent (10%) or more of the registered voters of the City of Abilene requesting an election on the dissolution of the Corporation, the City Council shall order an election on the issue. The election must be conducted according to the applicable provision of the Election Code. The ballot for the election shall be printed to provide for voting for or against the proposition:

"Dissolution of the Development Corporation of Abilene, Inc."

If a majority of voters voting on the issue approve the dissolution, the Corporation shall continue operations only as necessary to pay the principal of and interest on its bonds and to meet obligations incurred before the date of the election and, to the extent practicable, shall dispose of its assets and apply the proceeds to satisfy those obligations. When the last of the obligations is satisfied, any remaining assets of the Corporation shall be transferred to the City, and the Corporation is dissolved.

SECTION XIII INDEMNITY

13.01 Indemnity

As provided in the Section 504.107 of the Texas Local Government Code, the Corporation is, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practices and Remedies Code), a governmental unit and its actions are governmental functions.

The Corporation shall indemnify each and every member or former member of the Board of Directors, its officers, its employees, its attorneys, each member of the City Council and each employee of the City, to the fullest extent permitted by law, against any and all liability or expense, including attorneys' fees incurred by any of such persons by reason of any actions or omissions that may arise out of the functions and activities of the Corporation.

The Board of Directors shall authorize the Corporation to pay or reimburse any current or former Director or Officer of the Corporation for any costs, expenses, fines, settlements, judgments, and other amounts, actually and reasonable incurred by such person in any action, suit, or proceeding to which he or she is made a party by reason of holding such position as Officer or Director; provided, however, that such Officer or Director shall not receive such indemnification if he/she be finally adjudicated in such instance to be liable for gross negligence or intentional misconduct in office. The indemnification herein provided shall also extend to good faith expenditures incurred in anticipation of, or preparation for, threatened or proposed litigation. The Board of Directors may, in proper cases, extend the indemnification to cover the good faith settlement of any such action, suit, or proceedings, whether formally instituted or not.

To the extent the Board of Directors authorize indemnification to Directors or Officers of the Corporation, City of Abilene shall also provide indemnity to said Directors and Officers. However, City of Abilene's indemnification shall only apply after Corporation's ability to indemnify has been exhausted. Nothing in this section creates personal liability on the part of Officers and Directors to any extent not otherwise provided by statute or case law.

Furthermore, the Corporation agrees to indemnify and hold harmless and defend the City of Abilene, its officers, agents, and its employees, from and against liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorneys' fees and other reasonable costs arising out of or resulting from Corporation's activities and from any liability arising out of or resulting from the intentional acts or negligence or intentional acts or omissions of Corporation, including but not limited to its officers, agents, employees, licensees, invitees, and other persons.

Corporation further agrees that it shall at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, agents, employees, licensees, invitees, and other persons, as well as their property, while in the vicinity where activities are being performed. It is expressly understood and agreed that City of Abilene shall not be liable or responsible for the negligence of Corporation including but not limited to its officers, agents, employees, licensees, invitees, and other persons.

It is further agreed with respect to the above indemnity, that city of Abilene and Corporation will provide the other prompt and timely notice of any event covered which in any way, directly or indirectly, contingently or otherwise, affects or might affect Corporation or City of Abilene, and City of Abilene shall have the right to compromise and defend the same to the extent of its own interests. It is further agreed this indemnity clause shall be an additional remedy to City of Abilene and not an exclusive remedy.

**SECTION XIV
MISCELLANEOUS**

14.01 Relation to Articles of Incorporation

These Bylaws are subject to, and governed by, the Articles of Incorporation and applicable State statutes under which the Corporation is organized.

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**City Council
Agenda Memo**

City Council Meeting Date: 4/9/2020

TO: Honorable Mayor & Members of City Council

FROM:

SUBJECT: 16. *Emergency Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Postponing the May 2, 2020, General Election for Mayor and City Council Place 3 & 4*

GENERAL INFORMATION

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 2020 Emergency Election Postpone Resolution 1
2. 16

RESOLUTION NO. 78-2020

AN EMERGENCY RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, POSTPONING THE ELECTION ORDERED IN RESOLUTION 22-2020, ON FEBRUARY 13, 2020, PRESERVING CANDIDATE FILINGS, AND REPEALING CONFLICTING RESOLUTIONS, ESTABLISHING PROCEDURES FOR THE POSTPONED ELECTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Abilene is a Home Rule Municipality located in Taylor County, Texas, operating pursuant to the Texas Local Government Code and enabling legislation of the State of Texas; and

WHEREAS, the City Council of the City of Abilene previously passed Resolution 22-2020, ordering that a General Election be held on May 2, 2020, a uniform election date per Texas Law, for the purpose of electing the Mayor and City Council Members Place 3 and 4; and

WHEREAS, Elections in Texas must be held on a uniform election date per state law; and

WHEREAS, on March 13, 2020, the Governor of Texas certified that the novel coronavirus (COVID-19) poses an imminent threat of disaster and declared a state of disaster for all counties in Texas; and

WHEREAS, on March 18, 2020, the Governor of Texas issued a Proclamation to suspend various statutes to allow political subdivisions of the State that would otherwise hold elections on May 2, 2020, to move their general and special elections for 2020 to the next uniform election date, occurring on November 3, 2020; and

WHEREAS, the Texas Secretary of State has issued, pursuant to the Proclamation of March 18, 2020, Election Advisory No. 2020-12, to provide guidance to local political subdivisions regarding issues raised by the Proclamation; and

WHEREAS, federal, state, and local officials have determined that the spread of COVID-19 can be slowed by avoiding bringing people together, and the City Council hereby finds that the holding of the general election might cause physical danger of infection to voters, election officials, and election volunteers; and

WHEREAS, because of the public health crisis, and in order to protect the health and safety of voters, the election officials, and election volunteers, the City Council therefore wishes to exercise the authority granted in the Proclamation of March 18, 2020, to postpone the election previously called by it to be held on May 2, 2020 to November 3, 2020;

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

SECTION 1

POSTPONEMENT OF ELECTION

- A. Pursuant to the authority granted in the Proclamation of March 18, 2020, the general election ordered to be held on May 2, 2020 by Resolution R2020-02-11 is hereby postponed until, and Ordered to be held on, the next uniform election date, November 3, 2020, or an earlier date if deemed possible by the Secretary of State or Governor, as applicable.
- B. Candidate filings for the May 2nd election will remain valid for the November 3rd election, or earlier date if possible. This postponement does not reopen candidate filings for the 2 council places or the Mayor.
- C. All matters and dates relevant to the November 3, 2020 elections, or earlier date if possible, such as voter registration deadlines, applications for ballots by mail and dates for early voting shall be as provided by Texas law.
- D. The Council will, by subsequent action, amend Resolution 22-2020 to comply with state law regarding early voting location, dates and hours, and any other changes caused by postponing this election to November 3, 2020, or earlier date if possible.

SECTION 2

APPLICATION BALLOTS BY MAIL FOR THE MAY 2, 2020 ELECTION

- A. All applications for ballots by mail that were filed for the May 2, 2020, election that are marked annual remain valid for the November 3, 2020, election, or earlier date if possible.
- B. All single use applications for ballots by mail that were submitted for the May 2, 2020, election for reasons of age or disability remain valid for the November 3, 2020, election, or earlier date if possible.
- C. Single use applications for ballots by mail submitted for the May 2, 2020, election that indicated the reason for voting by mail was due to absence from the county will not remain valid for the November 3, 2020, election, or earlier date if possible.

SECTION 3

APPLICATION FOR BALLOTS BY MAIL FOR THE NOVEMBER 3, 2020 ELECTION

Applications for early voting by mail in Taylor County may be delivered to the Early Voting Clerk, Taylor County Elections Administrator, 400 Oak Street, #101, Abilene, Texas 79602 to be received not later than the close of business on October 23, 2020.

SECTION 4

EARLY VOTING BY PERSONAL APPEARANCE

For an election held on November 3rd, Early Voting by personal appearance shall be conducted beginning on October 19, 2020, and continuing through October 30, 2020. The exact times and locations for early voting will be determined by the Taylor County Elections Administrators in accordance with the Joint Election Agreements and will be reflected in a future revision to the original election order. This is subject to change if an earlier Election date is possible.

SECTION 5

DEADLINE TO REGISTER TO VOTE

Any individual seeking to vote in the November 3, 2020, election must register to vote by October 5, 2020.

SECTION 6

ELECTION DAY

Voting shall be conducted between the hours of 7:00 a.m. and 7:00 p.m. on Tuesday, November 3, 2020, at the polling locations determined by the Taylor County Elections Administrators in accordance with the Joint Election Agreements and will be reflected in a future revision to the original election order.

SECTION 7

GOVERNING LAW AND QUALIFIED VOTERS

The election shall be held in accordance with the Constitution of the State of Texas and the Code, and all resident qualified voters of the City shall be eligible to vote at the election.

SECTION 8

PUBLICATION AND POSTING OF NOTICE OF POSTPONED ELECTION

Notice of the postponement of the election until November 3, 2020, shall be posted on the City's website, provided to local media organizations, and provided to the Taylor County Elections Administrators.

SECTION 9

NECESSARY ACTIONS

The Mayor and the City Secretary, in consultation with the City Attorney, are hereby authorized and directed to take any and all actions necessary to comply with the provisions of the Code in carrying out and conducting the election, whether or not expressly authorized herein.

SECTION 10

CONFLICT CLAUSE

This Resolution shall be cumulative of all provisions of the City of Abilene, Texas, except where the provisions of this Resolution are in direct conflict with the provisions of other Resolutions, in which event the conflicting provisions of the other ordinances are hereby repealed.

SECTION 11

SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if a phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of the unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 12
SAVING CLAUSE

All rights and remedies of the City of Abilene are expressly saved as to any and all violations of the provisions of any ordinances which have accrued as of the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 13
NOTICE REQUIREMENTS

The City of Abilene City Secretary shall post notice on its website of this change to the election date, shall notify local media of this change to the election date, shall notify the County Election Officer of this change to the election date, and shall notify the Texas Secretary of State of this change in the election date.

ADOPTED this 9th day of April, 2020.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley E. Smith, City Attorney

Resolution:
**Postponing the May 2, 2020, General
Election for Mayor and
City Council Places 3 & 4**

