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

Notice is hereby given of a meeting of the City Council of City of Abilene to be held on 11th day of June, 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 Travis Craver

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 Regular Meeting Held on May 28, 2020, and the Special Meeting Held on June 1, 2020 ***(Shawna Atkinson)***

3. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Bid No. 2057 to Bontke Brothers Construction for Sayles Blvd Pavement Rehabilitation ***(Greg McCaffery)***

4. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Bid No. 2058 to Epic Construction for South 23rd Street and Barrow Street Reconstruction ***(Greg McCaffery)***

5. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Purchase of Ammunition from Precision Delta for the Police Department and Marshals Division ***(Stan Standridge)***

6. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on awarding the bid to Starks Construction Company Inc. for the South 14th Water Line Improvements Project ***(Rodney Taylor)***

7. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action Authorizing the City Manager to enter into an agreement with Texas Department of Transportation for the Bridge Replacement on N. 18th Street at Catclaw Creek ***(Greg McCaffery)***

8. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approving the FY 2020/2021 Action Plan and proposed use of Community Development Block Grant (CDBG) and Home Investment Partnerships Program (HOME) funds ***(Zack Rainbow)***

REGULAR AGENDA - ORDINANCES AND PUBLIC HEARINGS - RESOLUTIONS

9. **Presentation:** Receive a Presentation, Hold a Discussion and Public Hearing on the concept of a Public Improvement District ***(Michael Rice)***

10. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Adding Additional Liability Coverage with Texas Municipal League Intergovernmental Risk Pool (TMLIRP) ***(Brenda Alexander)***

11. **Ordinance (Final Reading):** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Amending Budget Ordinance No. 050-2019 to Include Updated Staffing Levels for the Fire Department ***(Cande Flores)***

12. **Ordinance (Final Reading):** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on An Ordinance, in Accordance with Texas Local Government Code 143, Section 143.042(b) Authorizing Assignment Pay for Specialized Functions Within the Abilene Fire Department ***(Cande Flores)***

13. **Ordinance (Final Reading) Z-2020-01:** (remove from table) Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Prairie Song LLC, agent Nick Coates, to amend the terms of Planned Development (PD) District Number 144 by expanding its original 14.166 acres to include 0.5 acre of additional now-vacant land at 2660 Garfield Avenue, by changing allowed uses to include all those permissible within Residential Medium-Density (MD) zoning districts and by requiring all access to future development of this property to be from Garfield Avenue; Legal description being 12.004 acres out of T&P Railway Co. Section 84 (and located at least 140 feet north of Garfield Avenue) as well as Lots 4-5 in Block 10 and all of Block 11 in the Hillcrest Addition (on north side of 2600 block of Garfield Avenue) ***(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

14. **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. 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
2. 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
3. Officer Patrick Sumrall and City of Abilene, Case No. 01-18-000-8653; Appeal of Indefinite Suspension to Arbitration, filed February 6, 2018
4. 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.
5. City of Abilene v. Patrick Sumrall; Cause No. 27,733-B, In the 104th Judicial District Court, Taylor County, Texas, filed May 28, 2019
6. 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
7. 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
8. 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
9. Chandler Brooks v. Taylor County, et al.; Civil Action No. 1:20-cv-00049, In the United States District Court, Northern District of Texas, Abilene Division; filed March 5, 2020
10. Claim of Discrimination - Rita Monterrosa
11. Governor's Executive Orders COVID-19
12. West Texas Water Partnership

B. 551.072 (Deliberations about Real Property)

1. Clyde Water
2. T&P Freight Warehouse, 901 North 1st Street, Abilene

C. 551.073 (Deliberations about Gifts and Donations)

D. 551.074 (Personnel Matters)

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

E. 551.076 (Deliberations about Security Devices)

F. 551.087 (Business Prospect/Economic Development)

1. Abilene Convention Center Hotel Project
2. Request from Abilene Hotel Owners Group
3. Public Improvement District for property adjacent to Boys Ranch Road
4. 5KLM Properties - The Harvest Subdivision

RECONVENE

REGULAR AGENDA

15. **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)***

    - Library Advisory Board

16. **Resolution:** Receive a Report, Hold a discussion and Public Hearing, and Take Action on approval of DCOA's Chief Executive Officer to extend and/or amend the DCOA's Agreements with Prairie Dog Pet Products ***(Misty Mayo)***

17. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approving an Agreement with Project ERG-2 ***(Misty Mayo)***

18. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approving an Agreement with Project ERG-3 ***(Misty Mayo)***

19. **Oral Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approving the FY 2020 Semi-Annual Report of Activities for the Development Corporation of Abilene ***(Misty Mayo)***

20. **Presentation:** Receive a Report and Hold a Discussion and Public Hearing on the Economic Relief Grant ***(Misty Mayo)***

ADJOURNMENT

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

CERTIFICATION

I hereby certify the above meeting notice was posted on the bulletin board at the City Hall of the City of Abilene, Texas, on the 5th day of June, 2020, at 2:45 p.m.

_____

Kaitlin Richardson, Deputy City Secretary

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO:

FROM: **Shawna Atkinson, City Secretary**

SUBJECT: **2. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on May 28, 2020, and the Special Meeting Held on June 1, 2020 *(Shawna Atkinson)***

GENERAL INFORMATION

Approval of the Minutes from the Regular Meeting Held on May 28, 2020, and the Special Meeting Held on June 1, 2020

SPECIAL CONSIDERATIONS

None.

FUNDING/FISCAL IMPACT

None

STAFF RECOMMENDATION

Approval of the Minutes

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 05-28-2020 Minutes - Regular - Evening
2. 06-01-2020 Minutes - Special - Extension of Disaster Declaration

CITY COUNCIL MEETING
May 28, 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 May 28, 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 and Kyle McAlister. Councilmember Travis Craver was absent. Also present were City Manager Robert Hanna, City Attorney Stanley Smith, City Secretary Shawna Atkinson, and various members of the City staff.

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:

20. A. 551.071 (Consultation with Attorney)
    1. Sanctuary City for the Unborn
    2. Moving General Election to non-uniform election date
    3. Governor's Executive Order GA-23
20. B. 551.072 (Deliberations about Real Property)
    1. Clyde Water
    2. T&P Freight Warehouse, 901 North 1st Street, Abilene

The Executive Session ended at 5:03 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.

Councilmember Jack Rentz delivered the invocation and the Pledge of Allegiance to the Flag of the United States of America and State of Texas Flag.

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS, ANNOUNCEMENTS

- Employee Service Awards
  - City Manager Robert Hanna – 5 Years

CONSENT AGENDA

The Consent Agenda consisted of items 3-9. Items 4, 6 & 7 were pulled for individual consideration.
Items pulled for individual consideration were as follows:

- David Swart, citizen – Item #4
- David Swart, citizen – Item #6
- David Swart, citizen – Item #7

Mayor Pro-tem Hurt moved to approve the Consent Agenda, now consisting of items 3, 5, 8 and 9. Councilmember Rentz seconded the motion. Motion carried.

AYES (6): Mayor Williams, Mayor Pro-tem Hurt, Deputy Mayor Pro-tem Albus and Councilmembers Price, Rentz and McAlister
NAYS (0): None
ABSENT (1): Councilmember Craver

3. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Special Meeting Held on May 12, 2020, the Regular Meeting Held on May 14, 2020, and the Special Meeting Held on May 15, 2020.

5. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Authorizing the Payment of Ongoing Annual Subscription/Maintenance Costs Associated with Software Provided by MyGov, LLC.
[ASSIGNED RESOLUTION NO. 98-2020]

8. Ordinance (First Reading): Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Amending Budget Ordinance No. 050-2019 to Include Updated Staffing Levels for the Fire Department.

9. Ordinance (First Reading): Receive a Report, Hold a Discussion and Public Hearing, and Take Action on An Ordinance, in Accordance with Texas Local Government Code 143, Section 143.042(b) Authorizing Assignment Pay for Specialized Functions Within the Abilene Fire Department.

ITEMS PULLED FOR INDIVIDUAL CONSIDERATION

4. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Approve Contracting with Best Friends Animal Society to Provide Direct Oversight Responsibilities and an Interim Animal Services Director.
[ASSIGNED RESOLUTION NO. 97-2020]

The item was pulled by David Swart, citizen.

Having pulled the item, David Swart stated that he is not opposed, but there is still an underlying issue he thinks needs to be addressed since the other director left so suddenly. He also questioned if this will be a prorated contract since the fiscal year begins in October.

Robert Hanna, City Manager stated that the contract will begin on July 1st for 12 months, with the option to renew. He hopes to partner with this organization to achieve a 90% live release rate.

Councilmember Price clarified further that the contract states that it is paid on a month by month basis, so it will be split across two fiscal years.

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

- Robert Sudberry – thanked Council for helping animals during the Covid-19 pandemic, as they were well taken care of. He stated that Best Friends is a great partner and an excellent choice.

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

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

AYES (6): Mayor Williams, Mayor Pro-tem Hurt, Deputy Mayor Pro-tem Albus and Councilmembers Price, Rentz and McAlister
NAYS (0): None
ABSENT (1): Councilmember Craver

6. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Bid No. CB 2054 to J.H. Strain & Sons for Curry Lane, Cedar Run Drive, Rolling Green Drive and Tuner Plaza Drive Resurfacing.
[ASSIGNED RESOLUTION NO. 99-2020]

The item was pulled by David Swart, citizen.

Having pulled the item, David Swart gave compliments to the Public Works Director and the Street Maintenance Board for all of their hard work. Mr. Swart also stated he is very grateful for the three new street lights on Rolling Green Dr.

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

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

AYES (6): Mayor Williams, Mayor Pro-tem Hurt, Deputy Mayor Pro-tem Albus and Councilmembers Price, Rentz and McAlister
NAYS (0): None
ABSENT (1): Councilmember Craver

7. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving a Contract with the Siddons Martin Emergency Group for the purchase of an Aerial Ladder Truck.
[ASSIGNED RESOLUTION NO. 100-2020]

The item was pulled by David Swart, citizen

Having pulled the item, David Swart stated he is supportive of our firefighters. Mr. Swart stated that this cost seems like a lot of money for a fire truck, but if it lasts as long as the previous vehicle did, it will be worth it in the long run.

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

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

AYES (6): Mayor Williams, Mayor Pro-tem Hurt, Deputy Mayor Pro-tem Albus and Councilmembers Price, Rentz and McAlister
NAYS (0): None
ABSENT (1): Councilmember Craver

REGULAR AGENDA

10. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving an Extended Term Street Use License at 137B Oak Street with Tim Smith (dba Soda District Courtyard, LLC)
[ASSIGNED RESOLUTION NO. 101-2020]

Greg McCaffery, Director of Public Works, presented the item. Adoption of the item would approve an extended term Street Use License at 137B Oak Street, so the applicant may build an ADA service ramp into the building.

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

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

AYES (6): Mayor Williams, Mayor Pro-tem Hurt, Deputy Mayor Pro-tem Albus and Councilmembers Price, Rentz and McAlister
NAYS (0): None
ABSENT (1): Councilmember Craver

11. Ordinance (Final Reading): Receive a Report, Hold a Discussion and Public Hearing, and by inserting a new Article IX, "Plumbing Ordinance", that provides for a cross connection control program for the City of Abilene, as set out below, providing for a severability clause, and declaring a penalty.
[ASSIGNED ORDINANCE NO. 18-2020]

Robert Hanna, City Manager, presented the item. Adoption of the item would amend Chapter 32, "Utilities", of the Abilene Municipal Code, by inserting a new Article IX, "Plumbing Ordinance", that addresses various TCEQ regulations associated with cross connection and customer service inspection programs.

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

Council questioned how annual inspections of lawn irrigation systems will be done, who will patrol it and how will the City get the word out about this. Rodney Taylor, Director of Water Utilities, clarified that the homeowner will be required to have a private party inspect the system and then send the inspection results to the City. He also stated that they will send out letters notifying customers of this, as well as through their utility billing system and website.

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

AYES (6): Mayor Williams, Mayor Pro-tem Hurt, Deputy Mayor Pro-tem Albus and Councilmembers Price, Rentz and McAlister
NAYS (0): None
ABSENT (1): Councilmember Craver

12. Ordinance (Final Reading): Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a Developer Participation Agreement between the City of Abilene, Texas and Abilene Forrest Hill, LLC
[ASSIGNED ORDINANCE NO. 19-2020]

Michael Rice, Assistant City Manager, presented the item. Adoption of the item would authorize a developer participation agreement with Abilene Forrest Hill, LLC., for the Forrest Meadows subdivision.

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

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

AYES (6): Mayor Williams, Mayor Pro-tem Hurt, Deputy Mayor Pro-tem Albus and Councilmembers Price, Rentz and McAlister
NAYS (0): None
ABSENT (1): Councilmember Craver

13. Ordinance (Final Reading): Receive a Report, Hold a Discussion and Public Hearing and Take Action on a Developer Participation Agreement between the City of Abilene, Texas and Aaron Waldrop.
[ASSIGNED ORDINANCE NO. 20-2020]

Michael Rice, Assistant City Manager, presented the item. Adoption of the item would authorize a developer participation agreement with Aaron Waldrop for the Carriage Hills subdivision.

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

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

AYES (6): Mayor Williams, Mayor Pro-tem Hurt, Deputy Mayor Pro-tem Albus and Councilmembers Price, Rentz and McAlister
NAYS (0): None
ABSENT (1): Councilmember Craver

14. Ordinance (Final Reading): Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Amending Section 3.2.13.6 (Exceptions, Waivers, and Deferrals) of the Land Development Code pertaining to appeals of construction of Sidewalks
[ASSIGNED ORDINANCE NO. 21-2020]

Councilmember McAlister moved to remove the item from the table. Councilmember Rentz seconded the motion; motion carried.

AYES (6): Mayor Williams, Mayor Pro-tem Hurt, Deputy Mayor Pro-tem Albus and Councilmembers Price, Rentz and McAlister
NAYS (0): None
ABSENT (1): Councilmember Craver

Mike Warrix, Planning and Development Director, presented the item. Adoption of the item would approve Amending Section 3.2.13.6 (Exceptions, Waivers, and Deferrals) of the Land Development Code, to provide an appeals process to the City Manager prior to appealing to the City Council.

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

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

AYES (6): Mayor Williams, Mayor Pro-tem Hurt, Deputy Mayor Pro-tem Albus and Councilmembers Price, Rentz and McAlister
NAYS (0): None
ABSENT (1): Councilmember Craver

15. Ordinance (Final Reading) Z-2020-01: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Prairie Song LLC, agent Nick Coates, to amend the terms of Planned Development (PD) District Number 144 by expanding its original 14.166 acres to include 0.5 acre of additional now-vacant land at 2660 Garfield Avenue, by changing allowed uses to include all those permissible within Residential Medium-Density (MD) zoning districts and by requiring all access to future development of this property to be from Garfield Avenues; Legal description being 12.004 acres out of T&P Railway Co. Section 84 (and located at least 140 feet north of Garfield Avenue) as well as Lots 4-5 in Block 10 and all of Block 11 in the Hillcrest Addition (on north side of 2600 block of Garfield Avenue)
[NOT REMOVED FROM THE TABLE / NOT CONSIDERED AT THIS TIME]

17. Resolution: Receive a Report, Hold a Discussion and public Hearing, and Take Action on Appointing Members to Various Boards and Commissions per the City Charter
[ASSIGNED RESOLUTION NO. 102-2020]

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

Mayor Pro-tem Hurt moved to (re)appoint the following:

Board	Term End Date
Keep Abilene Beautiful, Inc	
Akane Thaxton [New]	September 2021 [unexpired term]
Library Advisory Board	
Dorothy Davidson [Reappointment]	November 2022
Tim de la Vega [Reappointment]	November 2023
Joe Specht [Reappointment]	November 2022
Parks & Recreation Board	
Leigh Black [Reappointment]	May 2023
Jeff Goodin [Reappointment]	May 2023
Robyn Wertheim [Reappointment]	May 2023
Visual Arts Jury	
Grayson Allred [New]	May 2023
Melissa Noonan [Reappointment]	May 2023
Pam Tippen [Reappointment]	May 2023
Mike Warren [Reappointment]	May 2023

Deputy Mayor Pro-tem Albus seconded the motion; motion carried

AYES (6): Mayor Williams, Mayor Pro-tem Hurt, Deputy Mayor Pro-tem Albus and Councilmembers Price, Rentz and McAlister
NAYS (0): None
ABSENT (1): Councilmember Craver

PUBLIC COMMENTS

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

- David Swart – spoke about the high weeds at the Cedar Hill Cemetery and how they were taken care of quickly once he reported it. He also stated that he saw a Police Department Tahoe going under a shelter to keep the car safe during the recent storms, and how he appreciates staff taking care of investments the City has made. Mr. Swart also spoke about the recent announcement that the City will use a third party company to select a new Chief of Police. He stated the public will not be happy doing that, nor will they be just letting Council select one; the City will be criticized either way.

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

ADJOURNMENT

There being no further business, the meeting adjourned at 6:22 p.m.

_____	_____
Shawna Atkinson	Anthony Williams
City Secretary	Mayor

Minutes approved on: _____

SPECIAL CALLED MEETING
June 1, 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 a Special Session on June 1, 2020 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 Deputy City Manager Mindy Patterson, City Attorney Stanley Smith, City Secretary Shawna Atkinson, and various members of the City staff.

Councilmember Shane Price delivered the invocation and led the Pledge of Allegiance to the Flag of the United States of America and State of Texas Flag.

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS, ANNOUNCEMENTS

- Mayor Williams spoke on the current race issues going on in America and how the City of Abilene is handling the situation here locally.

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 May 15, 2020.
[ASSIGNED RESOLUTION NO. 103-2020]

Stanley Smith, City Attorney, presented the item. Adoption of the item would extend the Declaration of Local Disaster issued on May 15, 2020, and mirror Texas Governor Abbot's Executive Orders. Council and staff talked through the various parts of the declaration, which includes removing the stipulation about Board & Commission meetings being temporarily suspended.

Councilmember Hurt shared his concerns that this situation has not been as bad as it was predicted to be and he wants to open everything back up as quickly as possible.

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

- David Swart – stated that he understands that we need to do this to get funding but he thinks that shutting down small businesses has really hurt those businesses, and that they need to be open. Also spoke about the racial protests in America and stated that looting is not appropriate.
- Roseanna Deprang – questioned why Council is not wearing masks. Stated that her family all work in the healthcare industry and she thinks that by not wearing a mask you are hurting others, not yourself.

Council addressed Ms. Deprang's concerns and gave reasoning why they are not wearing masks.

- Cynthia Alvidrez – addressed Mayor Williams and stated that she felt it was inappropriate that he did not attend the protest the previous Saturday regarding the racial issues in America. She stated her opinion on Mayor Williams and that even though he is a minority, she does not think he represents anyone but himself and has an agenda for personal gain only.

Councilmember Price addressed Ms. Alvidrez's statements and defended the Mayor.

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

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

AYES (6): Mayor Williams, Deputy Mayor Pro-tem Albus and Councilmembers Price, Rentz, McAlister and Craver
NAYS (1): Mayor Pro-tem Hurt

ADJOURNMENT

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

_____	_____
Shawna Atkinson	Anthony Williams
City Secretary	Mayor

Minutes approved on: _____

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Robert Hanna, City Manager**

FROM: **Greg McCaffery**

SUBJECT: **3. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Bid No. 2057 to Bontke Brothers Construction for Sayles Blvd Pavement Rehabilitation *(Greg McCaffery)***

GENERAL INFORMATION

The City Council approved staff to proceed with the design and rehabilitation of Sayles Boulevard from Buffalo Gap Road to South Danville Drive back on November 7, 2019. A design contract was approved by City Council on January 9, 2020 to Enprotec/ Hibbs & Todd, Inc.

The Project was advertised as a Public Notice on May 10, 2020 and on May 17, 2020 with a bid opening dated May 26, 2020. This contract involves the rehabilitation of Sayles Boulevard from Buffalo Gap Road to South Danville Drive. The contract also includes a concrete intersection at Sayles Boulevard and South 27th Street as well as traffic signal and drainage improvements.

Additionally the project was bid with a Base Bid (asphalt pavement throughout), Alternate Item 1, concrete pavement across the frontage area of Cooper High School and Alternate Item 2, sidewalk along either side of Sayles Boulevard in the areas of Cooper High School. These two alternates add $901,765.00 and $455,720.00 collectively for a total contract amount of $4,509,623.00, if awarded.

Also a shared bikepath route, with signage, will be provided as part of the project.

The Street Maintenance Advisory and Appeals Board had reviewed the originally listing of major street projects from staff back in January 2020 and has recommended the City Council

proceed with the rehabilitation of Sayles Boulevard with any remaining 2015 Bond Funds.

SPECIAL CONSIDERATIONS

This project has a contract completion time of 100 working days (approx. 5 months, weather permitting)

FUNDING/FISCAL IMPACT

Funding for this project is allocated through 2015 General Bond Funds.

STAFF RECOMMENDATION

Staff recommends bid award to Bontke Brothers Construction, Co., Inc.of Abilene, TX for the base bid of $3,152,138.00, alternate item 1 of $455,138.00 and alternate item 2 of $901,765.00 for a total contract in the amount of $4,509,623.00.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Sayles_Blvd_ Proj Resolution
2. Signed_Contract_Contract-Sayles Blvd Pavement Rehab
3. SCOPE OF PROJECT
4. 060320 Recommendation of Award
5. Bid Tab
6. SAYLES LOCATION MAP
7. BICYCLE FACILITIES_UPDATE
8. Sayles_Blvd_Award PPT

RESOLUTION NO._____

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

WHEREAS, the City of Abilene duly advertised and gave such notice, as required by law, for bids for the pavement rehabilitation project of Sayles Boulevard from Buffalo Gap Road from South Danville Drive; and

WHEREAS, the project involves the pavement rehabilitation of Sayles Boulevard from Buffalo Gap Road to South Danville Road, and alternate items for sidewalk and concrete pavement placement versus asphalt within various locations of the project. The contract also includes traffic vehicular and pedestrian signal improvements,: and

WHEREAS, the following bids were received and opened on the May 26, 2020:

Bidder	Base Bid	Alternate 1	Alternate 2	Total Bid
Bontke Brothers	$3,152,138.00	$ 455,720.00	$ 901,765.00	$ 4,509,623.00
Contract Paving	$2,973,300.10	$2,980,990.00	$ 1,24,028.85	$ 6,078,318.95
Nobles Rd. Const.	$3,981,363.00	$1,190,240.00	$ 1,25,335.00	$ 5,171,603.00
J.H. Strain & Sons	$4,485,265.00	$ 961,875.00	$3,032,855.00	$ 8,479,995.00

WHEREAS, Bontke Brothers Construction, Co., Inc., Abilene, Texas submitted the "Best Value" bid in the amount of $4,509,623.00 with the bid meeting specifications. Staff recommends awarding the bid to the best value bidder, Bontke Brothers Construction, Co., 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 $4,509,623.00.

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

ADOPTED this 11th day of June, 2020.

ATTEST:

_____ _____

Shawna Atkinson, City Secretary Anthony Williams, Mayor

APPROVED:

_____

Stanley Smith, City Attorney

CONSTRUCTION CONTRACT

BACKGROUND

THIS CONTRACT, made June 11, 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.**

The Contractor hereby agrees to commence and complete the construction of Work described as

SAYLES BOULEVARD PAVEMENT REHAB

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

SAYLES BOULEVARD PAVEMENT REHAB

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

In consideration of this Work, the City will pay the Contractor the sum of **$4,509,623.00.**

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

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

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

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

6. **Indemnity.**

A. Definitions

For the purpose of this section the following definitions apply:

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

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

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

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

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

(i) injury or damage to any property or right

(ii) injury, damage, or death to any person or entity

(iii) attorney's fees, witness fees, expert witness fees and expenses, and

(iv) all other costs and expenses of litigation

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

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

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

B. Indemnity

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONTRACTOR

Name of Contractor:

Bontke Brothers Construction Company, Inc.

Business Address:

102 College Drive

Abilene, Texas 79601

Signature

Brent Partain

Name - Typed or Printed

Project Manager

Title - Typed or Printed

(325) 677-6276

Business Phone No.

75-1331325

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:

SCOPE OF PROJECT

Pavement rehabilitation along Sayles Boulevard from Buffalo Gap Rd to South Danville Drive. Base bid to include approximately 42,000 SY of flexible base, 10,000 tons of hot mix, lime stabilization, concrete valley gutters, traffic signal improvements and a concrete intersection at S. 27th. Alternate bids will include concrete paving (substitute) and concrete sidewalks.

Enprotec / Hibbs & Todd

June 3, 2020

City of Abilene
209 East Highway 80
Abilene, TX 79601
Attn: Mr. Greg McCaffery, P.E., CFM - Director of Public Works

Re: Recommendation of Award
Sayles Boulevard Pavement Rehabilitation Project
Abilene, Texas

Dear Mr. McCaffery:

Bids for the referenced project were opened on Tuesday, May 26, 2020. Four (4) bids were received that are summarized in the attached Bid Tabulation. The construction cost estimate developed for the base bid and two alternates was $4.7 million. The apparent low bid for the base bid and two alternates is $4,509,623 submitted by Bontke Brothers Construction Company, Inc., from Abilene, Texas.

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

Based on the criteria set forth in the City of Abilene's Invitation for Bids, eHT believes Bontke Brothers Construction Company, Inc., represents the best value for the Sayles Boulevard Pavement Rehabilitation Project, as the lowest responsive and responsible bidder, in the amount of $4,509,623.00 (base bid + alternate 1 + alternate 2).

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

Sincerely,

Enprotec / Hibbs & Todd, Inc.

Sage Diller

STATE OF TEXAS
SAGE DILLER
96645
LICENSED
PROFESSIONAL ENGINEER

Sage Diller, P.E.
Project Engineer

6/3/2020

SD/jd

Attachment: Bid Tabulation

c: Charlie Thomas, P.E. - Interim City Engineer
Project File: 6518 P:\Projects\Abilene, City of\7542 Sayles Blvd Pavement Rehab\5. Bidding Phase\Bidder Evaluation\060320 Recommendation of Award.docx

TABULATION OF BIDS FOR: Sayles Blvd Pavement Rehab, City of Abilene, Texas

BIDS RECEIVED: 05/26/2020

PE Firm Registration No. 1151

BASE BID

Item No.	Quantity	Unit	Item	Contract Paving Unit Cost	Contract Paving Amount	Bontke Brothers Construction Company Unit Cost	Bontke Brothers Construction Company Amount	Nobles Road Construction Unit Cost	Nobles Road Construction Amount	J.H. Strain & Sons Unit Cost	J.H. Strain & Sons Amount
104-1	2,265	LF	Removal of existing Concrete Curb	$ 5.00	$ 11,325.00	$ 10.00	$ 22,650.00	$ 9.00	$ 20,385.00	$ 15.00	$ 33,975.00
104-2	865	SY	Removal of existing Concrete Valley Gutter	$ 5.00	$ 4,325.00	$ 35.00	$ 30,275.00	$ 25.00	$ 21,625.00	$ 60.00	$ 51,900.00
110	16,090	CY	Roadway Excavation	$ 9.00	$ 144,810.00	$ 10.00	**$ 160,900.00**	$ 31.00	$ 498,790.00	$ 25.00	$ 402,250.00
247	42,315	SY	Flexible Base (Type A) (Grade 2) (Class 5) ((8") (Den Con)	$ 10.90	$ 461,233.50	$ 8.00	$ 338,520.00	$ 15.50	$ 655,882.50	$ 18.00	$ 761,670.00
260-1	650	TON	Lime (Hydrated Lime) (Dry)	$ 165.00	$ 107,250.00	$ 175.00	**$ 113,750.00**	$ 222.00	$ 144,300.00	$ 200.00	$ 130,000.00
260-2	48,130	SY	Construct Lime Stablized Subgrade (6") (Den Con)	$ 2.75	$ 132,357.50	$ 4.00	$ 192,520.00	$ 5.15	$ 247,869.50	$ 7.50	$ 360,975.00
310	12,450	GAL	Prime (AEP)	$ 4.75	$ 59,137.50	$ 4.50	$ 56,025.00	$ 5.00	$ 62,250.00	$ 5.00	$ 62,250.00
340-1	4,900	TON	Hot Mix Asphaltic Concrete (2") (Type C) (PG70-22)	$ 93.43	$ 457,807.00	$ 96.00	$ 470,400.00	$ 97.00	$ 475,300.00	$ 100.00	$ 490,000.00
340-2	5,770	TON	Hot Mix Asphaltic Concrete (2") (Type D) (PG70-22)	$ 95.40	$ 550,458.00	$ 96.15	$ 554,785.50	$ 99.00	$ 571,230.00	$ 100.00	$ 577,000.00
340-3	120	TON	Hot Mix Asphaltic Concrete (6") (Type B) (PG70-22)	$ 93.43	$ 11,211.60	$ 100.00	$ 12,000.00	$ 97.00	$ 11,640.00	$ 140.00	$ 16,800.00
354	7,355	SY	Planing (1-1/2" to 2-1/2")	$ 2.50	$ 18,387.50	$ 22.50	**$ 165,487.50**	$ 5.50	$ 40,452.50	$ 4.00	$ 29,420.00
360-1	4,750	SY	Concrete Pavemetn (8") (Class P)	$ 95.00	$ 451,250.00	$ 100.00	$ 475,000.00	$ 115.00	$ 546,250.00	$ 160.00	$ 760,000.00
360-2	1,135	SY	Concrete Valley Gutter (8") (Class P)	$ 100.00	$ 113,500.00	$ 80.00	$ 90,800.00	$ 115.00	$ 130,525.00	$ 175.00	$ 198,625.00
420-1	8	EA	Manhole Concrete Collar (8") (Class A)	$ 800.00	$ 6,400.00	$ 500.00	$ 4,000.00	$ 700.00	$ 5,600.00	$ 1,000.00	$ 8,000.00
420-2	7	EA	Water Valve Concrete Collar (6") (Class A)	$ 600.00	$ 4,200.00	$ 200.00	$ 1,400.00	$ 300.00	$ 2,100.00	$ 700.00	$ 4,900.00
420-3	205	SY	Replace Commercial Driveway or Alley Apron (8") (Class P)	$ 100.00	$ 20,500.00	$ 80.00	$ 16,400.00	$ 130.00	$ 26,650.00	$ 200.00	$ 41,000.00
420-4	160	SY	Replace Residential Driveway (6") (Class A)	$ 80.00	$ 12,800.00	$ 70.00	$ 11,200.00	$ 130.00	$ 20,800.00	$ 200.00	$ 32,000.00
500	1	LS	Mobilization and Insurance	$ 140,000.00	$ 140,000.00	$ 140,000.00	$ 140,000.00	$ 185,000.00	$ 185,000.00	$ 200,000.00	$ 200,000.00
502	5	MTH	Traffic Control Plan, Barricades, Signs, Traffic Handling	$ 10,000.00	$ 50,000.00	$ 10,000.00	$ 50,000.00	$ 17,750.00	$ 88,750.00	$ 15,000.00	$ 75,000.00
529-1	710	LF	Concrete Curb and Gutter (Class A)	$ 27.00	$ 19,170.00	$ 20.00	$ 14,200.00	$ 24.00	$ 17,040.00	$ 27.00	$ 19,170.00
529-2	1,555	LF	Monolithic Curb (Class A)	$ 10.00	$ 15,550.00	$ 16.00	$ 24,880.00	$ 29.00	$ 45,095.00	$ 25.00	$ 38,875.00
618-1	15	LF	Conduit (2") (PVC) (Sch 40)	$ 35.00	$ 525.00	$ 50.00	$ 750.00	$ 33.00	$ 495.00	$ 37.00	$ 555.00
618-2	10	LF	Conduit (3") (PVC) (Sch 40)	$ 50.00	$ 500.00	$ 50.00	$ 500.00	$ 44.00	$ 440.00	$ 50.00	$ 500.00
618-3	325	LF	Conduit (3") (Sch 80) (Bore)	$ 70.00	$ 22,750.00	$ 70.00	$ 22,750.00	$ 66.00	$ 21,450.00	$ 75.00	$ 24,375.00
620-1	5	LF	Electrical Conduit (No. 6)	$ 100.00	$ 500.00	$ 10.00	$ 50.00	$ 2.20	$ 11.00	$ 3.00	$ 15.00
620-2	445	LF	Electrical Conduit (No. 6) (Bare)	$ 10.00	$ 4,450.00	$ 2.00	$ 890.00	$ 2.20	$ 979.00	$ 3.00	$ 1,335.00
624-1	3	EA	Standard Ground Box (Size C)	$ 2,000.00	$ 6,000.00	$ 1,500.00	$ 4,500.00	$ 1,540.00	$ 4,620.00	$ 4,200.00	$ 12,600.00
624-2	1	EA	Standard Ground Box (Size D)	$ 2,000.00	$ 2,000.00	$ 1,500.00	$ 1,500.00	$ 1,595.00	$ 1,595.00	$ 2,000.00	$ 2,000.00
637-1	10	EA	Aluminum Signs (Bike Route) (D11-1) (with Poles)	$ 750.00	$ 7,500.00	$ 300.00	$ 3,000.00	$ 500.00	$ 5,000.00	$ 1,000.00	$ 10,000.00
637-2	2	EA	Aluminum Signs (Begin) (M4-14)	$ 750.00	$ 1,500.00	$ 500.00	$ 1,000.00	$ 250.00	$ 500.00	$ 100.00	$ 200.00
637-3	2	EA	Aluminum Signs (End) (M4-6)	$ 750.00	$ 1,500.00	$ 500.00	$ 1,000.00	$ 250.00	$ 500.00	$ 100.00	$ 200.00
666-1	17,050	LF	Pavement Markings (Double Solid Line) (4") (Yellow) (Thermo)	$ 1.50	$ 25,575.00	$ 2.00	$ 34,100.00	$ 1.70	$ 28,985.00	$ 1.60	$ 27,280.00
666-2	450	LF	Pavement Markings (Single Solid Line) (4") (White) (Thermo)	$ 3.25	$ 1,462.50	$ 3.00	$ 1,350.00	$ 1.70	$ 765.00	$ 3.25	$ 1,462.50
666-3	80	LF	Pavement Markings (Single Solid Line) (8") (White) (Thermo)	$ 10.00	$ 800.00	$ 5.00	$ 400.00	$ 2.20	$ 176.00	$ 6.00	$ 480.00
666-4	12,750	LF	Pavement Markings (Single Skip Line) (4") (White) (Thermo)	$ 0.20	$ 2,550.00	$ 2.50	$ 31,875.00	$ 0.35	$ 4,462.50	$ 0.20	$ 2,550.00
666-5	2,700	LF	Pavement Markings (Diagonal Line) (12") (Yellow) (Thermo)	$ 2.50	$ 6,750.00	$ 5.00	$ 13,500.00	$ 4.00	$ 10,800.00	$ 3.00	$ 8,100.00
666-6	200	LF	Pavement Markings (Diagonal Line) (12") (White) (Thermo)	$ 15.00	$ 3,000.00	$ 6.00	$ 1,200.00	$ 4.00	$ 800.00	$ 12.00	$ 2,400.00
666-7	1	EA	Pavement Markings (Crosswalk) (White) (Thermo)	$ 2,500.00	$ 2,500.00	$ 1,500.00	$ 1,500.00	$ 1,210.00	$ 1,210.00	$ 3,000.00	$ 3,000.00
666-8	1	EA	Pavement Markings (Arrow Symbol) (White) (Thermo)	$ 1,000.00	$ 1,000.00	$ 1,000.00	$ 1,000.00	$ 190.00	$ 190.00	$ 600.00	$ 600.00
666-9	1	EA	Pavement Markings (ONLY Text) (White) (Thermo)	$ 1,000.00	$ 1,000.00	$ 1,500.00	$ 1,500.00	$ 190.00	$ 190.00	$ 600.00	$ 600.00
666-10	2	EA	Pavement Markings (Stop Bar) (24") (White) (Thermo)	$ 800.00	$ 1,600.00	$ 1,000.00	**$ 2,000.00**	$ 220.00	$ 440.00	$ 700.00	$ 1,400.00
672-1	180	EA	Raised Pavement Markers (Class B) (Reflectorized) (Type I-C)	$ 10.00	$ 1,800.00	$ 5.00	$ 900.00	$ 6.00	$ 1,080.00	$ 5.00	$ 900.00
672-2	350	EA	Raised Pavement Markers (Class B) (Reflectorized) (Type II-A-A)	$ 10.00	$ 3,500.00	$ 5.00	$ 1,750.00	$ 6.00	$ 2,100.00	$ 5.00	$ 1,750.00
680	1	EA	Traffic Signal Cabinet Assembly (NEMA TS2T)	$ 33,000.00	$ 33,000.00	$ 30,000.00	$ 30,000.00	$ 33,000.00	$ 33,000.00	$ 40,000.00	$ 40,000.00
682	8	EA	Pedestrian Signal Heads	$ 1,200.00	$ 9,600.00	$ 2,000.00	$ 16,000.00	$ 1,100.00	$ 8,800.00	$ 1,250.00	$ 10,000.00
684	340	LF	Traffic Signal Cable (Type A) (16 Conductor) (14 AWG)	$ 6.00	$ 2,040.00	$ 6.00	$ 2,040.00	$ 5.00	$ 1,700.00	$ 6.00	$ 2,040.00
TXDOT 6062	1	EA	ITS Radio System	$ 4,000.00	$ 4,000.00	$ 5,000.00	$ 5,000.00	$ 3,850.00	$ 3,850.00	$ 4,000.00	$ 4,000.00
TXDOT 6089	445	LF	Ethernet Cable	$ 5.00	$ 2,225.00	$ 2.00	$ 890.00	$ 2.00	$ 890.00	$ 2.50	$ 1,112.50
TXDOT 6306-1	1	EA	VIVIDS Processor System (ITERIS Next)	$ 20,000.00	$ 20,000.00	$ 16,000.00	$ 16,000.00	$ 17,600.00	$ 17,600.00	$ 20,000.00	$ 20,000.00
TXDOT 6306-2	4	EA	VIVIDS Camera Assembly	$ 3,000.00	$ 12,000.00	$ 2,500.00	$ 10,000.00	$ 2,800.00	$ 11,200.00	$ 3,000.00	$ 12,000.00
TOTAL BASE BID PRICE (Items 104-1 thru TXDOT 6306-2)				***	**$ 2,973,300.10**	***	**$ 3,152,138.00**		**$3,981,363.00**		**$ 4,485,265.00**

ALTERNATE BID ITEM #1

Item No.	Quantity	Unit	Item	Contract Paving Unit Cost	Contract Paving Amount	Bontke Brothers Construction Company Unit Cost	Bontke Brothers Construction Company Amount	Nobles Road Construction Unit Cost	Nobles Road Construction Amount	J.H. Strain & Sons Unit Cost	J.H. Strain & Sons Amount
100	51	STA	Right-of-Way	$ 1,500.00	$ 76,500.00	$ 400.00	$ 20,400.00	$ 500.00	$ 25,500.00	$ 2,000.00	$ 102,000.00
420-3	195	SY	Replace Commercial Driveway or Alley Apron (8") (Class P)	$ 100.00	$ 19,500.00	$ 80.00	$ 15,600.00	$ 130.00	$ 25,350.00	$ 200.00	$ 39,000.00
420-4	525	SY	Replace Residential Driveway (6") (Class A)	$ 80.00	$ 42,000.00	$ 70.00	$ 36,750.00	$ 130.00	$ 68,250.00	$ 200.00	$ 105,000.00
531-1	47,110	SF	Sidewalk	$ 59.00	$ 2,779,490.00	$ 7.00	$ 329,770.00	$ 14.00	$ 659,540.00	$ 12.50	$ 588,875.00
531-2	3	EA	Sidewalk Box/Drainage Plate	$ 1,500.00	$ 4,500.00	$ 2,000.00	$ 6,000.00	$ 1,500.00	$ 4,500.00	$ 3,000.00	$ 9,000.00
531-3	59	EA	Curb Ramp	$ 1,000.00	$ 59,000.00	$ 800.00	$ 47,200.00	$ 6,900.00	$ 407,100.00	$ 2,000.00	$ 118,000.00
TOTAL ALTERNATE BID #1 PRICE (Items 100 thru 531-3)					**$ 2,980,990.00**		**$ 455,720.00**		**$1,190,240.00**		**$ 961,875.00**

ALTERNATE BID ITEM #2

Item No.	Quantity	Unit	Item	Contract Paving Unit Cost	Contract Paving Amount	Bontke Brothers Construction Company Unit Cost	Bontke Brothers Construction Company Amount	Nobles Road Construction Unit Cost	Nobles Road Construction Amount	J.H. Strain & Sons Unit Cost	J.H. Strain & Sons Amount
247	-14,110	SY	Deduct Flexible Base (Type A) (Grade 2) (Class 5) ((8") (Den Con)	$ 12.00	$ (169,320.00)	$ 7.00	$ (98,770.00)	$ 12.00	$ (169,320.00)	$ 15.00	$ (211,650.00)
310	-3,530	GAL	Deduct Prime (AEP)	$ 4.75	$ (16,767.50)	$ 4.50	$ (15,885.00)	$ 4.00	$ (14,120.00)	$ 4.00	$ (14,120.00)
340-1	-1,555	TON	Deduct Hot Mix Asphaltic Concrete (2") (Type C) (PG70-22)	$ 93.43	$ (145,283.65)	$ 96.00	$ (149,280.00)	$ 95.00	$ (147,725.00)	$ 100.00	$ (155,500.00)
340-2	-1,625	TON	Deduct Hot Mix Asphaltic Concrete (2") (Type D) (PG70-22)	$ 95.40	$ (155,025.00)	$ 96.00	$ (156,000.00)	$ 97.00	$ (157,625.00)	$ 100.00	$ (162,500.00)
420-1	-2	EA	Deduct Manhole Concrete Collar (8") (Class A)	$ 800.00	$ (1,600.00)	$ 500.00	$ (1,000.00)	$ 700.00	$ (1,400.00)	$ 1,000.00	$ (2,000.00)
104-1	4,100	LF	Removal of existing Concrete Curb	$ 5.00	$ 20,500.00	$ 10.00	$ 41,000.00	$ 9.00	$ 36,900.00	$ 15.00	$ 61,500.00
360-1	14,825	SY	Concrete Pavement (8") (Class P)	$ 79.00	$ 1,171,175.00	$ 80.00	$ 1,186,000.00	$ 95.00	$1,408,375.00	$ 225.00	$ 3,335,625.00
420-3	245	SY	Replace Commercial Driveway or Alley Apron (8") (Class P)	$ 1,500.00	$ 367,500.00	$ 80.00	$ 19,600.00	$ 130.00	$ 31,850.00	$ 200.00	$ 49,000.00
420-4	150	SY	Replace Residential Driveway (6") (Class A)	$ 79.00	$ 11,850.00	$ 70.00	$ 10,500.00	$ 130.00	$ 19,500.00	$ 200.00	$ 30,000.00
529-2	4,100	LF	Monolithic Curb (Class A)	$ 10.00	$ 41,000.00	$ 16.00	$ 65,600.00	$ 29.00	$ 118,900.00	$ 25.00	$ 102,500.00
TOTAL ALTERNATE BID #2 (Items 247 thru 529-2)					**$ 1,124,028.85**		**$ 901,765.00**		**$1,125,335.00**		**$ 3,032,855.00**

***** Due to calculation error, Contract Paving Co. and Bontke Brothers Construction Company's Base Bids are Higher than what was read aloud at the Bid Opening.**

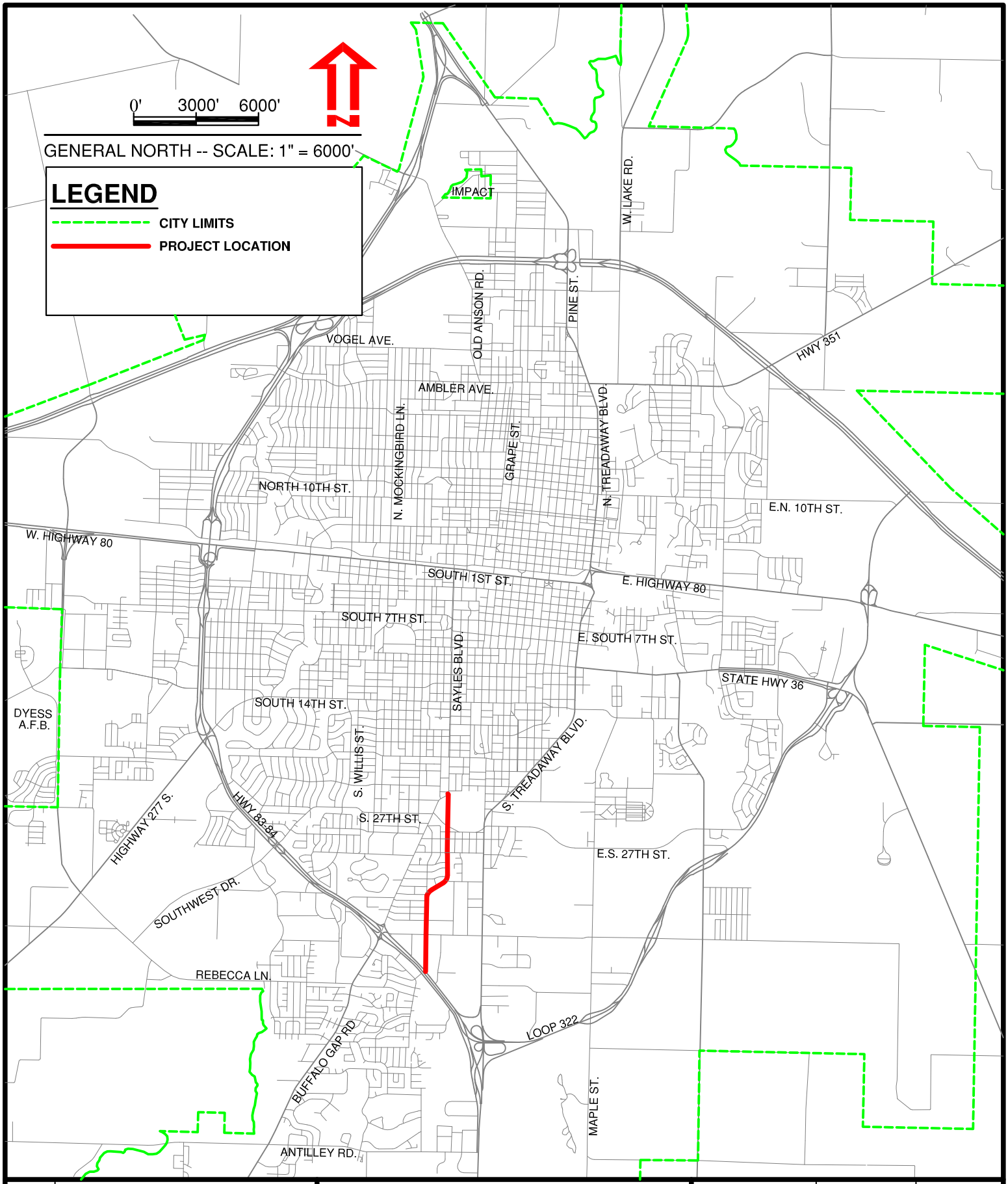
I, SAGE DILLER, P.E., #96645, DO HEREBY CERTIFY THAT THE ABOVE REFERENCED BIDS WERE RECEIVED, IN ACCORDANCE WITH THE ADVERTISED PROCEDURES, OPENED, AND READ ALOUD. THE BID TABULATION HEREIN IS A TRUE AND ACCURATE REPRESENTATION OF THE BIDS READ ALOUD.

Sage Diller, P.E.

SAGE DILLER, P.E., #96645

STATE OF TEXAS
SAGE DILLER
96645
LICENSED
PROFESSIONAL ENGINEER

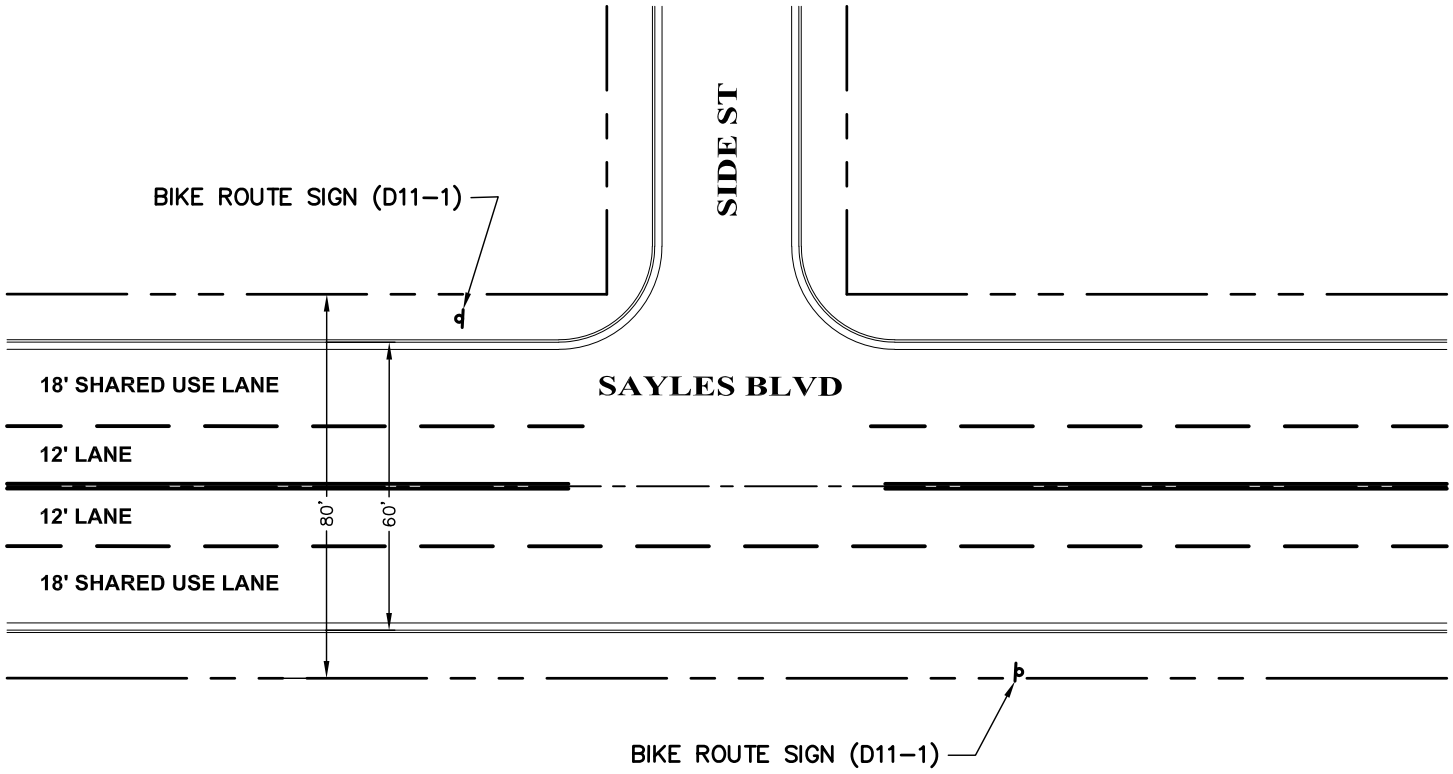
5/26/20



Sheet 1 Of 1	CITY OF ABILENE, TEXAS PUBLIC WORKS DEPARTMENT ENGINEERING DIVISION	SAYLES BLD PAVEMENT REHABILITATION	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: MAY 2020

CITY OF ABILENE, TEXAS
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION

DATE: 06/11/2020
TO: Abilene City Council
MISCELLANEOUS: Bicycle Facilities on Sayles Blvd (Master Bike Plan)



TYPICAL LAYOUT BUFFALO GAP RD TO INDUSTRIAL BLVD

Agenda Item:
Sayles Boulevard Rehabilitation Project

Resolution: Bid Award **#2057 Sayles Boulevard Rehabilitation Project**

(Greg McCaffery)

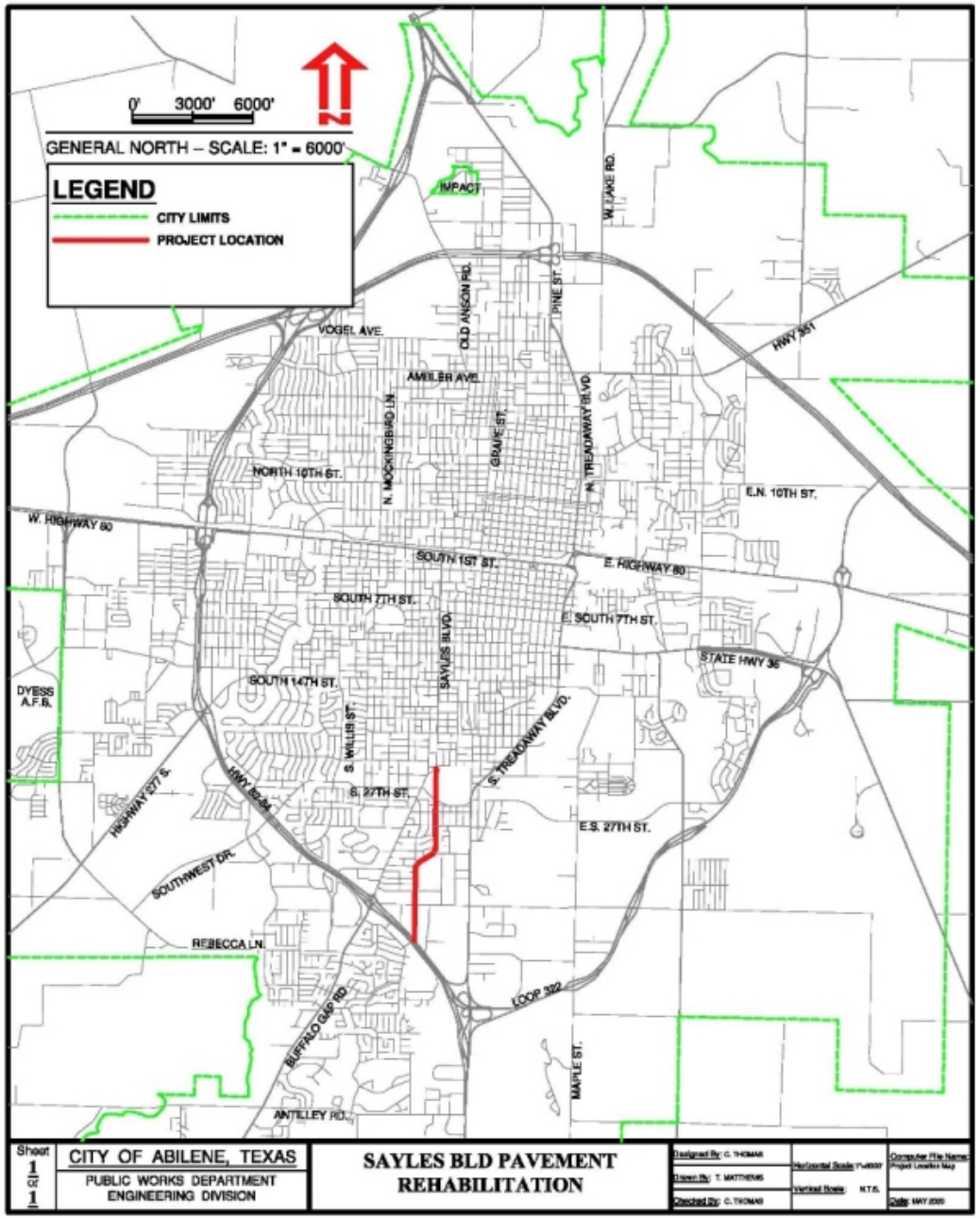
CITY OF ABILENE TEXAS

Project Location Map

Street
Sayles Boulevard

From
South Danville Road

To
Buffalo Gap Road



Agenda Item:
Sayles Boulevard from South Danville Road to Buffalo Gap Road

- Construction Contract includes the rehabilitation of Sayles Boulevard from Danville Road to Buffalo Gap Road.
- Included in the contract are alternative item 1, concrete sidewalk along either side of Sayles Blvd. within the vicinity Cooper High School and alternative item 2, concrete roadway section versus asphalt on Sayles Blvd. along the frontage of the Cooper High School.
- Also included are traffic vehicular and pedestrian signal improvements at the intersection of Salyes Blvd. & South 27th Street.
- Project Advertised May 10th 2020 & May 17th 2020, Bids Opened May 26th 2020.
- Four bids were received.
- The “Best Value” competitive bidding method was used.
- Staff recommends award of contract to Bontke Brothers Construction Co., Inc. in the amount of $4,509,623.00

Questions?

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Robert Hanna, City Manager**

FROM: **Greg McCaffery**

SUBJECT: **4. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Bid No. 2058 to Epic Construction for South 23rd Street and Barrow Street Reconstruction *(Greg McCaffery)***

GENERAL INFORMATION

This Project was advertised as a Public Notice on May 10, 2020 and on May 17, 2020 with a bid opening dated May 26, 2020. This contract involves the reconstruction of the intersection at South 23rd Street and Barrow Street. This contract also includes traffic vehicular and pedestrian signal improvements.

The Street Maintenance Advisory and Appeals Board has reviewed and recommended this construction project during their review of projects for 2020.

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

SPECIAL CONSIDERATIONS

This project has a contract completion time of 40 working days (approx. 2 months, weather permitting).

FUNDING/FISCAL IMPACT

Funding for this project is allocated through Street Maintenance Fund.

STAFF RECOMMENDATION

Staff recommends bid award to Epic Construction, Inc. of Abilene, Texas in the amount of $333,075.50.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. REV_s 23rd and barrow Proj Resolution (5)
2. Signed_Contract_Epic - S. 23rd & Barrow council contract
3. CB2058 TABSHEET
4. Scope of Project
5. PROJECT LOCATION MAP
6. s 23rd and barrow ppt

RESOLUTION NO._____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AWARDING BID TO EPIC 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 the intersection at South 23rd Street and Barrow Street; and

WHEREAS, the project involves the reconstruction the intersection at South 23rd Street and Barrow Street. The contract also includes traffic vehicular and pedestrian signal improvements,: and

WHEREAS, the following bids were received and opened on the May 26, 2020:

Epic Construction Inc., Abilene, Texas	$333,075.50
Bontke Brothers Construction Co., Inc., Abilene, Texas	$359,802.00

WHEREAS, Epic Construction, Inc., Abilene, Texas submitted the best value bid in the amount of $333,075.50 with the bid meeting specifications. Staff recommends awarding the bid to the best value bidder, Epic 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 $333,075.50.

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

ADOPTED this 11th day of June, 2020.

ATTEST:

_____ _____

Shawna Atkinson, City Secretary Anthony Williams, Mayor

APPROVED:

_____

Stanley Smith, City Attorney

CONSTRUCTION CONTRACT

BACKGROUND

THIS CONTRACT, made on the **11th** day of **June, 2020** is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and **Epic Construction Co.** 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 --

SOUTH 23RD ST AND BARROW ST RECONSTRUCTION PROJECT

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 **$333,075.50 (Three hundred thirty-three thousand seventy-five dollars and fifty 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:

Epic Construction Company

Signature

Kyle Doby

Name - Typed or Printed

Partner

Title - Typed or Printed

Business Address:

2701 S. Treadaway Blvd.

Abilene, Texas 79602

325-695-6283

Business Phone No.

75-2810409

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

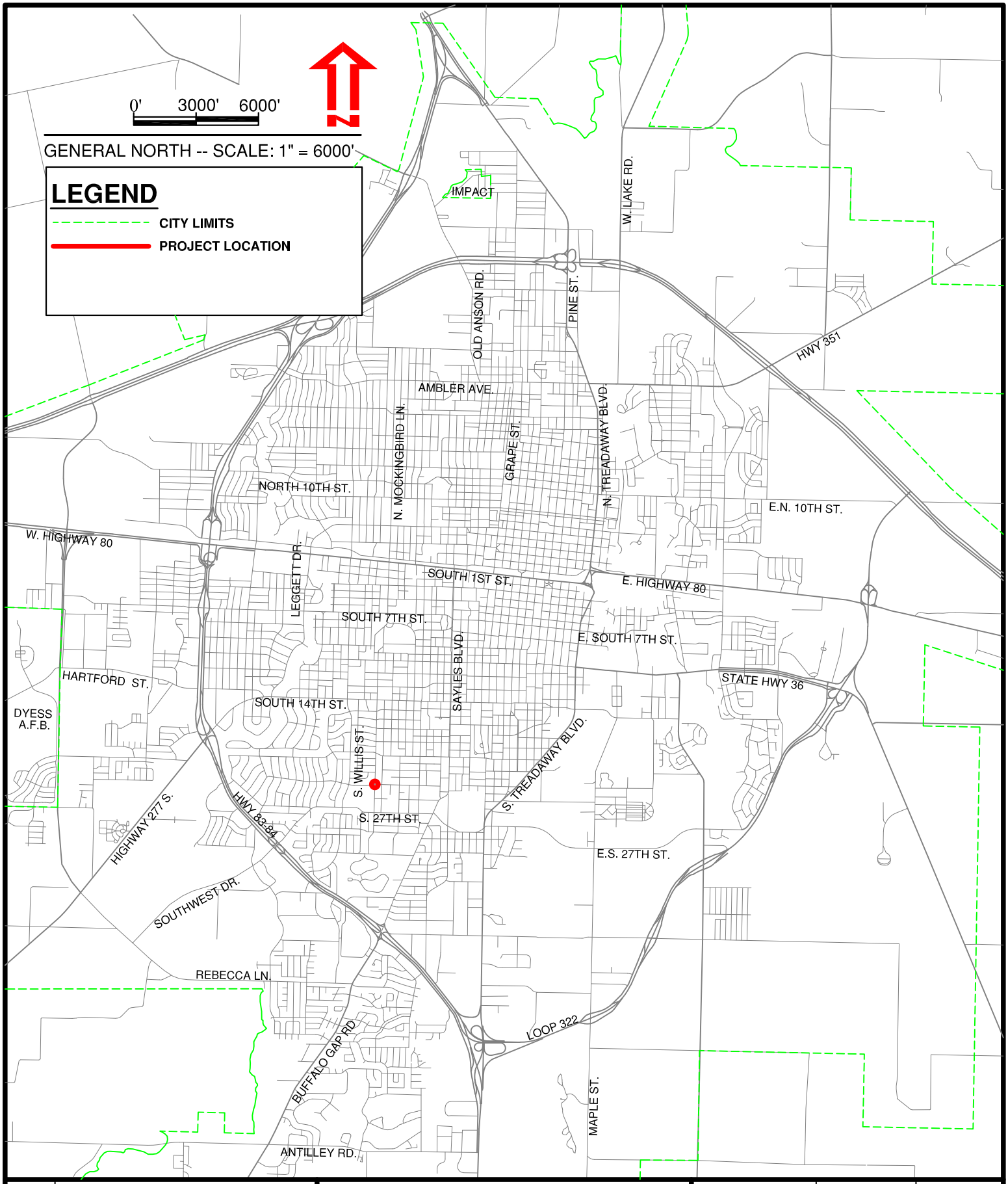
DEPARTMENT: ENGR
BID NO.: CB-2058
TIME OF OPENING: 11:00 A.M.
DATE OF OPENING: MAY 26, 2020

				EPIC CONSTRUCTION ABILENE, TX		BONTKE BROTHERS ABILENE, TX									
ITEM	**DESCRIPTION**	**QTY**	**UNIT**	**UNIT PRICE**	**EXTENSION**	**UNIT PRICE**	**EXTENSION**	**UNIT PRICE**	**EXTENSION**	**UNIT PRICE**	**EXTENSION**	**UNIT PRICE**	**EXTENSION**	**UNIT PRICE**	**EXTENSION**
1.	SOUTH 23RD ST AND BARROW ST RECONSTRUCTION PROJECT				333,075.50		359,802.00								
BASE BID					333,075.50		359,802.00								
DISCOUNT															
TOTAL BID					333,075.50		359,802.00								

*NOTES: INDICATES RECOMMENDED AWARD

SCOPE OF PROJECT

This construction contract involves the reconstruction of the intersection at S 23rd St and Barrow St. This contract will include signal updates and ADA improvements.



Sheet 1 Of 1	CITY OF ABILENE, TEXAS PUBLIC WORKS DEPARTMENT ENGINEERING DIVISION	**S 23RD ST AND BARROW ST RECONSTRUCTION PROJECT**	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:
South 23rd Street and Barrow Street Reconstruction

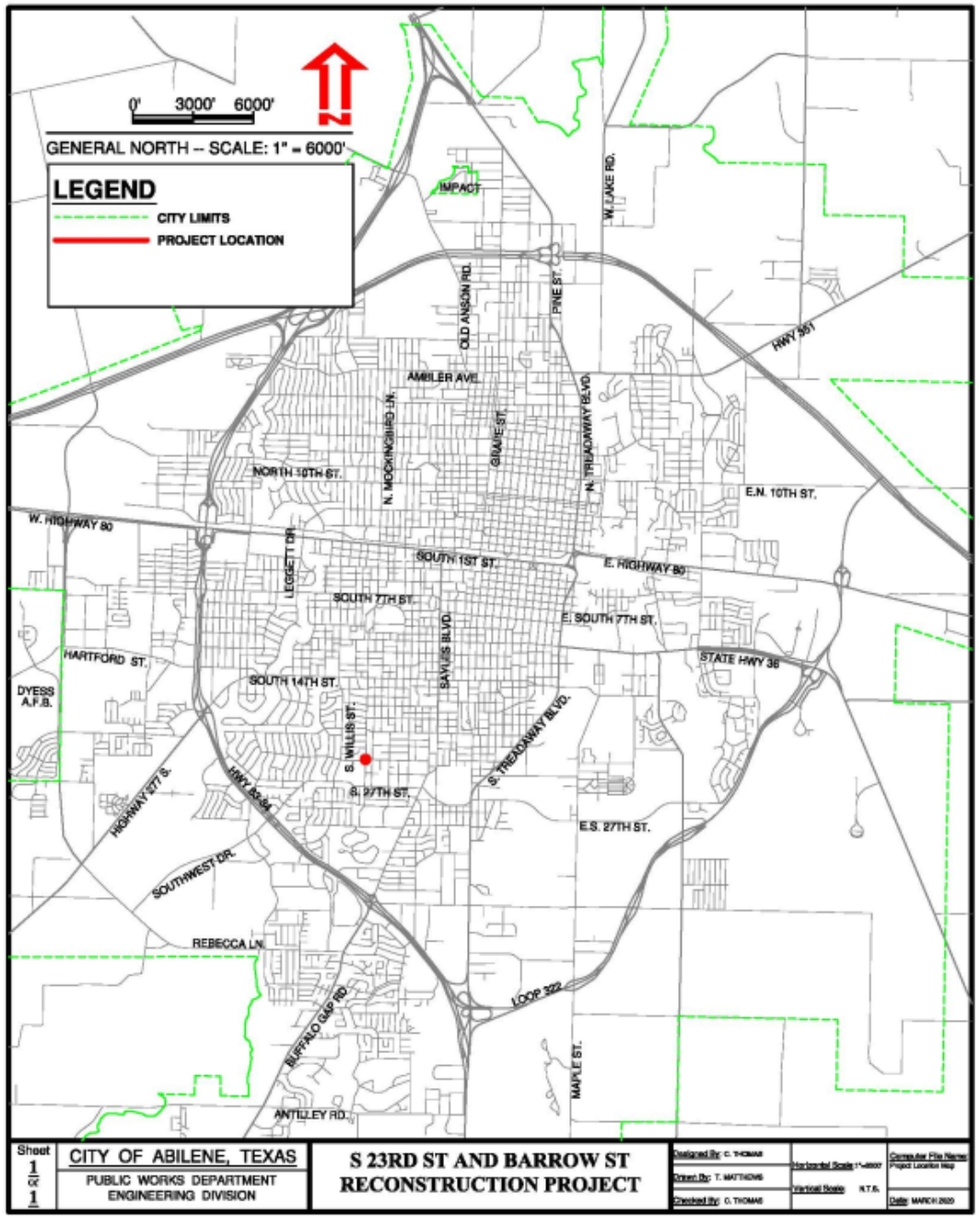
Resolution: Bid Award **#CB-2058** South 23rd and Barrow Reconstruction

(McCaffery)

CITY OF ABILENE TEXAS

Project Location Map

Streets	From	To
S 23rd St	Intersection	
Barrow St	Intersection	



Agenda Item:
South 23rd Street and Barrow Street Reconstruction

- Construction Contract includes the reconstruction of the South 23rd Street and Barrow Street intersection.
- Also included are traffic vehicular and pedestrian signal improvements
- Project Advertised May 10th 2020 & May 17th 2020, Bids Opened May 26th 2020.
- Two bids were received.
- The “Best Value” competitive bidding method was used.
- Staff recommends award of contract to Epic Construction, Inc. in the amount of $333,075.50.

Questions?

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Robert Hanna, City Manager**

FROM: **Stan Standridge, Police Chief**

SUBJECT: **5. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Purchase of Ammunition from Precision Delta for the Police Department and Marshals Division *(Stan Standridge)***

GENERAL INFORMATION

Ammunition is ordered in approximately six batches throughout the course of the Fiscal Year. Over the year, purchases will exceed $50,000 aggregate. The Abilene Police Department uses Winchester Law Enforcement ammunition. Precision Delta is the only state-awarded contract for Winchester ammunition.

The Texas Procurement and Support Services (TPASS) has been established as an alternative purchasing method, with the use of Texas multiple award schedule (TXMAS) contracts.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

The Department budgeted $103,950 for ammunition and related firearms equipment.

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 2020 ResolutionAmmo_and_Accessories_Resolution (1)
2. 680-A1 Precision Delta Catalog 5-26-2020
3. Precision Delta 680-A1
4. Police Ammunition Purchase

RESOLUTION NO._____

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AUTHORIZING THE ABILENE POLICE DEPARTMENT TO PURCHASE AMMUNITION FROM PRECISION DELTA THROUGH THE TEXAS PROCUREMENT & SUPPORT SERVICES (TPASS) CONTRACT #680-A1

WHEREAS, this City Council finds the Abilene Police Department has budgeted $103,950 for the purchase of ammunition and associated firearms accessories; and

WHEREAS, ammunition and firearms accessories are required items, essential to the services provided by the Abilene Police Department; and

WHEREAS, ammunition is ordered in approximately six batches throughout the course of the Fiscal Year; and

WHEREAS, the Abilene Police Department uses Winchester Law Enforcement ammunition; and

WHEREAS, the Texas Procurement and Support Services (TPASS) has been established, as an alternative purchasing method, with the use of Texas multiple award schedule (TXMAS) contracts; and

WHEREAS, Precision Delta is the only state awarded contract for Winchester ammunition.

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

PART 1: That the City approves the purchase of Winchester ammunition from Precision Delta and shall use the Texas Procurement & Support Services (TPASS) Contract #680-A1.

PART 2: That the City Manager or his designee is authorized to execute the necessary transaction(s) for the purchase of said ammunition and firearms accessories.

PART 3: That this Resolution shall take effect immediately from and after passage.

ADOPTED the 11th day of June, 2020.

ATTEST:

_____ _____

Shawna Atkinson, City Secretary Anthony Williams, Mayor

APPROVED:

_____

Stanley Smith, City Attorney

Company Name	PRECISION DELTA CORP

5/26/2020

Manufacturer (Brand)	Manufacturer's Code/Part No	Item Description	Unit of Measure (UOM)	Qty/ UOM	2020Catalog List (MSRP)	Catalog Discount %	Contract Price
Winchester	**Q4203**	25 AUTO 50 gr Full Metal Ja	Case	500 rds	$ 305.60	47.00%	$ 161.97
Winchester	**Q4255**	32 AUTO 71 gr Full Metal Ja	Case	500 rds	$ 342.80	47.00%	$ 181.68
Winchester	**Q4206**	380 AUTO 95 gr Full Metal J	Case	500 rds	$ 246.20	47.00%	$ 130.49
Winchester	**S380PDB**	380 AUTO 95 gr Bonded PD	Case	200 rds	$ 246.00	47.00%	$ 130.38
Winchester	**WC3801**	380 AUTO 95 gr WinClean	Case	500 rds	$ 267.50	47.00%	$ 141.78
Winchester	**USA38SP**	38 SPL 125 gr Jacketed Flat F	Case	500 rds	$ 275.60	47.00%	$ 146.07
Winchester	**WC381**	38 SPL 125 gr WinClean	Case	500 rds	$ 279.90	47.00%	$ 148.35
Winchester	**Q4171**	38 SPL 130 gr Full Metal Jack	Case	500 rds	$ 254.30	47.00%	$ 134.78
Precision Delta	**P14838W**	38 SPL 148 gr HBWC	Case	1000 rds	$ 357.33	25.00%	$ 268.00
Precision Delta	**P14838F**	38 SPL 148gr HBWC Match	Case	1000 rds	$ 364.00	25.00%	$ 273.00
Winchester	**Q4196**	38 SPL 150 gr Lead Round N	Case	500 rds	$ 395.10	47.00%	$ 209.40
Winchester	**X38S1P**	38 SPL 158 gr Lead Round N	Case	500 rds	$ 373.50	47.00%	$ 197.96
Precision Delta	**P15838W**	38 SPL 158 gr SWC	Case	1000 rds	$ 366.67	25.00%	$ 275.00
Precision Delta	**P15838F**	38 SPL 158 gr SWC Match	Case	1000 rds	$ 372.00	25.00%	$ 279.00
Winchester	**USA38JHP**	38 SPL +P 125 gr Jacketed H	Case	500 rds	$ 293.10	47.00%	$ 155.34
Winchester	**X38S7PH**	38 SPL +P 125 gr Jacketed H	Case	500 rds	$ 316.80	47.00%	$ 167.90
Winchester	**X38S8HP**	38 SPL +P 125 gr Silvertip H	Case	500 rds	$ 484.90	47.00%	$ 257.00
Winchester	**RA38B**	38 SPL +P 130 gr Ranger Bo	Case	500 rds	$ 374.10	47.00%	$ 198.27
Winchester	**X38SPD**	38 SPL +P 158 gr Lead Hollo	Case	500 rds	$ 381.40	47.00%	$ 202.14
Winchester	**RA38110HP+**	38 SPL +P+ 110 gr Ranger Ja	Case	500 rds	$ 336.80	47.00%	$ 178.50
Winchester	**USA9MMVP**	9 MM 115 gr Full Metal Jack	Case	1000 rds	$ 362.00	47.00%	$ 191.86
Winchester	**RA9MMJHP**	9 MM 115 gr Jacketed Hollov	Case	500 rds	$ 253.10	47.00%	$ 134.14
Winchester	**USA9JHP**	9 MM 115 gr Jacketed Hollov	Case	500 rds	$ 222.30	47.00%	$ 117.82
Precision Delta	**P9115JHP**	9MM 115 gr JHP	Case	1000 rds	$ 396.67	25.00%	$ 297.50
Winchester	**WC91**	9 MM 115 gr WinClean	Case	500 rds	$ 207.90	47.00%	$ 110.19
Winchester	**WC92**	9 MM 124 gr WinClean	Case	500 rds	$ 212.10	47.00%	$ 112.41
Precision Delta	**P9124JHP**	9MM 124 gr JHP	Case	1000 rds	$ 399.33	25.00%	$ 299.50
Winchester	**RA9147FMJ**	9 MM 147 gr Full Metal Jack	Case	500 rds	$ 257.10	47.00%	$ 136.26
Winchester	**USA9JHP2**	9 MM 147 gr Jacketed Hollov	Case	500 rds	$ 238.20	47.00%	$ 126.25
Winchester	**WC93**	9 MM 147 gr WinClean	Case	500 rds	$ 216.20	47.00%	$ 114.59
Winchester	**RA9124N**	9 MM NATO 124 gr Full Me	Case	500 rds	$ 205.80	47.00%	$ 109.07
Winchester	**RA9SF**	9MM 100 gr Ranger Frangibl	Case	500 rds	$ 386.80	47.00%	$ 205.00
Winchester	**RA9SF1**	9MM 90 gr Ranger Frangible	Case	500 rds	$ 364.30	47.00%	$ 193.08
Winchester	**RA9115HP+**	9 MM +P+ 115 gr Jacketed H	Case	500 rds	$ 256.60	47.00%	$ 136.00
Winchester	**X38ASHP**	38 SUPER AUTO 125 gr Silv	Case	500 rds	$ 449.40	47.00%	$ 238.18
Winchester	**Q4205**	38 SUPER AUTO 130 gr Ful	Case	500 rds	$ 371.10	47.00%	$ 196.68
Winchester	**RA357SSF**	357 SIG 100 gr Ranger Frang	Case	500 rds	$ 590.80	47.00%	$ 313.12
Winchester	**USA357SJHP**	357 SIG 125 gr Jacketed Holl	Case	500 rds	$ 406.60	47.00%	$ 215.50
Winchester	**Q4304**	9X23 MM WINCHESTER 1	Case	500 rds	$ 366.90	47.00%	$ 194.46
Winchester	**X923W**	9X23 MM WINCHESTER 1	Case	500 rds	$ 484.50	47.00%	$ 256.79
Winchester	**WC357SIG**	357 SIG 125 gr WinClean	Case	500 rds	$ 351.70	47.00%	$ 186.40
Winchester	**Q4204**	357 MAG 110 gr Jacketed Ho	Case	500 rds	$ 317.80	47.00%	$ 168.43
Winchester	**X3576P**	357 MAG 125 gr Jacketed Ho	Case	500 rds	$ 383.40	47.00%	$ 203.20
Winchester	**WC3571**	357 MAG 125 gr WinClean	Case	500 rds	$ 337.10	47.00%	$ 178.66
Winchester	**X3574P**	357 MAG 158 gr Jacketed Ho	Case	500 rds	$ 383.40	47.00%	$ 203.20

Company Name	PRECISION DELTA CORP

5/26/2020

Manufacturer (Brand)	Manufacturer's Code/Part No	Item Description	Unit of Measure (UOM)	Qty/ UOM	2020Catalog List (MSRP)	Catalog Discount %	Contract Price
Winchester	**X3575P**	357 MAG 158 gr Jacketed So	Case	500 rds	$ 383.50	47.00%	$ 203.26
Winchester	**RA40SF**	40 S&W 135 gr Ranger Frang	Case	500 rds	$ 478.60	47.00%	$ 253.66
Winchester	**USA40SWVP**	40 S&W 165 gr FMJ Value P	Case	500 rds	$ 202.45	47.00%	$ 107.30
Winchester	**WC401**	40 S&W 165 gr WinClean	Case	500 rds	$ 256.90	47.00%	$ 136.16
Winchester	**USA40JHP**	40 S&W 180 gr Jacketed Hol	Case	500 rds	$ 269.80	47.00%	$ 142.99
Winchester	**WC402**	40 S&W 180 gr WinClean	Case	500 rds	$ 256.90	47.00%	$ 136.16
Winchester	**X44MS**	44 REM MAG 210 gr Silverti	Case	200 rds	$ 256.70	47.00%	$ 136.05
Winchester	**Q4240**	44 REM MAG 240 gr Jackete	Case	500 rds	$ 521.00	47.00%	$ 276.13
Winchester	**RA45GSF**	45 GAP GLOCK AUTO 175	Case	500 rds	$ 724.50	47.00%	$ 383.99
Winchester	**RA45GB**	45 GAP GLOCK AUTO Ran	Case	500 rds	$ 578.40	47.00%	$ 306.55
Winchester	**USA45A**	45 AUTO 185 gr Full Metal J	Case	500 rds	$ 243.00	47.00%	$ 128.79
Winchester	**WC451**	45 AUTO 185 gr WinClean	Case	500 rds	$ 291.50	47.00%	$ 154.50
Precision Delta	**P45230**	45 AUTO 230 gr FMJ	Case	1000 rds	$ 461.33	25.00%	$ 346.00
Winchester	**USA45AVP**	45 AUTO 230 gr FMJ Value	Case	500 rds	$ 265.65	47.00%	$ 140.79
Winchester	**USA45JHP**	45 AUTO 230 gr Jacketed Ho	Case	500 rds	$ 326.50	47.00%	$ 173.05
Winchester	**WC452**	45 AUTO 230 gr WinClean	Case	500 rds	$ 291.50	47.00%	$ 154.50
Winchester	**RA45SF**	45 AUTO +P 175 gr Frangibl	Case	500 rds	$ 629.20	47.00%	$ 333.48
Winchester	**X45CSHP2**	45 COLT 225 gr Silvertip Ho	Case	200 rds	$ 261.90	47.00%	$ 138.81
Winchester	**USA45CB**	45 COLT 250 gr Lead Cowbo	Case	500 rds	$ 514.50	47.00%	$ 272.69
Winchester	**RA223R-Y**	223 Rem / 556 mm 55 gr Ran	Case	1000 rds	$ 1,053.50	47.00%	$ 558.36
Winchester	**RA556M855K**	223 REM / 556 mm 62 gr Ran	Case	1000 rds	$ 926.00	47.00%	$ 490.78
Winchester	**USA223R1**	223 REM 55 gr Full Metal Jac	Case	1000 rds	$ 622.64	47.00%	$ 330.00
Winchester	**RA223SF-Y**	223 REM 55 gr Ranger Sinter	Case	1000 rds	$ 1,332.00	47.00%	$ 705.96
Winchester	**RA556B**	556 mm 64 gr Ranger Bonded	Case	1000 rds	$ 1,522.00	47.00%	$ 806.66
Winchester	**RA556M**	5.56 mm 77gr Match BTHP	Case	1000 rds	$ 1,408.50	47.00%	$ 746.51
Winchester	**USA3081**	308 WINCHESTER 147 gr F	Case	200 rds	$ 296.90	47.00%	$ 157.36
Winchester	**S308WB**	308 WINCHESTER 150 gr R	Case	200 rds	$ 390.20	47.00%	$ 206.81
Winchester	**RA3085**	308 WINCHESTER 150gr Ra	Case	200 rds	$ 297.50	47.00%	$ 157.68
Winchester	**SBST308**	308 WINCHESTER 150 gr B	Case	200 rds	$ 412.60	47.00%	$ 218.68
Winchester	**SBST308A**	308 WINCHESTER 168 gr B	Case	200 rds	$ 412.60	47.00%	$ 218.68
Winchester	**RA1200**	12 GA 2 3/4 in 9 Pellet Range	Case	250 rds	$ 247.40	47.00%	$ 131.12
Winchester	**RA12008**	12 GA 2 3/4 in 8 Pellet Range	Case	250 rds	$ 247.50	47.00%	$ 131.18
Winchester	**RA120085**	12 GA 2 3/4 in 8 Pellet Range	Case	250 rds	$ 244.50	47.00%	$ 129.59
Winchester	**RA1200HD**	12 GA 2 3/4 in 9 Pellet Range	Case	250 rds	$ 256.70	47.00%	$ 136.05
Winchester	**XB1200**	12 GA 2 3/4 in 9 Pellet 00 Bu	Case	250 rds	$ 253.00	47.00%	$ 134.09
Winchester	**XB121**	12 GA 2 3/4 in 16 Pellet 1 Bu	Case	250 rds	$ 378.00	47.00%	$ 200.34
Winchester	**XB124**	12 GA 2 3/4 in 27 Pellet 4 Bu	Case	250 rds	$ 370.00	47.00%	$ 196.10
Winchester	**RA1200SF**	12 GA 2 3/4 in 9 Pellet 00 Bu	Case	250 rds	$ 619.30	47.00%	$ 328.23
Winchester	**RA12RSSF**	12 GA 2 3/4 in 357 grs Slug F	Case	250 rds	$ 745.20	47.00%	$ 394.96
Winchester	**X12RS15**	12 GA 2 3/4 in 1 oz Rifled Slu	Case	250 rds	$ 265.50	47.00%	$ 140.72
Winchester	**RA12RS15S**	12 GA 2 3/4 in Ranger Segme	Case	250 rds	$ 281.50	47.00%	$ 149.20
Winchester	**TRGT127**	12 GA 2 3/4 in 2 3/4 dr 1 1/8	Case	250 rds	$ 155.10	47.00%	$ 82.20
Winchester	**TRGT128**	12 GA 2 3/4 in 2 3/4 dr 1 1/8	Case	250 rds	$ 155.10	47.00%	$ 82.20
Winchester	**TRGT12M7**	12 GA 2 3/4 in 3 dr 1 1/8 oz #	Case	250 rds	$ 155.10	47.00%	$ 82.20
Winchester	**TRGT12M8**	12 GA 2 3/4 in 3 dr 1 1/8 oz #	Case	250 rds	$ 155.10	47.00%	$ 82.20
Winchester	**XU126**	12 GA 2 3/4 in 3 1/4 dr 1 oz #	Case	250 rds	$ 160.90	47.00%	$ 85.28

Company Name	PRECISION DELTA CORP

5/26/2020

Manufacturer (Brand)	Manufacturer's Code/Part No	Item Description	Unit of Measure (UOM)	Qty/ UOM	2020Catalog List (MSRP)	Catalog Discount %	Contract Price
Winchester	**XU127**	12 GA 2 3/4 in 3 1/4 dr 1 oz #	Case	250 rds	$ 160.90	47.00%	$ 85.28
Winchester	**XU128**	12 GA 2 3/4 in 3 1/4 dr 1 oz #	Case	250 rds	$ 160.90	47.00%	$ 85.28
Winchester	**XU12H4**	12 GA 2 3/4 in 3 1/4 dr 1 1/8	Case	250 rds	$ 163.90	47.00%	$ 86.87
Winchester	**XU12H6**	12 GA 2 3/4 in 3 1/4 dr 1 1/8	Case	250 rds	$ 163.90	47.00%	$ 86.87
Winchester	**XU12H7**	12 GA 2 3/4 in 3 1/4 dr 1 1/8	Case	250 rds	$ 163.90	47.00%	$ 86.87
Winchester	**XU12H8**	12 GA 2 3/4 in 3 1/4 dr 1 1/8	Case	250 rds	$ 163.90	47.00%	$ 86.87
Winchester	**AA127**	12 GA 2 3/4 in 2 3/4 dr 1 1/8	Case	250 rds	$ 187.50	47.00%	$ 99.38
Winchester	**AA128**	12 GA 2 3/4 in 2 3/4 dr 1 1/8	Case	250 rds	$ 187.50	47.00%	$ 99.38
Winchester	**AA12FL8**	12 GA 2 3/4 in 1 3/4 dr 26 gn	Case	250 rds	$ 176.70	47.00%	$ 93.65
Winchester	**AA208**	20 GA 2 3/4 in 2 1/2 dr 7/8 oz	Case	250 rds	$ 162.30	47.00%	$ 86.02
Winchester	**AAH208**	20 GA 2 3/4 in 2 1/2 dr 1 oz #	Case	250 rds	$ 162.30	47.00%	$ 86.02
Winchester	**AAL127**	12 GA 2 3/4 in 2 3/4 dr 1 oz #	Case	250 rds	$ 180.30	47.00%	$ 95.56
Winchester	**AAL128**	12 GA 2 3/4 in 2 3/4 dr 1 oz #	Case	250 rds	$ 180.30	47.00%	$ 95.56
Winchester	**AAM127**	12 GA 2 3/4 in 3 dr 1 1/8 oz #	Case	250 rds	$ 187.50	47.00%	$ 99.38
Winchester	**AAM128**	12 GA 2 3/4 in 3 dr 1 1/8 oz #	Case	250 rds	$ 187.50	47.00%	$ 99.38

Contract Details: # 680-A1

Search for items in this contract (/contract_number/680~A1/ex_search/false)

Number	680-A1
Description	Police Equipment, Accessories and Ammunition
Category	TxSmartBuy
Type	Term
Start Date	2/1/2015
End Date	2/28/2021
Purchase Category Code(Agencies Only)	PCC A except WorkQuest or TCI purchases made through Texas SmartBuy, which require the use of Document Type 9, with a blank PCC field.
Optional Renewal Terms	No renewals remaining
Purchase Orders	Only purchase orders issued through TxSmartBuy are eligible for contract pricing. The Contractor will not ship any products or provide related services until receipt of a Purchase Order generated by the TxSmartBuy system.
NIGP Code(s)	680-04 680-08 680-12 680-20 680-24 680-44 680-48 680-50 680-52 680-53 680-56 680-56 680-60 680-61 680-65 680-67 680-77 680-84 680-86 680-87 680-88 680-92 680-95
CPA Contract Management	Questions regarding contract management issues, price changes, amendments or other post-award concerns should be directed to: SPD Contract Management Office (SCMO) Texas Comptroller of Public Accounts (CPA) Phone: (512) 463-3034 option 3 Email: spd.cmo@cpa.texas.gov (mailto:spd.cmo@cpa.texas.gov)

Contract Specifics/Notes

This contract is intended to cover the State's normal requirements for police equipment, accessories, and ammunition that have historical usage and to offer best value for these items. Items that are not specifically listed in this contract may be purchased from the catalog provided by the Contractor. The Contract price for the catalog items offered by each awarded contractor can be found by going to the Contractor's link shown below:

Contractor Catalogs

680-A1 Axon Enterprise, Inc. Catalog (http://www.txsmartbuy.com/ShopFlow/Documents/Contract%20Attachments/680-A1 Axon Price Sheet - 4-26-18.xls)

680-A1 CMI Inc. Catalog (http://secocms.cpa.texas.gov/SSP Applications/NetSuite Inc. - Shopping/Custom ShopFlow/Documents/Contract Attachments/680-A1 CMI_Catalog_6-4-2020.xlsx)

680-A1 Galls, LLC dba Miller Uniforms & Equipment Catalog (http://www.txsmartbuy.com/ShopFlow/Documents/Contract%20Attachments/680-A1 Millers Uniforms Catalog v2.xlsx)

680-A1 GT Distributors, Inc. Catalog (http://secocms.cpa.texas.gov/SSP Applications/NetSuite Inc. - Shopping/Custom ShopFlow/Documents/Contract Attachments/680-A1 GT Distributor Catalog 4-14-2020.xlsx)

680-A1 Guth Laboratories, Inc. Catalog (http://www.txsmartbuy.com/ShopFlow/Documents/Contract%20Attachments/680-A1 Guth Catalog5-15-15.xlsx)

680-A1 Intoximeters, Inc. Catalog (http://www.txsmartbuy.com/ShopFlow/Documents/Contract%20Attachments/680-A1Intoximeters Catalog.xlsx)

680-A1 Kustom Signals, Inc. Catalog (http://www.txsmartbuy.com/ShopFlow/Documents/Contract%20Attachments/680-A1 Kustom Signals Posted.xlsx)

680-A1 Lawmen's Shooters' Supply, Inc. Catalog (http://www.txsmartbuy.com/ShopFlow/Documents/Contract%20Attachments/Lawmen.xlsx)

680-A1 MPH Industries, Inc. Catalog (http://www.txsmartbuy.com/ShopFlow/Documents/Contract%20Attachments/680-A1 MPH Catalog.xlsx)

680-A1 Precision Delta Catalog (http://secocms.cpa.texas.gov/SSP Applications/NetSuite Inc. - Shopping/Custom ShopFlow/Documents/Contract Attachments/680-A1 Precision Delta Catalog 5-26-2020.xlsx)

680-A1 Safety Supply, Inc. Catalog (http://www.txsmartbuy.com/ShopFlow/Documents/Contract%20Attachments/680-A1 Safety Supply Catalog Posted 3-14-18.xlsx)

Expedited Payment Discount

Following the contract award, additional products or services of the same general category that could have been encompassed in the award of this contract, and that are not already on the contract, may be added. Customers are encouraged to request additional items by contacting the SPD Contract Management Office.

Delivery Delays by Contractor

If delay is foreseen, Contractor shall give written notice to the Customer and must keep Customer advised at all times of status of order.

Default in promised Delivery Days After Receipt of Order (ARO) without accepted reasons or failure to meet specifications authorizes the Customer to purchase goods and services of this contract elsewhere and charge any increased costs for the goods and services, including the cost of re-soliciting, to the Contractor.

Failure to pay a damage assessment is cause for contract cancellation and/or debarment or removal of the contractor, as applicable, from the State Centralized Master Bidders List (CMBL).

Compliant Products by Contractor

Delivery does not occur until the Contractor delivers products, materials or services in full compliance with the specifications to Customer F.O.B. destination, unless delivery is specifically accepted, in whole or in part, by the Customer. Providing products, materials or services which do not meet all specification requirements does not constitute delivery.

Customer reserves the right to require new delivery or a refund in the event that materials or products not meeting specifications are discovered after payment has been made.

Purchase Order Cancellation

The Customer may request that a Contractor cancel a specific line item or an entire purchase order. There shall be no fees charged for cancellation of an item and/or order prior to shipment by the Contractor. The cancellation must be processed through the TxSmartBuy system.

Restocking Fee for Returned Products

The Customer may request that a Contractor accept return of products already delivered. If the return is required through no fault of the Contractor, the Contractor may request a reasonable restocking charge. The Customer may pay a restocking charge if the CPA or Customer determines that the charge is justifiable. As a guideline, such charges shall not exceed 10%.

Substitutions

During the Contract term, the Contractor shall not substitute a product or brand unless the Contractor has obtained prior written approval from the CPA Contract Manager in coordination with the Customer. The Contractor must have written confirmation from the CPA Contract Manager of the substitution before making delivery.

Contractor Performance

The Statewide Procurement Division Contract Management Office (SCMO), a division of the Comptroller of Public Accounts (CPA), administers a vendor performance program for use by all customers per Texas Government Code (TGC), §2262.055, and 34 Texas Administrative Code (TAC), §20.108. The Vendor Performance relies on the customer's participation in gathering information on vendor performance. State agency customers shall report vendor performance on purchases of $25,000 or more from contracts administered by CPA, or any other purchase of $25,000 or more made through delegated authority granted by CPA (TAC 20.108), or purchases exempt from CPA procurement rules and procedures. State agencies are additionally encouraged to report vendor performance on purchases under $25,000.

Vendor Performance shall be reported through the CPA VENDOR PERFORMANCE TRACKING SYSTEM. (https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/)
The purpose of the Vendor Performance Tracking System is to:
• Identify vendors that have exceptional performance
• Aid purchasers in making a best value determination based on vendor past performance
• Protect the state from vendors with unethical business practices
• Provide performance scores in four measurable categories for the CMBL vendors
• Track vendor performance for delegated and exempt purchases

Contractors Information

VID: 17515449258
Contractor: Applied Concepts Inc
Contact Name: Jan Achilles
Email: Sales@Stalkerradar.Com
Phone: (972) 398-3780
Address: Applied Concepts Inc 2609 Technology Drive Plano TX 75074-7467

VID: 18607412279
Contractor: Axon Enterprise, Inc.
Contact Name: Caitlin Morgan
Email: Contracts@axon.com
Phone: (480) 463-2149
Address: 17800 N 85Th St Scottsdale AZ 85255

VID: 17416721904
Contractor: Baileys House of Guns, Inc.
Contact Name: Bernard Bailey
Email: Baileyshouseofguns@Sbcglobal.Net
Phone: (713) 433-2475
Address: Baileys House of Guns, Inc. 3626 Bluebonnet Drive Houston TX 77053-4901
HUB Eligibility: WO
HUB Gender: F

VID: 16112052739
Contractor: CMI Inc.
Contact Name: Tom Settles
Email: Wtsettles@Alcoholtest.Com
Phone: (270) 685-6362
Address: CMI Inc. 316 E. 9th St. Owensboro KY 42303

VID: 12035459895
Contractor: Galls, LLC dba Miller Uniforms & Equipment
Contact Name: Lina Hester
Email: teamtexas@Galls.com
Phone: (859) 800-1139
Alternate Email: hester-lina@galls.com
Address: 1340 Russell Cave Road Lexington KY 40505

VID: 13611502801
Contractor: Grainger Inc.
Contact Name: Robert Garcia
Email: SCS.South@grainger.com
Phone: (512) 837-7440
Address: 7950 Research Blvd Ste 101 Austin TX 78758

VID: 17423395288
Contractor: GT Distributors, Inc.
Contact Name: Customer Service
Email: Txsales@Gtdist.Com
Phone: (512) 451-8298
Address: GT Distributors, Inc. Po Box 16080 Austin TX 78761-6080

VID: 12321390911
Contractor: Guth Laboratories, Inc.
Contact Name: Nancy Guth
Email: Nfguth@Guthlabs.Com
Phone: (717) 564-5470
Address: 590 North 67th Street Harrisburg PA 17111-4511

VID: 14309065333
Contractor: Intoximeters Inc
Contact Name: Jerry Denton
Email: sales@intox.com
Phone: (314) 429-4000
Address: 2081 Craig Road St Louis MO 63146

VID: 14317577303
Contractor: Kustom Signals, Inc.
Contact Name: Robin Jess
Email: info@kustomsignals.com
Phone: (800) 458-7866 x3023
Alternate Email: rjess@kustomsignals.com
Address: Kustom Signals, Inc. 9325 Pflumm Rd Lenexa KS 66215-3347

VID: 15922231327
Contractor: Lawmen's & Shooters' Supply
Contact Name: Gail Walker-Keen
Email: gail@lawmens.net
Phone: (772) 569-8700 x218
Address: Lawmen's & Shooters' Supply 1910 82nd Ave., Ste. 102 Vero Beach FL 32966

VID: 16112052747
Contractor: MPH Industries, Inc.
Contact Name: Eric Ruud
Email: elruud@mphindustries.com
Phone: (270) 685-6398
Address: 316 E. 9th St. Owensboro KY 42303

VID: 16406718441
Contractor: Precision Delta Corporation
Contact Name: Patricia Lott
Email: Precdelta@Tecinfo.Com
Phone: (662) 756-2810
Address: P.O. Box 128 Ruleville MS 38771

VID: 17422801534
Contractor: Safety Supply, Inc.
Contact Name: Elizabeth Caldwell
Email: Govorder@Safetysupplyinc.Com
Phone: (210) 650-9033
Address: 11827 Tech Com Rd, #114 San Antonio TX 78233

VID: 36966966966
Contractor: TCI
Contact Name: Customer Service
Email: tci@tdcj.texas.gov
Phone: (936) 437-6048
Address: PO BOX 4013 Huntsville TX 77342

VID: 17419760511
Contractor: WorkQuest (formerly TIBH)
Contact Name: Audrey Cedillo
Email: Smartbuy@workquest.com
Phone: (512) 451-8145
Address: TIBH 1011 East 53 1/2 Street Austin TX 78751

Purchase of Ammunition from Precision Delta

Chief Stan Standridge

CITY OF ABILENE TEXAS

Ammunition Purchases

- The Department budgeted $103,950 for ammunition, Taser cartridges, less-lethal munitions, targets, etc., for the coming fiscal year.
- Officers qualify twice annually.
- The Department uses Winchester ammunition, which is provided by Precision Delta pursuant to Texas Procurement and Support Services (TPASS).
- Precision Delta has the only state-awarded contract for Winchester.

Questions?

TAKE THE WHEEL
ANSWER
THE CALL
POLICE
OFFICER
ABILENE
HONOR
SERVICE
POLICE

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Robert Hanna, City Manager**

FROM: **Rodney Taylor, Director**

SUBJECT: **6. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on awarding the bid to Starks Construction Company Inc. for the South 14th Water Line Improvements Project *(Rodney Taylor)***

GENERAL INFORMATION

Water Utilities staff is requesting that the Abilene City Council award the bid to Starks Construction Company Inc. (Starks) of Abilene, Texas in the amount of $729,596.20 for CB-2056 South 14th Water Line Improvements Project (Project). Bids were advertised in the Abilene Reporter News on May 3rd and 10th, 2020. Bids were opened on Thursday May 21st, 2020. A total of 6 bids were received. The Project Engineer has evaluated the bids using the best value criteria and does recommend awarding the bid to Starks.

This project is along heavily traveled South 14th Street that includes multiple busy crossing intersections and residential and commercial establishments along each side of the street. W&S Construction, LLC (W&S) of Abilene submitted the lowest bid price of $713,417.40, which is $16,179.20 below the bid by Starks. However W&S does not have the highest level of experience with utility replacements along busy streets and maintaining difficult traffic control, it does not offer historically underutilized business opportunities, it proposes a much smaller number of personnel for the project, and it has a very limited working relationship with the City of Abilene. Based on the available information the Project Engineer and City staff recommend awarding the bid to Stark's based on best value.

SPECIAL CONSIDERATIONS

The project is for the replacement of over 5,000 feet of water main piping along South 14th

Street between South Willis Street and South Pioneer Drive. The existing cast iron piping is aged and in poor condition resulting in water main breaks that are disruptive to traffic and result in water outages and water quality issues. The project is for the installation of new 8 inch diameter PVC pipe and appurtenances. The contractor is responsible for managing traffic control along the length of the project.

FUNDING/FISCAL IMPACT

Funds for the project will utilize proceeds of the 2019 Certificates of Obligation for Water Utilities Improvements.

STAFF RECOMMENDATION

Staff recommends that the Abilene City Council award the bid the Starks Construction Company Inc. in the amount of $729,596.20 for the South 14th Water Line Improvements Project.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. WrittenResolution-WtrDpt-Award Bid-Starks-South 14th WL Improvements-6-11-2020
2. Letter of Recommendation-South14th WL Imp-Starks-6-11-2020
3. Contract-South14th WL Imp-Starks-6-11-2020
4. Presentation-Award Bid-Starks-South 14th Water Line Improvements-6-11-2020

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AWARDING THE BID TO STARKS CONSTRUCTION COMPANY INC. FOR THE SOUTH 14TH WATER LINE IMPROVEMENTS PROJECT.

WHEREAS, the City of Abilene (City) owns and operates a Public Water Supply System; and

WHEREAS, the water distribution system includes many miles of cast iron pipe, much of which is aged and in poor condition; and

WHEREAS, the existing cast iron water main piping along South 14th Street between South Willis Street and South Pioneer Drive is aged and in poor condition resulting in water main breaks which are disruptive to vehicular traffic and impacts water quality and reliability; and

WHEREAS, Jacob and Martin, LLC was hired to provide plans and contract documents, bidding assistance, general project supervision, and contract administration for the replacement of that section of water main; and

WHEREAS, Jacob and Martin, LLC has evaluated the bids for best value criteria and for conformity with the advertisement for bids and does recommend awarding the bid to Starks Construction Company Inc. in the amount of $729,596.20 for the South 14th Water Line Improvements Project.

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

That the City Manager is authorized to execute a construction contract with Starks Construction Company Inc. for the South 14th Water Line Improvements Project in the amount of $729,596.20.

ADOPTED this 11th day of June, 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley E. Smith, City Attorney

INTEGRITY
EXCELLENCE
TRUST

June 2, 2020

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

Re: South 14th Water Line Improvements
Letter of Recommendation for Award

Sent: Via Email

Dear Mr. Taylor:

On May 21, 2020 the City of Abilene received bids for the South 14th Water Line Improvements Project. Six bids were received for this project. A bid tabulation sheet summarizing the bids is included as an attachment to this letter. The six bids have been evaluated based on the "Best Value" criteria included in the Contract Documents. Based on our evaluation of the bids it is our conclusion that Starks Construction Co., Inc. provides the "Best Value" competitive bid at a base bid amount of $729,596.20.

Jacob and Martin has evaluated the Starks Construction bid for conformity with the Contract Documents and checked their references. It is recommended that the contract be awarded to Starks Construction for the bid amount of $729,596.20. If the Water Department and City Council agrees with the recommendation for award, Jacob and Martin will prepare contract documents for execution by the Contractor and the City. Feel free to contact me if you have any questions.

Sincerely,

Kirt Harle, P.E.

JACOB | MARTIN

325.695.1070
817.594.9880
info@jacobmartin.com
www.jacobmartin.com
3465 Curry Lane
Abilene, TX 76906
1508 Santa Fe, Suite 203
Weatherford, TX 76086
TBPE Firm #: 2448 | TBAE Firm #: BR 2261 | TBPLS Firm #: 10024300 – Abilene | TBPLS Firm #: 10193992 - Weatherford

City of Abilene
South 14th Water Line Replacement
Bid Date: 2:00 PM on May 21, 2020
JM Project Number: 19350

JACOB MARTIN
Abilene, Texas

Bid Tabulation

Engineer: Jacob & Martin, LLC
Abilene, Texas

				W&S Construction, LLC			Starks Construction Co., Inc.			Creek Pipe Company			R&A Road Boring, LLC			MH Civil Constructors, Inc.			Lupe Rubio Construction Co., Inc.		
For all Labor, Materials, Equipment, and Incidentals to Furnish and Install the Following:				5310 Knollwood Drive			7449 Lantana			P.O. Box 61008			11450 Hirsch Road			1100 S. Filmore St., Suite 105			981 Dilley Street		
				Abilene, TX 79606			Abilene, TX 79606			Midland, TX 79711			Houston, TX 77016			Amarillo, TX 79105			Kingsland, TX 78639		
Item #	Item Description	**Quantity**	**Unit**	**Unit Price**	**Total**		**Unit Price**	**Total**		**Unit Price**	**Total**		**Unit Price**	**Total**		**Unit Price**	**Total**		**Unit Price**	**Total**
1	**Mobilization, Bonding and Insurance**	1	LS	$ 26,625.00	$ 26,625.00		$ 20,000.00	$ 20,000.00		$ 64,900.00	$ 64,900.00		$ 36,000.00	$ 36,000.00		$ 51,477.00	$ 51,477.00		$ 45,600.00	$ 45,600.00
2	**8" DR18 C900 PVC Water Line**	2,698	LF	$ 54.50	$ 147,041.00		$ 58.00	$ 156,484.00		$ 7.00	$ 18,886.00	*	$ 69.00	$ 186,162.00		$ 99.00	$ 267,102.00		$ 106.66	$ 287,768.68
3	**6" DR18 C900 PVC Water Line**	90	LF	$ 50.00	$ 4,500.00		$ 58.00	$ 5,220.00		$ 4.08	$ 367.20	*	$ 59.00	$ 5,310.00		$ 99.00	$ 8,910.00		$ 111.85	$ 10,066.50
4	**8" Slick Bore with DR 18 C900 Fusible or Certa-Lok PVC Pipe – Driveways, Streets, and Landscaped Areas**	1,785	LF	$ 70.00	$ 124,950.00		$ 95.00	$ 169,575.00		$ 95.00	$ 169,575.00		$ 88.00	$ 157,080.00		$ 99.00	$ 176,715.00		$ 152.91	$ 272,944.35
5	**Elm Creek – 8" Horizontal Directional Drill with DR 18 C900 Fusible or Certa-Lok PVC Pipe**	300	LF	$ 87.00	$ 26,100.00		$ 110.00	$ 33,000.00		$ 176.00	$ 52,800.00		$ 199.00	$ 59,700.00		$ 285.00	$ 85,500.00		$ 130.22	$ 39,066.00
6	**Catclaw Creek – 8" Horizontal Directional Drill with DR 18 C900 Fusible or Certa-Lok PVC Pipe**	257	LF	$ 87.00	$ 22,359.00	*	$ 110.00	$ 28,270.00		$ 153.00	$ 39,321.00		$ 199.00	$ 51,143.00		$ 142.00	$ 36,494.00		$ 124.76	$ 32,063.32
7	**24" Gate Valve and Box**	1	EA	$ 25,347.00	$ 25,347.00		$ 28,000.00	$ 28,000.00		$ 26,600.00	$ 26,600.00		$ 22,000.00	$ 22,000.00		$ 28,000.00	$ 28,000.00		$ 24,321.90	$ 24,321.90
8	**12" x 8" Tapping Sleeve and 8" Tapping Valve**	1	EA	$ 6,500.00	$ 6,500.00		$ 3,800.00	$ 3,800.00		$ 3,400.00	$ 3,400.00		$ 5,000.00	$ 5,000.00		$ 5,600.00	$ 5,600.00		$ 11,021.52	$ 11,021.52
9	**8" Gate Valve and Box**	16	EA	$ 2,000.00	$ 32,000.00	**	$ 1,400.00	$ 22,400.00		$ 1,795.00	$ 28,720.00		$ 2,000.00	$ 32,000.00		$ 2,000.00	$ 32,000.00		$ 2,335.43	$ 37,366.88
10	**6" Gate Valve and Box**	19	EA	$ 1,500.00	$ 28,500.00		$ 900.00	$ 17,100.00		$ 1,595.00	$ 30,305.00		$ 1,700.00	$ 32,300.00		$ 1,400.00	$ 26,600.00		$ 1,654.98	$ 31,444.62
11	**8" Insertion Valve and Box**	1	EA	$ 13,500.00	$ 13,500.00		$ 10,000.00	$ 10,000.00		$ 9,100.00	$ 9,100.00		$ 8,000.00	$ 8,000.00		$ 8,300.00	$ 8,300.00		$ 26,487.90	$ 26,487.90
12	**2" Gate Valve and Box**	3	EA	$ 1,100.00	$ 3,300.00		$ 500.00	$ 1,500.00		$ 893.00	$ 2,679.00		$ 1,400.00	$ 4,200.00		$ 1,200.00	$ 3,600.00		$ 1,056.21	$ 3,168.63
13	**Remove Existing Valve Box**	13	EA	$ 350.00	$ 4,550.00		$ 50.00	$ 650.00		$ 600.00	$ 7,800.00		$ 200.00	$ 2,600.00		$ 400.00	$ 5,200.00		$ 136.80	$ 1,778.40
14	**6" Fire Hydrant**	7	EA	$ 3,500.00	$ 24,500.00		$ 3,800.00	$ 26,600.00		$ 2,700.00	$ 18,900.00		$ 6,000.00	$ 42,000.00		$ 3,400.00	$ 23,800.00		$ 5,332.35	$ 37,326.45
15	**Remove Fire Hydrant**	3	EA	$ 900.00	$ 2,700.00		$ 150.00	$ 450.00		$ 375.00	$ 1,125.00		$ 500.00	$ 1,500.00		$ 500.00	$ 1,500.00		$ 648.66	$ 1,945.98
16	**24" Water Line Connection**	1	EA	$ 22,000.00	$ 22,000.00		$ 12,000.00	$ 12,000.00		$ 8,100.00	$ 8,100.00		$ 5,000.00	$ 5,000.00		$ 43,000.00	$ 43,000.00		$ 47,944.64	$ 47,944.64
17	**8" Water Line Connection**	1	EA	$ 1,800.00	$ 1,800.00		$ 1,600.00	$ 1,600.00		$ 1,070.00	$ 1,070.00		$ 1,500.00	$ 1,500.00		$ 1,900.00	$ 1,900.00		$ 6,005.52	$ 6,005.52
18	**6" Water Line Connection**	12	EA	$ 1,500.00	$ 18,000.00		$ 1,200.00	$ 14,400.00		$ 995.00	$ 11,940.00		$ 1,400.00	$ 16,800.00		$ 1,800.00	$ 21,600.00		$ 5,351.35	$ 64,216.20
19	**4" Water Line Connection**	1	EA	$ 1,400.00	$ 1,400.00		$ 1,000.00	$ 1,000.00		$ 1,450.00	$ 1,450.00		$ 1,000.00	$ 1,000.00		$ 1,800.00	$ 1,800.00		$ 4,795.98	$ 4,795.98
20	**2" Water Line Connection**	3	EA	$ 1,000.00	$ 3,000.00		$ 1,000.00	$ 3,000.00		$ 828.00	$ 2,484.00		$ 800.00	$ 2,400.00		$ 1,500.00	$ 4,500.00		$ 2,881.92	$ 8,645.76
21	**Temporary Service Connection**	2	EA	$ 1,250.00	$ 2,500.00		$ 1,000.00	$ 2,000.00		$ 1,375.00	$ 2,750.00		$ 1,000.00	$ 2,000.00		$ 1,000.00	$ 2,000.00		$ 4,185.40	$ 8,370.80
22	**¾" Short Service Reconnect**	5	EA	$ 1,000.00	$ 5,000.00		$ 1,000.00	$ 5,000.00		$ 975.00	$ 4,875.00		$ 800.00	$ 4,000.00		$ 1,000.00	$ 5,000.00		$ 1,678.65	$ 8,393.25
23	**1" Short Service Reconnect**	1	EA	$ 1,250.00	$ 1,250.00		$ 1,200.00	$ 1,200.00		$ 1,300.00	$ 1,300.00		$ 1,000.00	$ 1,000.00		$ 1,000.00	$ 1,000.00		$ 1,425.34	$ 1,425.34
24	**Cut and Cap Existing Water Line**	9	EA	$ 1,250.00	$ 11,250.00		$ 750.00	$ 6,750.00		$ 525.00	$ 4,725.00		$ 1,000.00	$ 9,000.00		$ 1,500.00	$ 13,500.00		$ 588.87	$ 5,299.83
25	**Metal Detectable Tape**	2,698	LF	$ 0.30	$ 809.40		$ 0.40	$ 1,079.20		$ 0.02	$ 53.96		$ 0.40	$ 1,079.20		$ 1.00	$ 2,698.00		$ 0.59	$ 1,591.82
26	**Tracer Wire**	5,130	LF	$ 0.40	$ 2,052.00		$ 0.40	$ 2,052.00		$ 0.19	$ 974.70	*	$ 0.40	$ 2,052.00		$ 1.00	$ 5,130.00		$ 1.07	$ 5,489.10
27	**Pavement Repair**	252	SY	$ 55.00	$ 13,860.00		$ 32.00	$ 8,064.00		$ 135.00	$ 34,020.00		$ 35.00	$ 8,820.00		$ 40.00	$ 10,080.00		$ 47.88	$ 12,065.76
28	**Sidewalk Repair**	288	SY	$ 60.00	$ 17,280.00		$ 30.00	$ 8,640.00		$ 295.00	$ 84,960.00		$ 15.00	$ 4,320.00		$ 40.00	$ 11,520.00		$ 114.00	$ 32,832.00
29	**Concrete Flatwork Repair (Includes Valley Gutters, Alley Approaches, Curb and Gutter and Other Miscellaneous Concrete)**	107	SY	$ 124.00	$ 13,268.00		$ 40.00	$ 4,280.00		$ 240.00	$ 25,680.00		$ 20.00	$ 2,140.00		$ 40.00	$ 4,280.00		$ 136.80	$ 14,637.60
30	**Sod Replacement**	1,997	LF	$ 8.00	$ 15,976.00		$ 6.00	$ 11,982.00		$ 2.00	$ 3,994.00		$ 3.00	$ 5,991.00		$ 2.00	$ 3,994.00		$ 11.40	$ 22,765.80
31	**SWPPP**	1	LS	$ 7,500.00	$ 7,500.00		$ 7,500.00	$ 7,500.00		$ 3,000.00	$ 3,000.00		$ 5,000.00	$ 5,000.00		$ 7,500.00	$ 7,500.00		$ 10,260.00	$ 10,260.00
32	**Traffic Control**	1	LS	$ 30,000.00	$ 30,000.00		$ 65,000.00	$ 65,000.00		$ 25,000.00	$ 25,000.00		$ 5,000.00	$ 5,000.00		$ 15,000.00	$ 15,000.00		$ 22,800.00	$ 22,800.00
33	**Trench Safety Protection**	1	LS	$ 4,000.00	$ 4,000.00		$ 1,000.00	$ 1,000.00		$ 12,000.00	$ 12,000.00		$ 1,000.00	$ 1,000.00		$ 2,700.00	$ 2,700.00		$ 912.00	$ 912.00
34	**Lump Sum Item for Additional Work**	1	LS	$ 50,000.00	$ 50,000.00		$ 50,000.00	$ 50,000.00		$ 50,000.00	$ 50,000.00		$ 50,000.00	$ 50,000.00		$ 50,000.00	$ 50,000.00		$ 50,000.00	$ 50,000.00
	TOTAL BASE BID (Items 1 -34)				**$ 713,417.40**			**$ 729,596.20**			**$ 752,854.86**			**$ 773,097.20**			**$ 968,000.00**			**$ 1,190,822.53**

(*) - Extension Error
(**) - Unit Price Correction

JM TBPE Firm # 2448
JM TBAE Firm # BR2261
JM TBPLS Firm # 10194493

CONSTRUCTION CONTRACT

BACKGROUND

THIS CONTRACT, made on the ____ day of _____, 20____, is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and Starks 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. The Contractor hereby agrees to commence and complete the construction of Work required in the Contract Documents – incorporated herein by reference – South 14th Water Line Replacement project.

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

In consideration of this Work, the City will pay the Contractor the sum of $729,596.20

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

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

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

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

6. Indemnity.

A. Definitions

For the purpose of this section the following definitions apply:

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

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

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

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

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

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

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

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

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

B. Indemnity

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

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

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

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

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

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

7. Insurance. The Special Conditions found 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:
Starks Construction Company Inc.

Signature

Business Address: 7449 Lantana Avenue
Abilene, TX 79606

Business Phone No. (325)668-2271
Federal Tax I.D. # 75-2143891

Name – Typed or Printed
Bill Starks

Title – Typed or Printed
President

ATTEST: (If Corporation)

Corporate Seal
(If none, write "None")

CITY OF ABILENE

Robert Hanna – City Manager

ATTEST:

City Secretary

APPROVED:

City Attorney

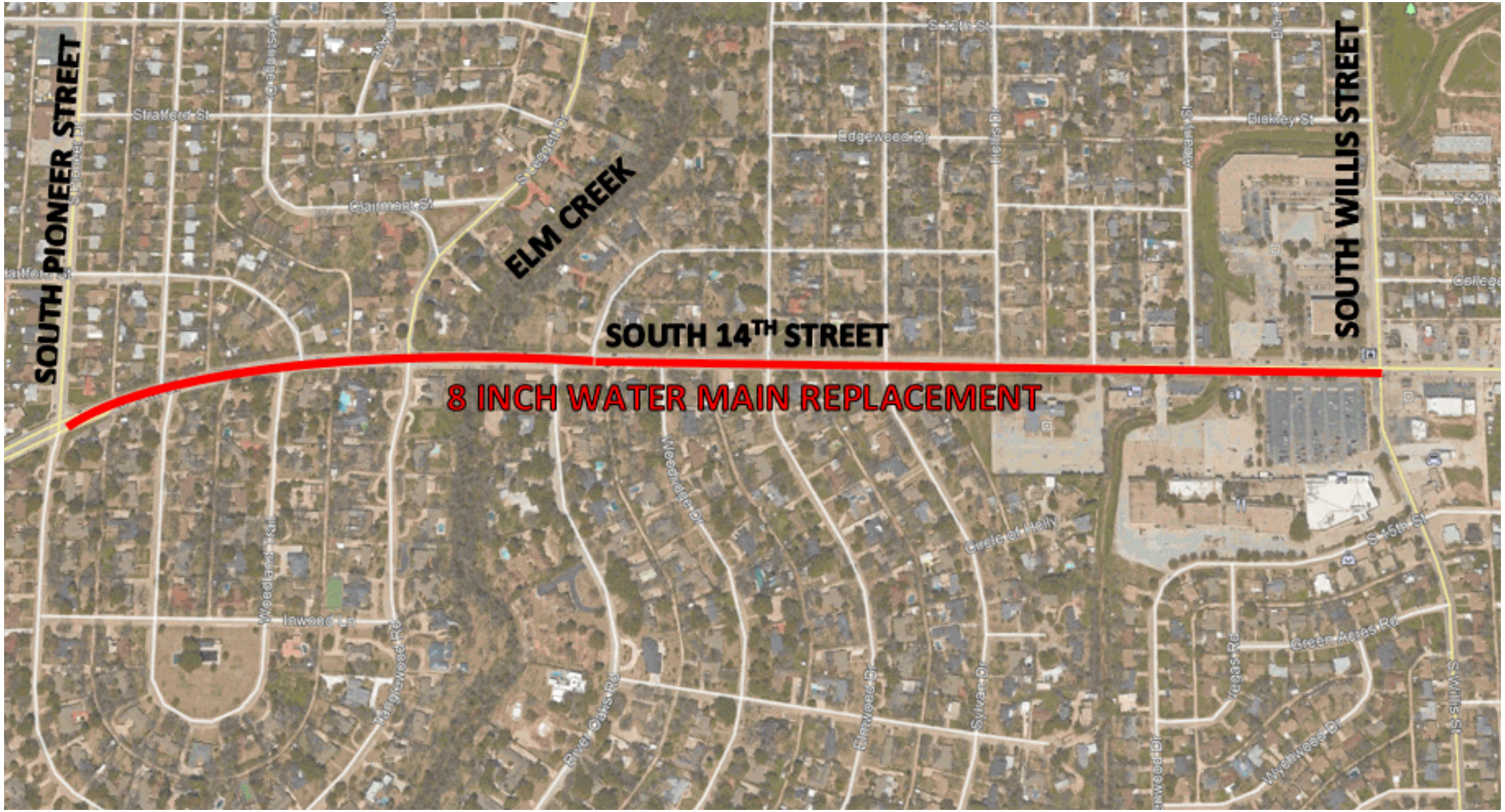
Seal

Award Bid to Starks Construction Company Inc. for the South 14th Water Line Improvements Project.

CITY OF ABILENE TEXAS

- Award bid to Starks Construction Company Inc.
- Bid value of $729,596.20.
- Project is for replacing over 5,000 feet of 8 inch diameter cast iron water main with PVC pipe.
- Project is along South 14th Street from South Willis Street to South Pioneer Drive.

SOUTH 14TH WATER LINE IMPROVEMENTS



Award Bid to Starks Construction Company Inc. for the South 14th Water Line Improvements Project.

Questions
?

CITY OF ABILENE TEXAS

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Robert Hanna, City Manager**

FROM: **Greg McCaffery**

SUBJECT: **7. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action Authorizing the City Manager to enter into an agreement with Texas Department of Transportation for the Bridge Replacement on N. 18th Street at Catclaw Creek *(Greg McCaffery)***

GENERAL INFORMATION

The bridge on North 18th Street and Catclaw Creek has sustained some structural damages over the last several years resulting from primarily the age of the bridge. Some minor repairs have been undertaken of the years. In February 2020 the bridge decking resulted in additional failures requiring the City to place load limits on the bridge. The bridge was constructed in 1952, and has received a sufficiency rating of 39.5 for the 2020 rating period. Per the Texas Department of Transportation (TxDOT) anything below a sufficiency rating of 50 is deemed structurally deficient. This makes it eligible for replacement using the TxDOT Bridge Replacement Program.

This agreement allows for the design and construction of a replacement structure at minimal costs to the City of Abilene. Should the City Council approve the City Manager to sign the agreement, the City's share would be 10% of the total cost of design and construction or $160,430.09 of the total estimated costs of $1,604,300.90.

SPECIAL CONSIDERATIONS

On February 26, the City found a hole had formed in the bridge deck, as well as, under-decking spalding which made it a hazard to the traveling public and the bridge was closed. On March 31st a repair for the bridge was designed, and then installed by City staff. The bridge was

reopened on April 13th with load limit of 5,000 pounds.

FUNDING/FISCAL IMPACT

The funding for this agreement will come from the Street Maintenance Fund.

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

N/A.

ATTACHMENTS:

1. 18th_Bridge_Agree_TxDOT_RESOLUTION NO. ____
2. AFA_Agree_18th_St_Bridge_TxDOT
3. PP Slides

RESOLUTION NO _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE TEXAS DEPARTMENT OF TRANSPORTATION AND THE CITY OF ABILENE TO PARTICIPATE WITHIN BRIDGE REPLACEMENT OF THE NORTH 18TH STREET BRIDGE AT CATCLAW CREEK THROUGH THE FEDERAL OFF-SYSTEM BRIDGE PROGRAM ADMINISTERED BY THE TEXAS DEPARTMENT OF TRANSPORTATION.

WHEREAS, the federal off-system bridge program is administered by the Texas Department of Transportation (the State) to replace or rehabilitate structurally deficient and functionally obsolete (collectively referred to as deficient) bridges located on public roads and streets off the designated state highway system; and

WHEREAS, **City of Abilene**, hereinafter referred to as the Local Government owns a bridge located at **North 18th Street at Catclaw Creek**, National Bridge Inventory (NBI) Structure Number **082210B13379001,** State Control-Section-Job (CSJ) Number **0908-33-101;** and

WHEREAS, a project to remedy the bridge is included in the currently approved program of projects as authorized by Texas Transportation Commission Minute Order Number **115550.** Dated **August 29, 2019;** and

WHEREAS, the usual fund participation ratio for projects on such program is 80 percent federal, 10 percent state and 10 percent Local Government, unless reduced by participation in the Economically Disadvantaged County Program; and

WHEREAS, the estimated local match fund participation requirement on the approved federal off-system bridge project is **$160,430.09**.

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

PART 1: That the City of Abilene confirms its agreement with the State to secure all match funding for the approved federal off-system bridge project, that all requirements of TAC 43 will be implemented, and the City Manager, in consideration of the foregoing premises and the mutual benefits to be derived therefrom, is hereby authorized and directed to execute and attest on behalf of the City of Abilene, and agreement to Contribute Funds for the above referenced project, referenced by the date of June 11, 2020.

PART 2: That the sum of One Hundred-Sixty Thousand-Four Hundred-Thirty Dollars and Nine Cents ($160,430.09), which represents ten percent

(10%) of, the estimated total cost of the bridge project, is hereby appropriated and the City Manager is hereby authorized and direct to pay the sum indicated from the funds available in the budget accounts.

ADOPTED: this 11th day of June, 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

CSJ # 0908-33-101
District # 08
Code Chart 64 # 00150
Project: North 18th St at Catclaw Creek
NBI Structure # 082210B13379001
Federal Highway Administration
CFDA Title: Highway Planning and Construction
CFDA No: 20.205
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

ADVANCE FUNDING AGREEMENT
For Bridge Replacement or Rehabilitation
Off the State System

THIS Advance Funding Agreement (the Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, called the "State", and the **City of Abilene** acting by and through its duly authorized officials, called the "Local Government."

WITNESSETH

WHEREAS, Title 23 United States Code Section 144 authorizes federal funds to assist the states in the replacement or rehabilitation of deficient bridges located on public highways, roads, and streets, including those under the jurisdiction of local governments; and

WHEREAS, the Texas Transportation Code Sections 201.103 and 222.052 establish that the State shall plan and make policies for the construction of a comprehensive system of state highways and public roads in cooperation with local governments; and

WHEREAS, the Local Government owns one or more bridges on a public road or street located at **North 18th Street at Catclaw Creek** and these bridges are included in the currently approved off-state system federal-aid Highway Bridge Replacement and Rehabilitation Program (HBRRP) as authorized by Texas Transportation Commission Minute Order Number **115550** dated **August 29, 2019**; and

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution or ordinance, which is attached to and made a part of this agreement as Attachment A for the development of the specific programmed replacement or rehabilitation project, called the "Project". The Project is identified in the location map shown as Attachment B, which is attached to and made a part of this agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth, it is agreed as follows:

AGREEMENT

1. **Period of this Agreement**
   This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided in Article 2.

2. **Termination of this Agreement**
   This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:
   - **A.** The Agreement is terminated in writing with the mutual consent of the parties;
   - **B.** The Agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party;
   - **C.** The Local Government elects not to develop the project and the project does not proceed, in which case the Local Government agrees to reimburse the State for one-hundred percent (100%) of its reasonable actual direct and indirect costs incurred for the project; or
   - **D.** The project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may at its discretion terminate the agreement.

3. **Amendments**
   Amendments to this Agreement may be made due to changes in the character of the work, the terms of the Agreement, or the responsibilities of the parties. Amendments shall be enacted through a mutually agreed upon written amendment executed by all parties to this Agreement.

4. **Remedies**
   This Agreement shall not be considered as specifying the exclusive remedy for any Agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

5. **Scope of Work**
   The scope of work for this Agreement is the replacement or rehabilitation of the bridges identified in the recitals of this Agreement. This replacement or rehabilitation

shall be accomplished in the manner described in the plans, specifications, and estimates developed in accordance with this Agreement and which are incorporated in this agreement by reference.

6. Right of Way and Real Property

A. The Local Government is responsible for the provision and acquisition of all necessary right of way and will not be reimbursed with federal or state funds for the required right of way.

B. The Local Government authorizes the State, its consultant, contractor, or other designated representative to enter the sites of these bridges and adjacent right of way or relocation right of way to perform surveys, inspections, construction, and other activities necessary to replace or rehabilitate these bridges and approaches.

7. Adjustment of Utilities

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

8. Environmental Assessment and Mitigation

Development of the Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

A. The State is responsible for the identification and assessment of any environmental problems associated with the development of the Project governed by this Agreement.

B. Cost participation in environmental assessment and remediation work shall be paid by the parties in the same ratio as construction costs and will be included in the construction costs identified in Attachment D, Estimate of Direct Costs.

C. The State is responsible for providing any public meetings or public hearings required for development of the environmental assessment.

D. The State will not begin construction of the Project until identified environmental problems have been remediated, unless provided for otherwise.

9. Compliance with Texas Accessibility Standards and ADA

All parties to this Agreement shall ensure that the plans for and the construction of the Project subject to this Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

10. Architectural and Engineering Services

The State is responsible for performance of any required architectural or preliminary engineering work. The Local Government may review and comment on the work as required to accomplish the public purposes of the Local Government. The State will cooperate fully with the Local Government in accomplishing these local public purposes to the degree permitted by state and federal law. The Local Government review shall not unduly delay the development of the Project.

11. Construction Responsibilities

A. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.

B. Upon completion of the Project, the State will issue a "Notification of Completion" acknowledging the Project's construction completion.

12. Project Maintenance

After the Project has been completed, the Local Government shall accept full ownership, and operate and maintain the facilities authorized by this Agreement for the benefit of and at no charge of toll to the public. This covenant shall survive the completion of construction under this Agreement.

13. Local Project Sources and Uses of Funds

A. A Project Cost Estimate is provided in Attachment D, Estimate of Direct Costs.

B. Attachment D provides a source of funds estimate as well as the estimated direct preliminary engineering, construction engineering, and construction costs for the Project in total and by the Local Government.

C. The required Local Government participation is based solely upon the State's estimate of the eligible work at the time this Agreement is executed and will not be adjusted during construction except as needed to include any Project cost item or portion of a cost item ineligible for state or federal participation. In addition to its share of estimated direct engineering and construction costs, the Local Government is responsible for the direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the federal HBRRP. The Local Government is also responsible for any cost resulting from changes made at the request of the Local Government. The State and the Federal Government will not reimburse the Local Government for any work performed before federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information.

D. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

E. After execution of this Agreement, but thirty (30) days prior to the performance of any work by the State, the Local Government shall remit to the State the amount specified in Attachment D for the Local Government's contribution for preliminary engineering. The Local Government will pay, at a minimum, its funding share for this estimated cost of preliminary engineering.

F. Forty-five (45) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs and any other costs owed.

G. If, at the completion or termination of the Project, the State determines that additional funding is required by the Local Government, the State shall notify the

Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.

H. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation". The check or warrant shall be deposited by the State and managed by the State. The funds may only be applied to the State Project.

I. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.

J. The State will not pay interest on any funds provided by the Local Government.

K. The Local Government funding participation responsibilities include Project direct costs only, except when the Project is terminated before completion at the request of the Local Government as addressed in the Termination provision of this Agreement.

L. The amounts shown on Attachment D are estimates only. If actual costs exceed the estimates, this shall be considered a fixed price agreement, and no additional funding shall be required of the Local Government except to the extent that the additional costs result from changes made at the request of the Local Government or to the extent that the additional costs are not eligible for federal participation under the federal HBRRP. If actual costs are less than the estimates, Local Government participation shall be recalculated based on actual costs. If the recalculation results in a reduction in participation by the Local Government, the State shall pay the difference to the Local Government upon completion of the Project.

M. Under the provisions of Texas Transportation Code Section 222.053 certain counties qualify as Economically Disadvantaged Counties (EDC) in comparison to other counties in the state as below average per capita property value, below average per capita income, and above average unemployment, for certain years. If applicable, in consideration of such EDC status that may be applicable for the Project, the required local match fund participation has been adjusted to _____ percent (___%).

N. The State will not execute the contract for the construction of a Project until the required funding has been made available by the Local Government in accordance with this Agreement.

O. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit

committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

P. The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly, and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.

14. Performance by Local Government of Equivalent-Match Projects (EMP) in Return for Waiver of Local Match Participation Funding on Participation-Waived Projects (PWP)

A. Applicability. If a request for waiver has been received and approved by the State's District Engineer, then the required ten percent matching fund participation or percent as adjusted for EDC consideration, as shown in Attachment D, Estimate of Direct Costs, but excluding ineligible costs under the bridge program, is waived. This waiver is based on the commitment of the Local Government to spend an equivalent amount of funds for structural or safety improvement on "other" bridge structures and other conditions as specified in 43 TAC Section 15.55(d). If a waiver has been granted, the Project shall be defined to be a PWP and the work on the "other" bridge structures that will be improved by the Local Government shall be defined to be the EMPs. Attachment C to this Agreement shows a list of EMPs under this Agreement.

B. Project Cost Estimate for PWP. Attachment D to this Agreement shows the estimated direct preliminary engineering, construction engineering, and construction costs for the PWP in total and local match fund participation being waived or partially waived.

C. Credit Against EMP Work. Any local match fund participation that has already been paid, or which the Local Government is agreeable to paying to the State, will be credited against EMP work to be performed by the Local Government. If applicable, this credit will be reflected in Attachment D to this Agreement.

D. Responsibilities of the Local Government on EMPs.

1. The Local Government shall be responsible for all engineering and construction, related costs, and compliance with all applicable state and federal environmental regulations and permitting requirements.

2. The structural or safety improvement work on the EMPs shall be performed subsequent to the final execution of this Agreement but within three (3) calendar years after the earliest contract award of the related PWPs.
3. Written documentation, suitable for audit, of the structural or safety improvement work completed on the EMPs shall be kept on file by the Local Government for four (4) years after completion of work or claims, lawsuits, or audits related to those items, whichever is longer. A notice of completion of work on the EMPs shall be delivered to the State's District Engineer no later than thirty (30) calendar days after work is completed on the EMPs.
4. Failure by the Local Government to adequately complete the EMPs within the stated three-year period shall result in the Local Government being excluded from receiving such waivers for a minimum of five (5) years.

E. Funding of Ineligible or Additional Work Not Waived. Regardless of any waiver of eligible program costs, the Local Government shall pay the State one-hundred percent (100%) of the cost of any PWP item or portion of a cost item that is not eligible for federal or state participation, and one-hundred percent (100%) of the costs resulting from additional work on the PWP performed solely at the request of the Local Government. If the ineligible or additional work is preliminary engineering, the payment shall be made at least thirty (30) days prior to the beginning of preliminary engineering work on the PWP. If the ineligible or additional work is for construction or construction engineering, the payment shall be made at least forty-five (45) days prior to the date set for receipt of bids for construction of the PWP.

15. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

State: Director, Bridge Division
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701

Local Government: Abilene, City Manager
City of Abilene
555 Walnut Street
Abilene, Texas 79601

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the

above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

16. Legal Construction

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

17. Responsibilities of the Parties

The parties to this Agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

18. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

19. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

20. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the subject matter of this Agreement.

21. Office of Management and Budget (OMB) Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

22. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

23. Inspection of Books and Records

The parties to the Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA) and the U.S. Office of the Inspector General, or their duly authorized representatives, for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, the FHWA, and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

24. Civil Rights Compliance

A. Compliance with Regulations: The Local Government will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this agreement.

B. Nondiscrimination: The Local Government, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be

notified by the Local Government of the Local Government's obligations under this contract and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this contract, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

1. withholding of payments to the Local Government under the contract until the Local Government complies and/or
2. cancelling, terminating, or suspending of the contract, in whole or in part.

F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

25. Disadvantaged Business Enterprise (DBE) Program Requirements

A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.

B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.

C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall

have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.

D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.

E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

26. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred,

suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

27. Lobbying Certification

In executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

28. Federal Funding Accountability and Transparency Act Requirements

A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf and http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf.

B. The Local Government agrees that it shall:

1. Obtain and provide to the State, a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than $25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is: https://sam.gov/SAM/pages/public/index.jsf;
2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website http://fedgov.dnb.com/webform; and
3. Report the total compensation and names of its top five (5) executives to the State if:
   i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than $25,000,000; and
   ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

29. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement.

30. Local Government Restrictions

In the case that the Local Government has an existing, future, or proposed local ordinance, commissioners court order, rule, policy, or other directive that is more restrictive than the state or federal regulations that results in an increase cost to the State for the project, the local government is responsible for all increased costs associated with the ordinance, order, policy, directive, or change.

31. Single Audit Report

A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR 200.

B. If threshold expenditures of $750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division at singleaudits@txdot.gov.

C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as follows: "We did not meet the $_____ expenditure threshold and therefore, are not required to have a single audit performed for FY_____."

D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

32. Pertinent Non-Discrimination Authorities

During the performance of this contract, the Local Government, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- **A.** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- **B.** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- **C.** Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- **D.** Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- **E.** The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- **F.** Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- **G.** The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not).
- **H.** Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- **I.** The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- **J.** Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.

K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).

L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

33. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

_____
Signature

Robert Hanna
Typed or Printed Name

Abilene City Manager
Title

_____
Date

THE STATE OF TEXAS

_____
Graham Bettis, P.E.
Bridge Division Director
Texas Department of Transportation

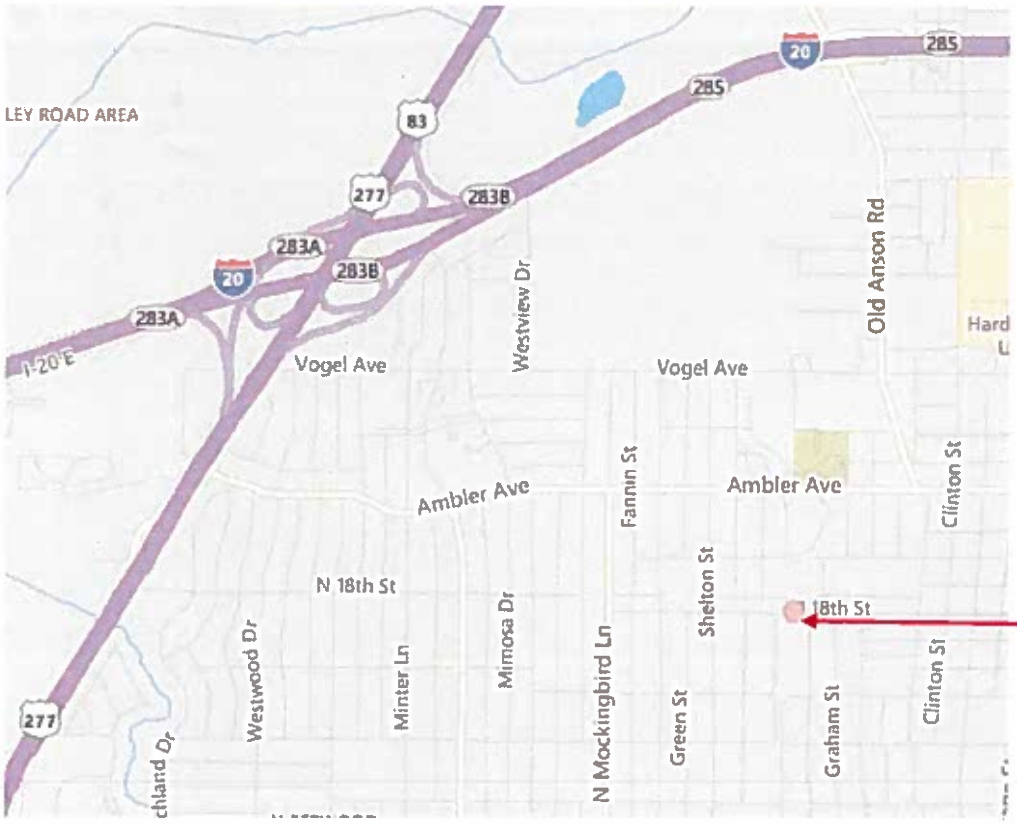
_____
Date

CSJ # 0908-33-101
District # 08
Code Chart 64 # 00150
Project: North 18th St at Catclaw Creek
NBI Structure # 082210B13379001
Federal Highway Administration
CFDA Title: Highway Planning and Construction
CFDA No: 20.205
Not Research and Development

ATTACHMENT A
RESOLUTION OR ORDINANCE OF LOCAL GOVERNMENT

CSJ # 0908-33-101
District # 08
Code Chart 64 # 00150
Project: North 18th St at Catclaw Creek
NBI Structure # 082210B13379001
Federal Highway Administration
CFDA Title: Highway Planning and Construction
CFDA No: 20.205
Not Research and Development

ATTACHMENT B
PROJECT LOCATION MAP



NBI Structure # 082210B13379001

CSJ # 0908-33-101
District # 08
Code Chart 64 # 00150
Project: North 18th St at Catclaw Creek
NBI Structure # 082210B13379001
Federal Highway Administration
CFDA Title: Highway Planning and Construction
CFDA No: 20.205
Not Research and Development

ATTACHMENT C **
LIST OF DISTRICT ENGINEER APPROVED EQUIVALENT-MATCH PROJECTS

NOT APPLICABLE

CSJ # 0908-33-101
District # 08
Code Chart 64 # 00150
Project: North 18th St at Catclaw Creek
NBI Structure # 082210B13379001
Federal Highway Administration
CFDA Title: Highway Planning and Construction
CFDA No: 20.205
Not Research and Development

ATTACHMENT D
ESTIMATE OF DIRECT COSTS

	Estimated Cost	Local Government Participation
Preliminary Engineering (PE)	$376,849.20	
Ten Percent (10%) or EDC Adjusted Percent of PE for Local Government Participation		(3) $37,684.92
Construction	$1,076,712.00	
Engineering and Contingency (E&C)	$150,739.68	
The Sum of Construction and E&C	$1,227,451.68	
Ten Percent (10%) or EDC Adjusted Percent of the Sum of Construction and E&C for Local Government Participation		$122,745.17
Amount of Advance Funds Paid by Local Government *		$0.00
Amount of Advance Funds to be Paid by Local Government *		$160,430.09
Balance of Local Government Participation which is to be Waived where the Project is a PWP		$0.00
Total Project Direct Cost	$1,604,300.88	

*Credited Against Local Government Participation Amount

If this Project is to be a PWP, Amount of EMP Work Being Credited to this PWP as Shown on Attachment C. _____

Agreement with TXDoT for Bridge Repairs on N 18th St at Catclaw Creek

Greg McCaffery

CITY OF ABILENE TEXAS

Bridge Replacement Agreement

- **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action Authorizing the City Manager to enter into an agreement with Texas Department of Transportation for the Bridge Replacement on N. 18th Street at Catclaw Creek ***(Greg McCaffery).***

Bridge Replacement Agreement

- Agreement between the City of Abilene and the Texas Department of Transportation to replace the failing bridge structure at N. 18th St and Catclaw creek.
- The bridge on N. 18th St. and Catclaw Creek has reached its end of life. It was constructed in 1952, and has received a sufficiency rating of 39.5, anything below a 50 is structurally deficient. This makes it eligible for replacement using the TxDOT Bridge Replacement Program.
- This agreement allows for the design and construction of a replacement structure at a fraction of the cost to the City of Abilene. The City's part is 10% of the total cost of design and construction or $160,430.09 of the total $1,604,300.90.

Bridge Replacement Agreement

- On February 26, the City found a hole had formed in the bridge deck, which made it a hazard to the traveling public and the bridge was closed.

Bridge Replacement Agreement

- On March 31st a repair for the bridge was designed, and placed. The bridge was reopened on April 13th with load limit of 5,000 pounds.

Questions?

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Robert Hanna, City Manager**

FROM: **Mike Warrix, Director**

SUBJECT: **8. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approving the FY 2020/2021 Action Plan and proposed use of Community Development Block Grant (CDBG) and Home Investment Partnerships Program (HOME) funds *(Zack Rainbow)***

GENERAL INFORMATION

As an entitlement city receiving funds from the U.S. Department of Housing and Urban Development (HUD), the City of Abilene is required to submit a Consolidated Plan that strategically addresses the City's goals and objectives for housing and community development over the course of a five-year period. The City of Abilene is also required to submit a One-Year Action Plan outlining specific uses of Community Development Block Grant (CDBG) and Home Investment Partnerships Program (HOME) funds planned for the coming fiscal year. The Office of Neighborhood Services Advisory Council (ONSAC) was instrumental in the development of the goals, objectives and budget of the Consolidated Plan and provided input into the FY 2020/2021 Action Plan.

The summaries are attached. The full documents have been made available to Council through the City Secretary's Office and are available on the City website.

SPECIAL CONSIDERATIONS

A public hearing and 4 community neighborhood meetings were held to receive input for the FY **2020/2021** Consolidated Plan and Action Plan. The needs discussed were: housing, community

services, economic development, community/public facilities, public improvements and homeless services. Invitees were service providers and nonprofits, the homeless network, disability services, 211 A Call for Help, agencies, religious organizations/churches and neighborhood associations and residents. Professionals from housing, insurance, real estate and lending were invited. All City directors and managers were invited along with all previous funding recipients. Discussion centered on the community needs that could be addressed with CDBG/HOME funds or alternative funds. Funding applications were accepted from May 15, 2020 - May 28, 2020. The Proposed FY **2020/2021** budget for the FY **2020/2021** Action Plan was published in the Abilene Reporter-News on June 5, 2020 (which began the HUD-required 30-day comment period). A second public hearing on June 11, 2020, is required with approval of the attached resolution. The FY **2020/2021** Consolidated Plan and Action Plan must be received by HUD no later than August 16, 2020.

FUNDING/FISCAL IMPACT

There will be no impact on local taxes. Projects are to be funded using 2020 Entitlements of $870,932 CDBG and $447,803 HOME. In addition, the City anticipates that it will receive $500 program income from the CDBG program during FY **2020/2021.**

STAFF RECOMMENDATION

Staff recommends approval of the attached resolution approving the

FY **2020/2021** One-Year Action Plan for use of CDBG and HOME funds.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. FY2020_21 One Year Action Plan New revised (1)

FY 2020/2021 One-Year Action Plan

Community Development Block Group Grant
HOME Investment Partnerships Grant

CITY OF
ABILENE
TEXAS

What is the difference between Community Development Block Grant (CDBG) and HOME Investment Partnerships Grant (HOME)

- CDBG: A grant used for expanding decent housing, suitable living environments and economic opportunities through rental or homeowner rehabilitation and homebuyer assistance

- HOME: A grant used for increasing the quality of low-income housing stock through new construction, rehabilitation, reconstruction or conversion

Components of the Consolidated Plan

- Consultation Process
- Citizen Participation
- Housing & Homeless Needs Assessment
- Housing Market Analysis
- Action Plan

Project Funding Guidelines

- Meet HUD National Objectives
- Meet Consolidated Plan Goals & Objectives
- >70% Low- to Moderate-Income (LMI) Benefit
- Follow Council policy on funding capital projects for nonprofits; not operating expenses

FY 2020 - 2021 CDBG REVENUE

CDBG Entitlement	$ 870,932
Anticipated Reprogrammed Funds	$ 312,845
Program Income	$ 500
Total Revenue	**$1,184,277**

CDBG PROGRAM DELIVERY & PLANNING ADMIN

Housing Admin (Program Delivery Not Subject to 20% Cap)	$120,660
CDBG Planning Admin (Subject to 20% Cap)	$ 84,190
Indirect Admin (Subject to 20% Cap)	$ 90,000
Total Admin Expenditures	**$294,850**

TOTAL CDBG EXPENDITURES

Administration	$ 294,850
Condemnation and Demolition Program	$ 80,000
Noah Project Inc.	$ 9,477
Meals on Wheels	$ 81,000
Salvation Army	$ 49,950
Abilene Hope Haven	$ 69,000
Abilene-Taylor County Public Health District	$ 130,000
CDBG Public Service Project (Mandatory 15% of Entitlement)	
Critical/Limited Repair	$ 245,000
Neighborhood Revitalization Program	$ 225,000
Total CDBG Expenditures	**$1,184,277**

TOTAL CDBG Projects

- **CDBG Housing Administration-$120,660** pays staff, HUD training, office materials, Public Notices, and advertising materials as required by HUD
- **CDBG Indirect Admin-$90,000** will be paid to the City of Abilene for building and office use, maintenance, fleet, IT services and access to all City personnel.
- **CDBG Planning Administration-$84,190** will fund staff, advertising and promotion, HUD training, IT fund and memberships.
- **Noah Project -$9,477** to assist with the capital improvement project to enlarge storage facility.
- **Abilene-Taylor County Public Health District - $130,000** will offer dental services to Abilene low-mod residents who do not have dental insurance or the means to pay for dental care.

TOTAL CDBG Projects Cont.

- **Critical/Limited Repair- $245,000** 25-35 Low-Moderate-Income (LMI) clients that reside in owner-occupied single-family residences will be assisted with one system failure per calendar year such as a roof, sewer, water, or gas line and ADA accessibilities for restroom and handicap ramp.
- **Neighborhood Revitalization Program $225,000** Revitalize 15 LMI neighborhoods by wrapping income qualified clients homes in Smart Board. ONS will continue to focus and redevelop those neighborhoods long neglected
- **Condemnation & Demolition- $80,000** will assist in the demo of a substandard commercial building or single-family residence to eliminate Spot Slum Blight in the 14 LMI Neighborhoods.

TOTAL CDBG Projects Cont.

- **Meals on Wheels $81,000** to assist with the capital improvement project by replacing Air Conditioning units and Exhaust Fans to improve the quality of the Meals on Wheels Plus facility for the health and safety of staff, volunteers, and meal recipients.
- **Salvation Army $49,950** to assist with the capital improvement project to repair the parking lot around the facility to provide access to services, a safe place to walk and park at the facility
- **Abilene Hope Haven $69,000** to assist with the capital improvement project to plan and re-pipe the plumbing system to ensure building sustainability and cost efficiency long-term.

HOME REVENUE

HOME Entitlement	$447,803
Reprogrammed Funds	$ 34,139
Program Income	$ 5,000
Total Revenue	**$ 486,942**

HOME EXPENDITURES

Single-Family Rehab/RECON Program	$349,992
First Time Homebuyer Program	$ 25,000
Administration	$ 44,780
Community Housing Development Organization (CHDO-15%)	$ 67,170
Total Expenditures	**$486,942**

HOME Expenditures

- **HOME Administration $44,780** to provide program delivery of all HOME assisted projects.
- **Single-Family Rehabilitation/Reconstruction Program $349,992** will fund 3-4 owner occupied residences ensuring the entire home brought up to meet local codes such as roof, electrical, plumbing, gas and sewer lines.
- **First Time Homebuyer Program $25,000** to provide approximately $5,000 in down payment and closing cost for 5 buyers within the City of Abilene.
- **Community Housing Development Organization (CHDO) $67,170** will be provided to Habitat of Humanity to aid in construction of 3 new single-family homes within the City of Abilene.

Questions?

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Robert Hanna, City Manager**

FROM: **Michael Rice, Assistant City Manager**

SUBJECT: **9. Presentation: Receive a Presentation, Hold a Discussion and Public Hearing on the concept of a Public Improvement District *(Michael Rice)***

GENERAL INFORMATION

Robert Rivera, with MFSbonds, Inc., has requested the opportunity to discuss a economic development tool called a Public Improvement District (PID). PIDs can finance a wide array of public infrastructure and development items. PIDs have been used by cities and counties for residential and commercial development to fund roads, water, sewer, and other eligible costs.

SPECIAL CONSIDERATIONS

This agenda item is for discussion only, and no votes or action are required.

A Public Improvement District may be a tool used for property adjacent to Boys Ranch Road in the future.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. City of Abilene - PID Introduction Presentation

City of Abilene, Texas

Public Improvement Districts

tms bonds, Inc.
Municipal Bond Specialists

FMS ROLE AS UNDERWRITER AND NOT FINANCIAL ADVISOR

FMSbonds, Inc., is providing the information contained in this document for discussion purposes only in anticipation of serving as underwriter to the "Issuer". The primary role of FMSbonds, Inc., ("FMS") as an underwriter, is to purchase securities, for resale to investors, in an arm's-length commercial transaction between the Issuer and FMS. FMS may have financial and other interests that differ from those of the Issuer. FMS is not acting as a municipal advisor, financial advisor or fiduciary to the Issuer or any other person or entity. The information provided is not intended to be and should not be construed as "advice" within the meaning of Section 15B of the Securities Exchange Act of 1934. The Issuer should consult with its own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it deems appropriate. The Issuer should consider whether to engage an advisor to act in a fiduciary capacity on its behalf in connection with this transaction.

Securities offered by FMSbonds, Inc., including annuities, are not insured by the FDIC or any government agency; are not deposits or other obligations of or guaranteed by FMSbonds, Inc. or any of its affiliates; and are subject to investment risks, including possible loss of the principal invested. FMSbonds, Inc. is a broker/dealer, member FINRA/SIPC.

FMS has a policy that is designed to comply with the disclosure requirements under revised MSRB Rule G-23. In conjunction with these requirements, we are providing the following disclosure to all of our municipal underwriting clients.

Public Improvement Districts

Development Using Public Improvement Districts

What are Public Improvement Districts?
Public Improvement Districts ("PID") are economic tools available to Texas cities / counties to fund public improvements that benefit the area within the PID boundaries. Landowners within the PID are assessed for the benefits, rather than burdening the general tax base or having to consent to the formation of an independent political subdivision.

PID Creation: Landowners can petition a city or county to establish a PID. Thereafter, PIDs are created by cities or counties.

Resources: The financial resources of PIDs are assessments levied on property owners within the PID. The assessments are based on a percentage of benefited property. Additional revenues can be pledged to the project, thereby mitigating assessments. Other revenues include tax increment, parking, fees, appropriations, etc.

Financings: A PID (City or County) sells assessment revenue bonds and / or can generate annual revenues.

Governance: Appointed by the city council or commissioner's court (dependent district).

Eligible Costs: PIDs can finance a wide array of public infrastructure and development items, including:

- landscaping; erection of fountains, distinctive lighting and signs;
- acquiring, constructing, improving, widening, narrowing, or rerouting sidewalks, streets/roadways or rights-of-way;
- construction or improvement of pedestrian malls;
- acquisition, construction or improvement of libraries;
- acquisition, construction or improvement of off-street parking facilities;
- acquisition, construction, improvement or rerouting of mass transportation facilities;
- acquisition, construction, or improvements of water, wastewater or drainage improvements;
- the establishment or improvement of parks;
- acquisition, by purchase or otherwise, of real property in connection with an authorized improvement;
- special supplemental services for improvement and promotion of the district; and
- payment of expenses incurred in the establishment, administration and operation of the district.

Public Improvement Districts

Ways to Utilize Public Improvement Districts

Cash Flow PIDs

Maintenance & Operation PIDs – for all intents and purposes, a HOA on steroids. Developers request the M&O PID to fund ongoing maintenance and operation of fencing, landscaping, roads, etc. Many debt PIDs (see below) will also have an M&O assessment to mitigate future expenses to the issuers and their general tax base.

Capital Cash Flow PIDs – landowner and governmental entity agree to the levy of an assessment and enter into a reimbursement agreement. In the agreement, the landowner promises to construct public improvements, dedicated to a governmental body, who then pays the developer assessments over an agreed period of time.

Debt PIDs

Dirt Bonds – bonds issued by the governmental body at the earliest stage of development. Proceeds used to directly fund improvement constructed by the developer. It's not unusual for the land to be designated as agricultural and for there to be little to no adjacent development.

Project Finance Bonds – bonds issued simultaneous with development or re-development (classic infill project). Often, the developer has commenced installation of key infrastructure (spine roads, water sewer facilities) and is seeking to fund additional improvements – parks, internal roads, monumentation, fencing, or other assets that the issuer and developer agrees will amenitize the project.

Reimbursement Bonds – developer privately funds infrastructure and the issuer agrees to provide bond funding after a key benchmark is met. The bonds can be contingent on all horizontal being funded or a certain level of vertical (similar to a municipal utility district).

Who uses Public Improvement Districts?

PIDs have been used by cities and counties for residential (and commercial) development in lieu of other Special Districts (MUDs, FWSDs, WCIDs) to fund roads, water, sewer, and other eligible costs.

The following is a partial list of Texas cities / counties that have utilized PIDs for development:

City of Arlington
City of Aubrey
Town of Argyle
City of Hackberry
City of Leander
City of Celina
City of El Paso
Town of Little Elm
City of Irving
Hays County
City of Liberty Hill
City of Ferris
City of Austin
City of Oak Point
Town of Trophy Club
Town of Northlake
City of Lavon
Town of Westlake
City of Horseshoe Bay
City of McAllen
City of Dripping Springs
City of Lubbock
Travis County
The Colony
City of Royse City
City of Princeton
City of Magnolia
City of Justin
City of Kyle
City of San Marcos
City of Fate
Town of Flower Mound
City of Lago Vista
City of Coppell
City of Lewisville
City of Waxahachie
City of Shenandoah
City of Fort Worth
City of Galveston
City of Anna
City of Heath
City of North Richland Hills

Assessment Bond Safeguards – For Successful Assessment Bond Sales, Underwriters Generally Require:

- Value to Lien – while issued "up front," the VTL is typically 3:1 – though this is determined on a project by project basis
- All public approvals, entitlement and utility service delivery issues be resolved
- Private sources of funding be fully committed so that funding (bonds plus private capital) exists for finished lots
- Clean title from environmental and lien standpoint (development related mortgages are OK), normal due diligence matters
- It is recommended that an appraisal / third-party market study and engineer's report be conducted
- Builder contracts are preferred – they are the "gold standard" indicators of market demand and positively effect bond rates
- The bond prospectus, deliberately and intentionally includes very little disclosure on the political subdivision
- The prospectus also includes strong developer disclosures and risk factors
- The bond proceeds are held by a trustee. The developer does not have access to the funds. The political subdivision (or its designee) must approve each construction requisition
- The bonds are secured by a debt service reserve fund, which serves as a "surge-tank" funding source should a delinquency require enforcement action
- Typically, 2-3 years capitalized interest is funded from the bonds
- The strict nature of special assessments assures every property owner that their assessment cannot increase due to non-payment by another landowner

Assessment / Credit Mechanics

- Assessments are levied against each individual lot or parcel for the life of the PID (lien is known at time of purchase)
- Assessment liens within the PID are subordinate only to governmental taxes
- Generally, assessments are paid annually like ad valorem taxes, but the lien can be paid in full (unlike ad valorem taxes)
- The land / homeowner is responsible for assessment payment (unlike MUD, no impact to owners for non-payment of others)

Public Improvement Districts

Special Assessment Bonds – Associated Risks and Mitigation

***Development Risk*: The possibility the development does not take place or is not constructed as planned.**

1. The Master Indenture outlines the steps required before proceeds may be released to the developer.
2. The issuer must inspect and certify that the work performed meets the agreement upon specifications. The issuer then approves and submits the draw request to trustee.
3. The trustee must have this issuer certification before dispersing any proceeds from the project fund. Should the work performed fail to meet the issuer's requirements or the not take place at all, the proceeds are retained in the project fund and would ultimately be redirected to the repayment of the bonds.

***Suitability of the Bond Investor*: The possibility the PID bonds are purchased by an unsophisticated investor with limited ability to absorb potential investment loss.**

1. FMS voluntarily structures the bonds with minimum denominations of $100,000.
2. FMS voluntarily requires potential investors to be "Accredited Investors" or "Qualified Institutional Buyers".
3. In order to met either definition, investors must prove they have a high level of sophistication regarding speculative investments, maintain a high level of liquidity, and can absorb potential investment losses.

***Administrative / Continuing Disclosure Risk*: The ongoing administration of monitoring of disclosure.**

1. The issuer covenants to collect assessments on behalf of bondholders.
2. The issuer covenants to foreclose on property for non-payment of assessments.
3. In addition to the Issuer's 15c2-12 continuing disclosure requirements, the developer is required to submit quarterly disclosures on the project and its progression.

***Declining Home Value / Default of Home Owner*: The possibility that home values in the PID decline after the issuance of the bonds or that one or more final home owners fail to pay the fixed assessments on the bonds.**

1. Non-payment of assessments is treated in the same manner as property taxes.
2. Foreclosure proceedings are built into the bond documents.
3. To mitigate the time delay between a missed payment and foreclosure sale, PID bonds are also structured with a Debt Service Reserve Funds and a Delinquency Reserve Fund. These funds help ensure there is no payment gap due to timing requirements associated with the foreclosure process on individual lots.
4. Each homeowner is responsible for their own fixed assessments, one home owner's default does not adversely affect their neighbors through the increase in assessments (i.e. MUD).

***Determining Underlying Value (Real vs. Paper Value)*: The risk the "value" assigned to the project is not supported by real world market demand.**

1. Many issuer's request an appraisal to establish a "Value to Lien" for the project. While an appraisal report may add additional support to a project, they should never be the sole determination of a project's value.
2. Inexperienced underwriters rely on appraisals as their key quantitative characteristic for the development.
3. It is the underwriter's responsibility to provide detailed information on the project in an offering document, so investors may make their own decision as to the "value" of a project.
4. Instead of just an appraisal, a qualified underwriter will base the value of a project on fundamental data like homebuilder contracts and money that has been spent by the developer on actual in ground improvements.
5. Using real world metrics rather than a hypothetical, future, appraised value allows potential investors to derive a much more accurate "value" for a project and further establish a "lien per lot" value which, ultimately is how a PID bond will be secured (i.e. individual home owner fixed assessment payments).

Public Improvement Districts

Possible Transaction Participants / Process Timeline

Overview of PID Bond Financing Team

Issuer Financing Team:

City / County Staff
City Attorney*
Bond Counsel*
Financial Advisor*
Appraiser*
Assessment Administrator*

Investor Financing Team:

Underwriter*
Underwriter's Counsel
Trustee*
Trustee's Counsel

Developer Financing Team:

Developer
Developer's Counsel
Engineer

* The Issuer (City or County) selects these professionals, not the developer or development team.

Time

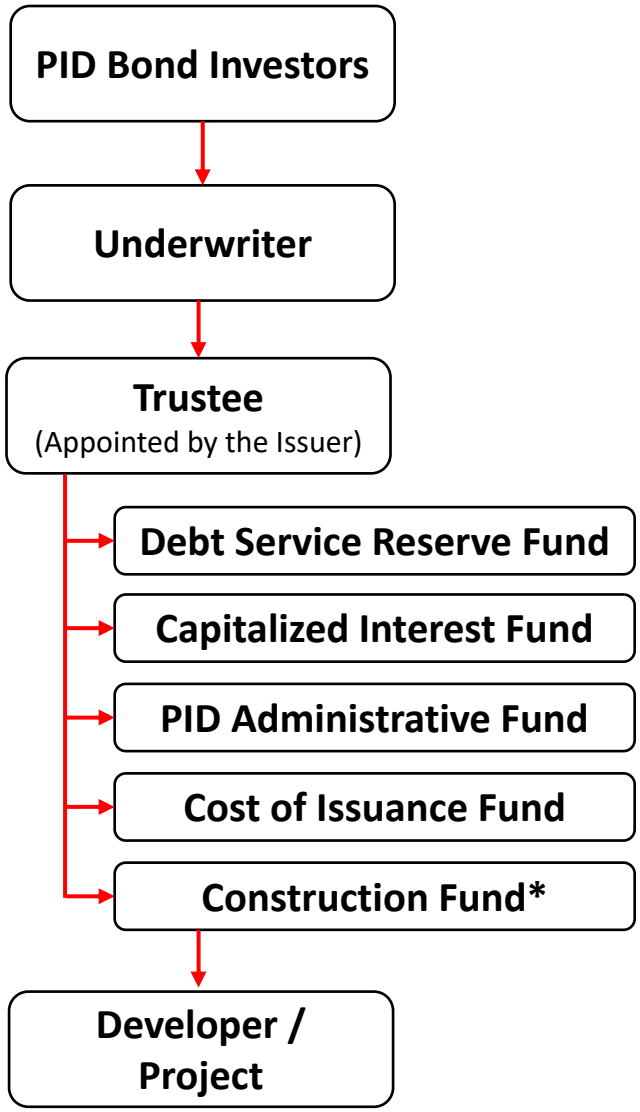
- Initial Working Group Meeting
- PID Petition
- Public Hearing
- Working Group Meetings
- Public Hearing – Project, Financing Plan, Levy Assessments
- Prepare Bond Documents
- Distribute PLOM
- Investor Call / Site Visits
- Price Bonds
- Transcript to Texas AG
- Close and Deliver Bonds
- Begin Construction

Once the development and financing agreement is approved, the issuance process may take 3 – 6 months.

Public Improvement Districts

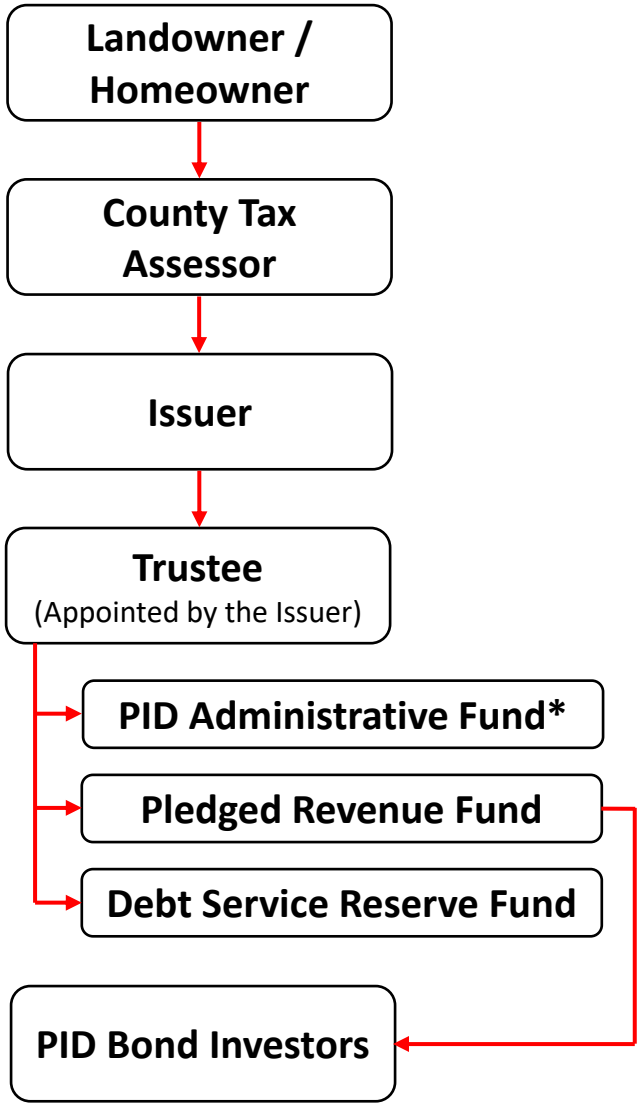
PID Bond Indenture Structure / Flow of Assessments

Flow of Bond Proceeds



* Construction funds are only distributed to the Project upon inspection and approval of the Issuer. Ultimately assets will be dedicated to the Issuer and must meet their standards.

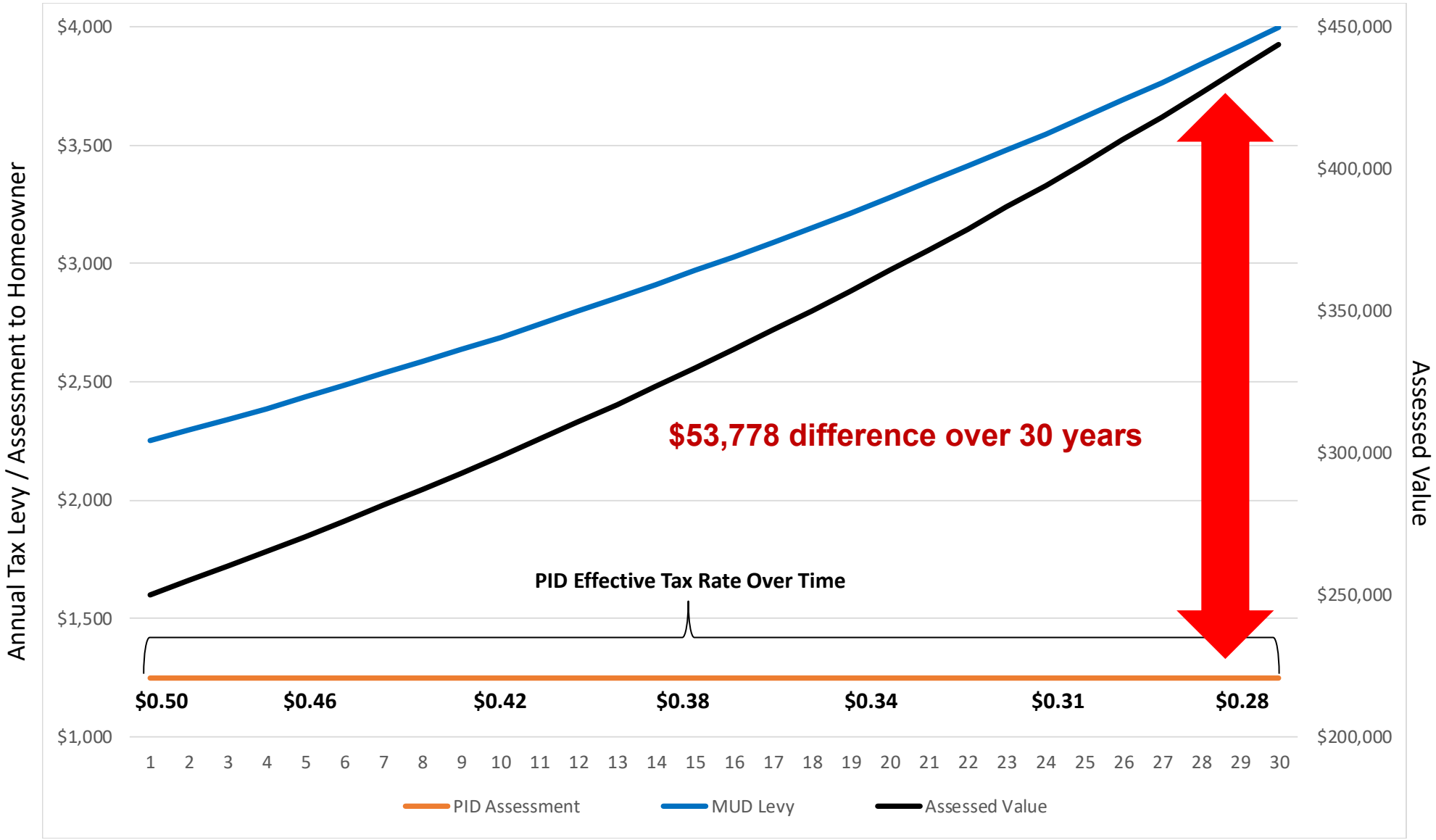
Flow of PID Assessment Payments



* The Issuer's PID Administrative Fund is held by the Trustee separate from other funds and is not part of the Trust Estate or security for the PID Bonds.

Public Improvement Districts

PID Bond Assessments are Fixed Regardless of Future Home Value [1]



1. MUD Tax Rate - $0.9000 (The dollar value increases with the assessed value at the same tax rate). PID Fixed Assessment at Bond Issuance - $0.5000 (The dollar value is locked in going forward). Assumes a beginning home assessed value of $250,000 and increases at an annual rate of 2.0%.

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Robert Hanna, City Manager**

FROM: **Brenda Alexander, Director**

SUBJECT: **10. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Adding Additional Liability Coverage with Texas Municipal League Intergovernmental Risk Pool (TMLIRP)** ***(Brenda Alexander)***

GENERAL INFORMATION

The City Council adopted a resolution on October 25, 1979, approving and authorizing the establishment of a self-insurance program for the City of Abilene and appropriated $500,000 for the Self-insurance fund. Since that time, the City has been self-insured for the majority of its liability exposures, including: general liability, law enforcement liability, automobile liability, errors & omissions, and cyber liability. Being self-insured, the City uses in-house attorneys for litigation.

On October 1, 2012, the City entered into a Liability/Property Interlocal Agreement with the Texas Municipal League Intergovernmental Risk Pool (TMLIRP). The City already has certain liability coverages in force for medical professional liability for the Abilene Taylor County Public Health District and COACH clinic, events liability for the Convention Center, and aviation liability for the airport. The City also has property coverage through TMLIRP for its real and personal property.

Due to the increasing risks of liability for municipalities, such as employment and discrimination claims, law enforcement, cyber extortion and data security breaches, the City decided to obtain quotes for additional liability coverages from TMLIRP for consideration.

The City is considering adding the following liability coverage: General Liability, Law Enforcement Liability, Errors & Omissions Liability, and Cyber Liability.

SPECIAL CONSIDERATIONS

If the City purchases the additional liability coverages, outside attorneys working through TMLIRP would litigate

on behalf of the City. An authorized interlocal agreement with TMLIRP is already in place.

A survey of our sister cities indicated that 3 of the 9 respondents are self-insured and 6 are covered by TMLIRP.

Automobile liability coverage is not being recommended at this time, as the City wishes to remain self-insured for this exposure.

FUNDING/FISCAL IMPACT

The costs of these coverages for the remainder of FY20 and FY21 are budgeted in the Self-insurance fund. The costs would be as follows:

	FY20	FY21
Coverage Type	**June 1 - Oct 1**	**Oct 1 - Oct 1**
General Liability	$ 16,040.00	$ 48,122.00
Law enforcement liability	20,264.00	60,797.00
Errors & omissions liability	29,804.00	89,412.00
Cyber liability (highest tier)	16,263.75	21,685.00
Total cost	**$ 82,371.75**	**$ 220,016.00**

STAFF RECOMMENDATION

Staff recommends that the City accept the liability coverage proposals from the Texas Municipal League Intergovernmental Risk Pool (TMLIRP).

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 2020 TMLIRP Liability coverages resolution
2. June to October Proposal GL LEL E&O X104 Abilene .57 LB Mod 05 27 2020
3. October to October Proposal GL LEL EO X104 Abilene .57 LB Mod
4. Cyber Liability Limit Structures
5. Liability Coverage Document as of 10-1-18
6. Cyber Liability and Data Breach Response Coverage Document

7. Settlements over $50,000
8. Comparative Cities
9. TMLIRP Liability Property Interlocal Agreement 101112
10. Liability coverages presentation

RESOLUTION NO._____

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL (TMLIRP) FOR LIABILITY COVERAGE

WHEREAS, the City Council adopted a resolution on October 25, 1979, approving and authorizing the establishment of a self-insurance program for the City of Abilene, and appropriating $500,000 for the Self-Insurance Reserve Fund; and

WHEREAS, the City has remained self-insured for most liability exposures since the establishment of the self-insurance program; and

WHEREAS, the City has reviewed its current risk exposures being self-insured, and has determined that it is in its best interest to procure liability coverages, rather than self-insure, for these exposures; and

WHEREAS, the City currently has other coverages through the Texas Municipal League Intergovernmental Risk Pool (TMLIRP) through an authorized Interlocal agreement; and

WHEREAS, the City received a proposal for various liability coverages from the TMLIRP at a prorated cost of $82,371.75 for June 1, 2020 through October 1, 2020, and an annualized 12-month cost of $220,016.00 beginning October 1, 2020.

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

PART 1: That the City Manager is authorized to negotiate and execute an agreement with the Texas Municipal League Intergovernmental Risk Pool for additional liability coverages.

PART 2: The coverages will become effective June 1, 2020, with a 12-month renewal on October 1, 2020.

PART 3: This Resolution will take effect immediately from and after passage.

Adopted the 11th day of June, 2020

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

Bid / Proposal Summary

Date:

		Proposed Effective Date	Proposed Anniversary Date
Entity Name:	**City of Abilene**		
Entity ID:	**1407**	**06/01/2020**	**10/01/2020**

Type of Coverage	Limit			Deductible	Annual Contribution
General Liability	$ 2,000,000	Each occurrence [1]	$ 50,000	$ 16,040.00
	$ 4,000,000	Aggregate		
Law Enforcement Liability [2]	$ 2,000,000	Each occurrence	$ 50,000	$ 20,264.00
	$ 4,000,000	Aggregate		
Errors & Omissions Liability [3]	$ 2,000,000	Each wrongful act	$ 50,000	$ 29,804.00
(Public Officials)	$ 4,000,000	Aggregate		

TOTAL ANNUAL:	$ 66,108.00
2% Annual Payment Discount [4]:	$ -1,322.16
Total Annual Contribution:	$ 64,785.84
Quarterly Payment:	$ 16,527.00

SEE PROPOSAL FOR OPTIONAL COVERAGES, LIMITS, DEDUCTIBLES, etc.

[1] Sudden events involving pollution provided at the occurrence limit shown or $2,000,000, whichever is less.
[2] Retroactive date available for 5 years prior to the effective date of coverage at no additional contribution.
[3] E&O retroactive date available for 5 years prior to the effective date of coverage at no additional contribution.
[4] Annual Payment Discount applies if full annual contribution is paid within 30 days of the effective date, or receipt of your first bill, whichever is later. (The Annual Payment Discount does not apply to public officials' bonds or windstorm coverage for Tier 1 members.)

Bid / Proposal Summary

Date:

		Proposed Effective Date	Proposed Anniversary Date
Entity Name:	**City of Abilene**		
Entity ID:	**1407**	**10/01/2020**	**10/01/2021**

Type of Coverage	Limit			Deductible	Annual Contribution
General Liability	$ 2,000,000	Each occurrence [1]		$ 50,000	$ 48,122.00
	$ 4,000,000	Aggregate			
Law Enforcement Liability [2]	$ 2,000,000	Each occurrence		$ 50,000	$ 60,797.00
	$ 4,000,000	Aggregate			
Errors & Omissions Liability [3]	$ 2,000,000	Each wrongful act		$ 50,000	$ 89,412.00
(Public Officials)	$ 4,000,000	Aggregate			

TOTAL ANNUAL:	$ 198,331.00
2% Annual Payment Discount [4]:	$ -3,966.62
Total Annual Contribution:	$ 194,364.38
Quarterly Payment:	$ 49,582.75

SEE PROPOSAL FOR OPTIONAL COVERAGES, LIMITS, DEDUCTIBLES, etc.

[1] Sudden events involving pollution provided at the occurrence limit shown or $2,000,000, whichever is less.
[2] Retroactive date available for 5 years prior to the effective date of coverage at no additional contribution.
[3] E&O retroactive date available for 5 years prior to the effective date of coverage at no additional contribution.
[4] Annual Payment Discount applies if full annual contribution is paid within 30 days of the effective date, or receipt of your first bill, whichever is later. (The Annual Payment Discount does not apply to public officials' bonds or windstorm coverage for Tier 1 members.)

TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL

City of Abilene

04/21/2020

05/21/2020

< Can be considered beyond 30 days subject to a NLL and approval by the Underwriter.

SECTION A

Tower 1	**SECTION A POLICY AGGREGATE LIMIT OF LIABILITY**	For all Damages, Claims Expenses, Penalties and PCI Fines, Expenses and Costs	USD 1,000,000	USD 1,000,000	USD 1,000,000
	Information Security and Privacy Liability Aggregate Limit	each Claim and in the Aggregate	USD 1,000,000	USD 1,000,000	USD 1,000,000
	Website Media and Content Liability Aggregate Sublimit:	each Claim and in the Aggregate	USD 1,000,000	USD 1,000,000	USD 1,000,000

Note: The above Aggregate Limits are part of, and not in addition to, the overall Section A Policy Aggregate Limit of Liability

Liability Retention Per Claim:

Retention:	each Claim	USD 0	USD 0	USD 0

SECTION B

Tower 2	**SECTION B POLICY AGGREGATE LIMIT OF LIABILITY**	For all Damages, Claims Expenses, Penalties and PCI Fines, Expenses and Costs	USD 250,000	USD 500,000	USD 1,000,000
	Regulatory Defense and Penalties Aggregate Sublimit:	each Claim and in the Aggregate	USD 75,000	USD 150,000	USD 300,000
	PCI Fines, Expenses and Costs Aggregate Sublimit:	each Claim and in the Aggregate	USD 40,000	USD 50,000	USD 100,000
	Cyber Extortion Aggregate Sublimit:	each Claim and in the Aggregate	USD 35,000	USD 100,000	USD 200,000
	First Party Data Protection Aggregate Sublimit:	each Claim and in the Aggregate	USD 50,000	USD 100,000	USD 200,000
	First Party Network Business Interruption Aggregate Sublimit:	each Claim and in the Aggregate	USD 50,000	USD 100,000	USD 200,000

Note: The above Sublimits are part of, and not in addition to, the overall Section B Policy Aggregate Limit of Liability

Liability Retention Per Claim:

Retention:	each Claim	USD 5,000	USD 10,000	USD 20,000
Income Loss Retention under First Party Network Business Interruption:	the greater of	USD 5,000	USD 15,000	USD 25,000
		Income Loss during 12 hour waiting period	Income Loss during 12 hour waiting period	Income Loss during 12 hour waiting period

SECTION C

Limits of Coverage - Privacy Breach Response Services

Tower 3	Notified Individuals:	Notified Individuals in the Aggregate	25,000	75,000	150,000
Tower 4	Legal Services/Computer Expert Services/Public Relations and Crisis Management Expenses Aggregate Sublimit:	per Incident and in the Aggregate	USD 75,000	USD 100,000	USD 150,000

Privacy Breach Response Services Threshold/Retention (Each Incident):

Tower 3	Notification Services/Call Center Services/Breach Resolution and Mitigation Services Threshold:	each Incident	100 Notified Individuals	100 Notified Individuals	100 Notified Individuals
Tower 4	Legal Services/Computer Expert Services/Public Relations and Crisis Management Expenses Retention:	each Incident	USD 7,500	USD 10,000	USD 15,000

Note: The Policy Aggregate Limits of Liability under Sections A & B and the Privacy Breach Response Services Limits of Coverage under Section C are all separate from and in addition each other.

Annual Premium USD	USD 16,481	USD 19,083	USD 21,685

Premium can be prorated for period less than 12 months with a maximum reduction of 25% to Annual Premium

Tower 1	Tower 2	Tower 3	Tower 4
Information Security and Privacy Liability aggregate limit of liability	policy aggregate limit of liability	privacy breach response services limit of coverage part 1	privacy breach response services limit of coverage part 2
• Third party information security and privacy • Website media content liability	• Regulatory defense and penalties • PCI fines, expenses and costs • Cyber extortion • First party data protection • First party business interruption	• Notification services • Call center services • Credit monitoring services • Foreign notifications	• Legal services (ie. privacy counsel not defense) • Computer expert services • Public relations and crisis management expenses
Dollar Limits and Retentions **BI—Waiting period and Dollar Retention**	**Dollar Limits and Retentions** **BI—Waiting period and Dollar Retention**	**Notified Individuals Limit and Retention** Provided on a number of affected individuals basis, not capped by a dollar amount	**Dollar Limit and Retention**

The Section A Policy Aggregate Limit of Liability (Tower 1) and the Section B Policy Aggregate Limit of Liability (Tower 2) are **both separate from and in addition to** the Privacy Breach Response Services Limits of Coverage part 1 (Towers 3) & part 2 (Tower 4)

Texas Municipal League
JOINT SELF-INSURANCE FUND
Liability Coverage Document

OCTOBER 1, 2018

Texas Municipal League Intergovernmental Risk Pool
1821 Rutherford Lane, First Floor • Austin, Texas 78754
P.O. Box 149194 • Austin, Texas 78714-9194
(512) 491-2300 • (800) 537-6655
www.tmlirp.org

TML
INTERGOVERNMENTAL RISK POOL

Changes to the Liability Coverage Document
Effective October 1, 2018

The Pool's Board of Trustees, acting in their capacity as the "fiduciary" of the risk sharing partnership that is TMLIRP, recently approved three changes to the Liability Coverage Document to be effective for rerates beginning October 1, 2018. Each of these changes can be categorizes as a "Clarification," that does not change the intent of the coverage. A detailed explanation of all changes approved by the Trustees can be accessed on our website at https://www.tmlirp.org/board-of-trustees/board-meeting-agenda, under Tab 16. Additionally, your Member Services Manager can provide additional explanation on these changes as needed. As is the case each time coverage changes are made, the Board carefully considers the needs of the membership and the preservation of long-term stability and costs; while continuing to provide coverage that is unmatched in the marketplace.

Below is a brief summary of the clarifications to the Liability Coverage Document. *The information below is intended to provide a brief overview, please consult your coverage document for actual wording.*

1. **Exclusion for the Exercise of Zoning for Subdivision Regulatory Powers:** Exclusion "W" under Part VIII, Exclusions Applicable to All Coverages, concerns claims or lawsuits based upon the exercise or failure to exercise zoning or subdivision regulatory powers. Language is clarified to state coverage does apply to suits that seek damages.

2. **Exclusion for Reckless Indifference:** The Pool's Liability Coverage excludes damages arising from the dishonest, fraudulent, criminal or malicious act or omission of any Member or Covered Party (Exclusions Applicable to All Coverage – Paragraph Q). "Punitive Damages" are not explicitly excluded within this paragraph, however this exclusion is partly intended to exclude these types of damages. Reckless indifference may result in a punitive damages award. Therefore language is added to clarify that the Pool will not pay damages based upon reckless indifference. Please note punitive damages cannot be awarded against a municipality in most instances; but they can be awarded against individual employees or officials. When awarded, punitive damages are intended to "punish" the wrongdoer and set a public example to prevent repetition of the act, in which an insurer may not be allowed to pay such punitive damages as a matter of public policy.

3. **Cyber Liability Exclusion:** Cyber Liability and Data Breach Response Coverage is currently provided through a separate document. Previously, an endorsement has been attached to the Member's Liability Coverage document excluding cyber coverage. This exclusion is incorporated into the Liability Coverage Document so that an endorsement is no longer necessary.

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PART I

GENERAL CONDITIONS

I. DEFENSE

The **Fund** shall have the right and the duty to defend any **suit** against the **Member** or **Covered Party** seeking **damages** on account of such liability as covered in this **Plan**, even if any of the allegations of the **suit** are groundless, false, or fraudulent, and may make such investigation and settlement of any **claim** or **suit** it deems expedient, but the **Fund** shall not be obligated to pay any **claim** or judgment or to defend any **suit** or pay any amounts specified under General Conditions XIV, Supplementary Payments, after the **Fund** has paid or offered to pay the applicable limit of the **Fund's** liability. In the event that there is a conflict of interest between the **Fund** and the **Member** or **Covered Party**, the **Fund** shall retain its contractual right to select defense counsel and control the defense of the **suit**, without waiving its right to pay only those **damages** which are covered under the terms of the **Plan**.

II. DEFINED WORDS

Whenever words or phrases appear in this **Plan** in bold type, they are used as defined in the Definitions section or in the Coverage parts of this **Plan**. Otherwise, words or phrases used herein shall have the ordinary meaning attached to their usage.

III. INSPECTION AND AUDIT

A. The **Fund** shall be permitted but not obligated to inspect the **Member's** property and operations at any time. Neither the **Fund's** right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the **Member** or others to determine or warrant that such property or operations are safe or healthful or are in compliance with any law, rule, or regulation.

B. The **Fund** may examine and audit the **Member's** books and records at any time during the **Agreement Period** and extensions thereof and within three years after the final termination of this **Agreement**, as far as they relate to the subject matter of this coverage.

IV. MEMBER'S DUTIES IN THE EVENT OF AN OCCURRENCE, WRONGFUL ACT, CLAIM, OR SUIT FOR ALL COVERAGES ADOPTED

A. In the event of an **occurrence** or **wrongful act**, written notice containing particulars sufficient to identify the **Member** and also reasonably obtainable information with respect to the time, place, and circumstances thereof, and the names and addresses of the injured and available witnesses shall be given by or for the **Member** to the **Fund** or any of its authorized agents as soon as practicable. Failure to provide written notice to the **Fund** of an **occurrence** or **wrongful act** as soon as practicable, at the sole discretion of the **Fund**, may be declared a material breach of the duties of the **Member** or **Covered Party** under this **Agreement** and result in forfeiture of coverage for that **occurrence** or **wrongful act**. Knowledge or notice of an **occurrence**, **claim**, or **wrongful act** by an agent, servant, or employee of the **Member** shall not constitute knowledge or notice to the **Member**, unless the **Member's Fund Contact**, as designated in the **Agreement**, shall have received notice from its agent, servant, or employee. The inadvertent failure of an agent, servant, or employee of the **Member** to notify the **Fund** of any **occurrence** or **wrongful act** of which he has knowledge shall not invalidate the coverage afforded by this **Agreement**.

B. If a **claim** is made or **suit** is brought against the **Member** or **Covered Party**, the **Member** or **Covered Party** shall immediately forward to the **Fund** at its Austin, Texas, address every demand, notice, summons, or other process received. Failure to immediately forward to the **Fund** such documents, at the sole discretion of the **Fund**, may be declared a material breach of the duties of the **Member** or **Covered Party** under this **Agreement** and result in forfeiture of coverage for that **claim**. In the event of a default judgment as the result of the **Member** or **Covered Party's** failure to comply with this provision, the **Fund** will retain defense counsel to attempt to have the judgment set aside. The **Member** will be responsible for payment of all legal fees and expenses incurred in attempting to have the judgment set aside. The **Member** will also be responsible for payment of any legal fees or expenses awarded to the Plaintiff in connection with having the judgment set aside. Legal fees and expenses, whether incurred in the attempt to have the judgment set aside or awarded to the Plaintiff in connection with having the judgment set aside, will be paid by the **Member** and do not apply toward its deductible. If the default judgment becomes final, the **Fund** may declare a material breach of the duties of the **Member** or **Covered**

Party under this **Agreement** and a forfeiture of coverage for that **claim**.

C. The **Member** or **Covered Party** shall cooperate with the **Fund** and give any information as may reasonably be required and, upon the **Fund's** request, assist in making settlement, in the conduct of **suits** and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Member** or **Covered Party** because of injury or **damage** with respect to which coverage is afforded under the **Agreement**; and the **Member** or **Covered Party** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Member** or **Covered Party** shall not, except at its own cost, voluntarily make any payment, assume any obligation, or incur any expense other than for first aid to others at the time of an accident. It shall be understood that the **Member** or **Covered Party** shall not take any action whatsoever, subsequent to an **occurrence** or **wrongful act** that could increase the liability exposure of or jeopardize the **Fund** in any way. Failure of the **Member** or **Covered Party** to comply with the requirements of this paragraph, at the sole discretion of the **Fund**, may be declared a material breach of the duties of the **Member** or **Covered Party** under this **Agreement** and result in forfeiture of coverage for that **claim**.

V. ACTION AGAINST FUND

A. No action shall lie against the **Fund** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this **Agreement**, nor until the amount of the **Member's** or **Covered Party's** obligation to pay shall have been finally determined either by judgment against the **Member** or **Covered Party** after actual trial or by written agreement of the **Member** or **Covered Party**, the claimant and the **Fund**. The **Member** or **Covered Party** shall not assign, transfer, or pledge all or any portion of the **Member's** or **Covered Party's** rights or interests under this **Agreement**, and the **Fund** shall not be liable to any person claiming any such rights by virtue of any reported assignment, transfer, or pledge thereof. Breach of the **Fund's** obligation to provide a defense shall not relieve the **Member** or **Covered Party** of complying with the provisions of this paragraph. Further, any such assignment, transfer, or pledge shall relieve the **Fund** of all duties and obligations under this **Agreement** to the **Member** or **Covered Party** in respect to the **claim** in which the rights were assigned, transferred, or pledged.

B. Any person or organization or legal representative thereof who has secured judgment or written agreement shall thereafter be entitled to recover under this **Agreement** to the extent of the coverage afforded by this **Agreement**. No person or organization shall have any right under this **Agreement** to join the **Fund** as a party to any action against the **Member** or **Covered Party** to determine the **Member's** or **Covered Party's** liability, nor shall the **Fund** be impleaded by the **Member** or **Covered Party** or its legal representative. Bankruptcy or insolvency of the **Member** or of the **Member's** or **Covered Party's** estate shall not relieve the **Fund** of any of its obligations hereunder.

VI. COVERED PARTY COUNTERCLAIMS

This coverage is not intended to and does not provide coverage for any **claim** or **suit** when **Covered Parties** are asserting **claims** against each other which would otherwise have resulted in coverage under this **Agreement** applying to each **Covered Party** involved in such **claims**. This provision does not apply:

A. To the Member; or

B. To a **Covered Party** of one **Member** asserting **claims** against a **Covered Party** of another **Member**.

VII. OTHER INSURANCE

A. The coverage afforded by the **Agreement** is primary coverage, except when stated to apply in excess of or contingent upon the absence of other insurance. When this coverage is primary and the **Member** or **Covered Party** has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the **Fund's** liability under the **Agreement** shall not be reduced by the existence of such other insurance.

B. When both this coverage and other insurance apply to the loss on the same basis, whether primary, excess, or contingent, the **Fund** shall not be liable under the **Agreement** for a greater proportion of the loss than that stated in the applicable contribution provision below:

1. CONTRIBUTION BY EQUAL SHARES. If all of such other valid and collectible insurance provides for contribution by equal shares, the **Fund** shall not be liable for a greater proportion of such loss than would be payable if each insurer or the **Fund** contributes an equal share until the share of each insurer or the **Fund** equals the lowest applicable limit of liability under any one policy or **Agreement** or the full

amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers or the **Fund** then continue to contribute equal shares of the remaining amount of the loss until each such insurer or the **Fund** has paid its limit in full or the full amount of the loss is paid; or

2. CONTRIBUTION BY LIMITS. If any such other insurer does not provide for contribution by equal shares, the **Fund** shall not be liable for a greater proportion of such loss than the applicable limit of liability under the **Agreement** for which such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

C. As respects **non-owned automobiles**, the coverage provided by this Coverage Document shall be in excess of any valid and collectible insurance available to the **Member** or **Covered Party**.

D. As respects **hired automobiles** and watercraft, this coverage shall be excess over any valid and collectible insurance available to the **Member** or **Covered Party**.

E. As respects any **occurrence** or **wrongful act** arising out of the ownership, maintenance, or use of an airport or medical clinic, this coverage shall be excess over any valid and collectible insurance available to the **Member** or **Covered Party** and shall be non-contributory with any insurance or self-insurance purchased by the **Member** or **Covered Party** specifically for such airport or medical clinic.

F. This coverage shall be excess over any valid and collectible insurance which provides coverage to the **Member** or **Covered Party** as an additional named insured, an additional insured, or any other insured, including any excess coverage to which the **Member** or **Covered Party** is entitled through its status as an additional named insured, additional insured, or other insured.

G. This coverage shall be excess over any valid and collectible insurance which provides coverage to the **Member** or **Covered Party** for any specific operation or location, unless such insurance was purchased specifically to apply in excess of the limit of liability of this coverage.

H. This coverage shall be excess over any valid and collectible insurance that provides coverage to a City Attorney or City Engineer who is not an employee of the **Member** when acting within the scope of his or her professional duties or services as a City Attorney or City Engineer, regardless of how such policy shall be named.

I. When this coverage is excess, the **Fund** will pay only its share of the amount of **damages**, if any, that exceeds the sum of:

1. The total amount that all such other insurance would pay for the loss in the absence of this coverage; and

2. The total of all deductibles and self-insured amounts under any other insurance.

In the event the deductibles of any other insurer providing primary coverage and the limits of liability of that insurance equal or exceed the deductible under this **Plan**, the **Member** shall not have a deductible for **claims** which trigger the **Fund's** excess obligations. In the event the deductibles of any other insurers providing primary coverage and the limits of liability of that insurance are less than the **Member's** deductible under this **Plan**, the **Member's** deductible for **claims** which trigger the **Fund's** excess obligations shall be the difference.

J. The **Fund** will have no duty to defend any **claim** or **suit** when its coverage is excess and one or more primary insurers have a duty to defend the **Member** or **Covered Party**. However, the **Fund** continues to have the right, in its discretion, to become associated with the defense or control of a **claim** or **suit** which involves or is likely to involve this coverage.

VIII. SUBROGATION

In the event of any payment under this **Agreement**, the **Fund** shall be subrogated to all the **Member's** or **Covered Party's** rights of recovery thereof against any person or organization, and the **Member** or **Covered Party** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Member** shall do nothing after loss to prejudice such rights.

A waiver of subrogation is included for **Members** if required by **contract**.

IX. CHANGES

Notice to any agent of knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of the **Agreement** or estop the **Fund** from asserting any right under the terms of the **Agreement**; nor shall the terms of the **Agreement** be waived or changed, except by

amendment issued to form part of the **Agreement**, signed by an authorized representative of the **Fund** and reinsurer if applicable.

It is agreed that the Board of Trustees of the **Fund** shall have the right to amend, change, or revise the coverages, limits, terms, and exclusions provided in this **Agreement** as needed during the **Agreement Period** to maintain the fiscal soundness of the **Fund**. In the event the Board determines to change or revise any coverage, term, exclusion, or limits of liability provided by this **Agreement**, it shall cause written notice of the change or revision to be given to the **Member** stating in the notice the effective date which, if necessary to satisfy or comply with reinsurer requirements, may be prior to sending the written notice of change or revision. The **Member** shall have the right to terminate this **Agreement** and all of its coverages under the **Plan** because of any change or revision by delivering to the **Fund's** offices in Austin, Texas, notice of termination, provided the effective date of termination may not be earlier than the date the written notice is actually received in the **Fund** offices and the **Member** shall be liable for payment of all contributions due to the **Fund** for that **Fund Year** prorated as of the effective date of termination.

X. ASSIGNMENT

Assignment of interest under the **Agreement** shall not bind the **Fund** until its consent is endorsed thereon.

XI. INTERLOCAL AGREEMENT IN EXCESS OF THE FUND YEAR

This **Agreement** is indefinite in term and shall continue until terminated by either the **Member** or the **Fund**. The limit of the **Fund's** liability stated in the **Agreement Declarations** as "aggregate" shall apply separately to the first **Fund Year** beginning at the inception of the **Agreement** through the next September 30, and to each consecutive **Fund Year** thereafter.

XII. REIMBURSABLE DEDUCTIBLE

It is agreed that:

A. The **Fund's** obligation under this **Agreement** to pay **damages** and **claim expenses** on behalf of a **Member** or **Covered Party** shall be subject to the limits of liability stated herein less the stated deductible amount;

B. The deductible amounts stated in the **Declarations** apply:

1. Separately to each **occurrence** or **wrongful act**; and
2. To all **damages** and **claim expenses** as a result of that **occurrence** or **wrongful act**.

For Automobile Physical Damage and Automobile Catastrophe Coverage, deductibles apply separately as stated in Section III. D. of Part V., Automobile Physical Damage Coverage;

C. The terms of this **Agreement**, including those with respect to (1) the **Fund's** rights and duties with respect to the defense of **suits**, and (2) the **Member's** duties in the event of an **occurrence** apply irrespective of the application of the deductible amount; and

D. The **Fund** may pay any part or all of the deductible amount to effect settlement of any **claim** and upon notification of the action taken, the **Member** shall promptly reimburse the **Fund** for such part of the deductible amount as has been paid by the **Fund**.

XIII. EXPOSURE SUMMARY

Any unintentional error or omission made by the **Member** or **Covered Party** in completing the exposure summary shall not void or impair the coverage hereunder, provided the **Member** reports to the **Fund** such error or omission as soon as reasonably possible after discovery. In respect to the section "Exclusions Applicable to All Coverages", this provision does not limit or in any way alter Exclusion O.

XIV. SUPPLEMENTARY PAYMENTS

The **Fund** will pay, subject to the reimbursable deductible as stated in the **Agreement**, and in addition to the applicable limits of liability provided by this **Agreement**:

A. All expenses incurred by the **Fund**, including all **claim expenses**, all costs taxed against the **Member** or **Covered Party** in any **suit** defended by the **Fund**;

B. Prejudgment interest awarded against the **Member** or **Covered Party** on the part of the judgment to be paid by the **Fund**. If the **Fund** makes any offer to pay the applicable limit of the **Fund's** liability, the **Fund** will not pay any prejudgment interest based on that period of time after the offer;

C. All interest on the full amount of any judgment that accrues after the entry of the judgment and before the **Fund** has paid, offered to pay, or deposited in court that part of the judgment that is within the applicable limit of the **Fund's** liability;

D. Premiums on appeal bonds required in any such **suit**, premiums on bonds to release attachments in any such **suit** for an amount not in excess of the applicable limit of liability of the **Agreement**, and the cost of bail bonds required of the **Member** or **Covered Party** because of an accident or traffic law violation arising out of the use of any vehicle to which the **Agreement** applies, not to exceed $250 per bail bond, but the **Fund** shall have no obligation to apply for or furnish any such bonds; and

E. Expenses incurred by the **Member** or **Covered Party** for first aid of others at the time of an accident for **bodily injury** to which the **Agreement** applies.

The **Fund** shall not be obligated to pay any amounts under this extension of coverage after the **Fund** has paid or offered to pay the applicable limit of the **Fund's** liability.

XV. INTERPRETATION

This **Agreement** will be construed according to general rules of contract construction. This **Agreement** is drafted on behalf of all **Members** of the **Fund** and will be construed in a manner which most reasonably and accurately reflects the intent of the **Agreement**.

PART II
DEFINITIONS

Whenever the following words or phrases appear throughout the **Plan**, they are defined as follows:

A. **ADVERTISING INJURY** means injury arising out of an offense committed during the **Agreement Period** occurring in the course of the **Member's** advertising activities, if such injury arises out of libel, slander, defamation, violation of right of privacy, piracy, unfair competition or infringement of copyright, title, or slogan.

B. **AGREEMENT** means the Interlocal Agreement executed between the **Fund** and the **Member** and the **Declarations** of Coverage designating those coverages, limits, and deductibles of the **Plan** adopted by the **Member**.

C. **AGREEMENT PERIOD** means the continuous period since the **Member** became a **Member** of the **Fund** for the particular coverage excluding, however, any periods of time therein that the **Member** did not participate as a **Member** of the **Fund** for that coverage.

D. **AGREEMENT TERRITORY**, except as otherwise provided herein, means anywhere in the world, provided the original **suit** for such **damages** is brought within the United States of America, except automobile liability territory shall mean the United States of America, its territories or possessions, or Canada.

E. **AIRCRAFT** means a landplane, seaplane, amphibian helicopter, ultra-light, or balloon and shall include the engines, propellers, rotor blades, tools, and repair equipment therein which are standard for the make and type of the **aircraft**, and operating and navigation instruments and radio equipment usually attached to the **aircraft**, including parts temporarily detached and not replaced by other similar parts.

F. **AUTOMOBILE** means a land motor vehicle, trailer, or semi-trailer designed for travel on public roads (including any machinery, equipment, tools, or apparatus attached thereto and not intended to be removed for use off or away from the vehicle), but does not include **mobile equipment**.

G. **AUTOMOBILE BUSINESS** means the business or occupation of selling, repairing, servicing, storing, or parking **automobiles**.

H. **BODILY INJURY** means bodily injury, sickness, or disease sustained by any person, including death at any time resulting therefrom.

I. **CLAIM** means a demand or **suit** against any **Covered Party** for **damages** because of an **occurrence** or **wrongful act**. All **claims** and **damages** arising out of a single **wrongful act**, interrelated **wrongful acts**, or a series of related **wrongful acts** by one or more **Covered Party(ies)** shall be considered a single **wrongful act**.

J. **CLAIM EXPENSES** means all allocated expenses (those expenses applicable to a particular **claim** but not including **claims** service fees paid to the **claims** subcontractor) incurred by the **Fund**, or by a **Member** or other **Covered Party** with the **Fund's** consent, in the investigation, negotiation, arbitration, settlement, and defense of any **claim** or **suit** including payments under the "Supplementary Payments" provisions of this **Agreement**.

K. **COMMANDEERED AUTOMOBILE** and **COMMANDEERED BOAT** means an **automobile** or boat that the **Member** seizes, confiscates, or takes arbitrarily by force into the **Member's** temporary care, custody, or control while using it as part of an **emergency situation**. **Commandeered automobile** and **commandeered boat** does not include an **automobile** or a boat owned or available to an employee or volunteer of the **Member** from whom the **Member** has tacit approval to use the **automobile** or boat.

L. **COMPLETED OPERATIONS HAZARD** includes **bodily injury** and **property damage** arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the **Member**. Operations include materials, parts, or equipment furnished in connection therewith.

Operations shall be deemed completed at the earliest of the following times:

1. When all operations to be performed by or on behalf of the **Member** under a **contract** have been completed;

2. When all operations to be performed by or on behalf of the **Member** at the site of the operations have been completed; or

3. When the portion of the work out of which the injury or **damage** arises has been put to its intended use by any person or organization other than another contractor or subcontractor

engaged in performing operations for a **Member** as a part of the same project.

Operations which may require further service or maintenance work or correction, repair, or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The **Completed Operations Hazard** does not include **bodily injury** or **property damage** arising out of:

1. Operations in connection with the transportation of property, unless the **bodily injury** or **property damage** arises out of a condition in or on a vehicle created by the loading or unloading thereof; or

2. The existence of tools, uninstalled equipment, or abandoned or unused materials.

M. CONTRACT means any contract or agreement relating to or arising out of the conduct of the **Member's** business.

N. COVERED CONTRACT means:

1. A **contract** for a lease of premises. However, that portion of the **contract** for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to the **Member** or temporarily occupied by the **Member** with permission of the owner is not a **covered contract**;

2. An elevator maintenance **contract**;

3. A sidetrack **contract**;

4. An easement or license **contract**, except in connection with construction or demolition operations on or within 50 feet of a railroad;

5. An Interlocal **contract** entered into under the Texas Interlocal Cooperation Act;

6. Lease **contract** under which the **Member** leases equipment from another party;

7. Mutual aid **contracts** between governmental entities for police and firefighting services;

8. That part of any other **contract** pertaining to the **Member's** business under which the **Member** assumes the tort liability of another party to pay for **bodily injury** or **property damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of a **contract**. This paragraph does not include that part of any **contract**:

   a. That indemnifies a railroad for **bodily injury** or **property damage** arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass, or crossing;

   b. If the **Member** or **Covered Party** is acting in the capacity of or providing the services of an architect, engineer, or surveyor, for **damages** arising out of the rendering or providing or failure to render or provide such architect, engineer, or surveyor services by such **Covered Party**, including:

      (1) The preparation or approval of maps, plats, drawings, opinions, reports, surveys, change orders, designs, or specifications; and

      (2) Supervisory, inspection, or engineering services;

   c. If the indemnitee of the **Member** or **Covered Party** is an architect, engineer, or surveyor, to the liability of the indemnitee, his agents, or employees, arising out of:

      (1) The preparation or approval or the failure to prepare or approve maps, plats, drawings, opinions, reports, surveys, change orders, designs, or specifications; or

      (2) The giving of or the failure to give directions or instructions by the indemnitee, his or her agents, or employees, provided such giving or failure to give is the primary cause of the **damages**.

O. COVERED PARTY is defined in each of the coverage sections of this document. **Covered Party** shall also include the heirs, estates, assigns, or legal representatives of any person qualifying as **Covered Party.**

P. DAMAGES means monetary judgment, award, or settlement, but does not include fines, civil penalties, of whatever kind or nature, damages for which insurance is prohibited by law, pre-judgment interest and post-judgment interest thereon, or attorneys' fees unless those attorneys' fees are awarded in connection with a covered **damage**.

Q. DECLARATIONS means the document which sets forth information that identifies, by **Member**, the types of coverage to be provided by the **Fund**, the amounts of any deductible, the coverage period, the limits of liability of the **Fund** including any aggregate limit, the **Fund** contribution and

any endorsements to this **plan** of coverage that may be appended to the **declaration** or referred to in the **declaration**, and such other information matters as determined by the **Fund**.

R. **EMERGENCY SITUATION** means an unexpected situation demanding immediate official action.

S. **FUND** means the Texas Municipal League Joint Self-Insurance Fund.

T. **FUND MEMBER** means the political subdivision within the State of Texas which is a present participant in the **Fund**.

U. **FUND YEAR** means the twelve-month period following the effective date set forth in the **declarations**.

V. **HIRED AUTOMOBILE** means an **automobile** not owned by the **Member** which is used by **contract** by or on behalf of, or lent to, the **Member,** but does not include **automobiles** owned by or registered in the name of:

1. An officer, director, elected or appointed official, or any member of a board or commission of the **Member**; or

2. An employee or agent of the **Member** who is granted an operating allowance of any sort for the use of such **automobile**.

W. **INSURANCE** means the "self-insurance" provided under the **Agreement**.

X. **JOINT VENTURE** under this **Agreement** shall mean a relationship by which the **Member** and one or more other persons, organizations, or legal entities combine their labor, property, or resources for mutual benefit in a single undertaking for either a definite period or on a continuing basis.

Y. **LAW ENFORCEMENT ACTIVITIES** means the actions and functions that are required or within the defined scope of duties for a **Member's** Law Enforcement Agency which include, but are not limited to, actions towards the prevention and control of crime. The term **Law Enforcement Activities** does not include employment or personnel related practices, actions, or decisions that result in **claims** against the **Member** or a **Covered Party** by employees, former employees, or prospective employees of the Law Enforcement Agency.

Z. **MEMBER** means **Fund Member**.

AA. **MEMBER'S PRODUCTS** means goods or products manufactured, sold, handled, or distributed by the **Member** or by others trading in its name, including any container thereof (other than a vehicle), but **Member's Products** shall not include a vending machine or any property other than such container rented to or located for use of others but not sold.

BB. **MOBILE EQUIPMENT** means any of the following types of land vehicles, including any attached machinery or equipment:

1. Bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;

2. Vehicles maintained for use solely on or next to premises owned by or rented to the **Member** and not licensed for highway use;

3. Vehicles that travel on crawler treads;

4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

   a. Power cranes, shovels, loaders, diggers, or drills; or

   b. Road construction or resurfacing equipment such as graders, scrapers, or rollers;

5. Vehicles not described in 1, 2, 3, or 4 above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

   a. Air compressors, pumps, and generators including spraying, welding, building cleaning, geophysical exploration, lighting, and well servicing equipment; or

   b. Cherry pickers or similar devices used to raise or lower workers;

6. Vehicles not described in 1, 2, 3, or 4 above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not **mobile equipment** but will be considered **automobiles**:

1. Equipment designed primarily for:

   a. Snow removal;

   b. Road maintenance, but not construction or resurfacing;

   c. Street cleaning;

   d. Firefighting.

2. Cherry pickers and similar devices mounted on **automobile** or truck chassis and used to raise or lower workers; and

3. Air compressors, pumps, and generators, including spraying, welding, building cleaning, geophysical exploration, lighting, and well servicing equipment.

CC. NON-OWNED AUTOMOBILE means an **automobile** which is neither an owned **automobile** nor a **hired automobile** of the **Member**.

DD. OCCURRENCE shall mean an accident which results in **bodily injury** or **property damage** neither expected nor intended from the standpoint of the **Member** or **Covered Party**. **Occurrence** shall also include an offense committed by the **Member** or **Covered Party** which results in **personal injury** or **advertising injury** and any intentional act by the **Member** or **Covered Party** which results in **bodily injury** or **property damage** if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property.

With respect to **bodily injury** and **property damage,** all **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

With respect to **personal injury**, all **damages** arising out of a single offense, interrelated offenses, or a series of related offenses shall be deemed to arise out of one **occurrence**.

With respect to an **advertising injury**, all **damages** involving the same injurious material or act, regardless of the frequency of repetition thereof, the number or kind of media used and the number of claimants, shall be deemed to arise out of one **occurrence**.

With respect to Law Enforcement Liability Coverage only, **occurrence** shall mean an event, including continuous or repeated exposure to conditions which result in **personal injury, bodily injury, advertising injury,** or **property damage** sustained during the **Fund Year**, by any person or organization, and arising out of the **Member's law enforcement activities**. All claims arising out of (a) a riot or insurrection; (b) a civil disturbance resulting in an official proclamation of a state of emergency; (c) a temporary curfew; or (d) martial law shall be deemed to constitute one **occurrence**.

EE. PERSONAL INJURY means injury arising out of one or more of the following offenses:

1. False arrest, detention, or imprisonment;
2. Malicious prosecution;
3. Wrongful entry, eviction, or other invasion of the right of private occupancy committed by or on behalf of the property's owner, landlord, or lessor;
4. The publication or utterance of a libel, slander, or other defamatory or disparaging material, or publication or utterance in violation of an individual's right of privacy;
5. False, erroneous, or improper service of civil papers; or
6. Assault and battery.

For the purposes of Law Enforcement Liability Coverage only, the following are included within the definition of **personal injury**:

1. Violation of property rights; or
2. Violation of civil rights.

FF. PLAN means the **plan** of coverage offered its **Members** by the **Fund** and as more specifically designated in the **Agreement**.

GG. PRIOR ACTS PERIOD means the **Agreement Period** as defined herein during which the **Member** has been a **Member** of the **Fund** for a particular coverage plus the period of time, if any, between the retroactive date stated in the **Declarations** as applicable to a particular coverage and the beginning of the **Agreement Period** for the **Member** for that particular coverage.

HH. PRODUCTS HAZARD includes **bodily injury** and **property damage** arising out of the **Member's Products** or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs away from premises owned by or rented to the **Member** and after physical possession of such products has been relinquished to others.

II. PROPERTY DAMAGE means:

1. Physical injury to or destruction of tangible property which occurs during the **Agreement Period**, including the loss of use thereof at any time resulting therefrom; or
2. Loss of use of tangible property which has not been physically injured or destroyed, provided such loss of use is caused by an **occurrence** during the **Agreement Period**.

Property damage shall include **damage** arising out of the handling of or performing post-mortem examinations on human bodies.

JJ. SUIT means a proceeding before a judicial court of law and does not include a proceeding before an administrative agency. However, **suit** shall include responding to claims filed with the Equal Employment Opportunity Commission, the Texas Work Force Commission Civil Rights Division, or

any state or local commission created to enforce anti-discrimination in employment laws.

KK. WRONGFUL ACT means any actual or alleged error, misstatement, misleading statement, act or omission, neglect or breach of duty including misfeasance, malfeasance, or nonfeasance, including **wrongful acts** relating to the **administration** of **Employee Benefits Program** by the **Member** and employment practices including but not limited to hiring or failure to hire, improper dismissal or discipline, improper promotion or failure to promote, discrimination in employment practices, or allegations related to such employment practices of the **Member** by a **Member** or **Covered Party** which occurs during the **Fund Year** or **prior acts period**.

With respect to the definition of **Wrongful Act**:

1. **EMPLOYEE BENEFITS PROGRAM** means the **administration** of group life insurance, group accident or health insurance, profit sharing plans, pension plans and stock subscription plans, unemployment insurance, social security benefits, workers' compensation and disability benefits, or any other similar plan; and

2. **ADMINISTRATION** means the counseling of employees, including their dependents and beneficiaries, with respect to the **Employee Benefits Program**, the handling of records in connection with the **Employee Benefits Program** or effecting or terminating any employee's participation in a plan included in the **Employee Benefits Program**.

PART III
GENERAL LIABILITY COVERAGE

I. INSURING AGREEMENT

The **Fund** will pay on behalf of the **Member** or **Covered Party** all sums which the **Member** or **Covered Party** shall become legally obligated to pay as **damages** arising out of an **occurrence** that takes place during the **Fund Year** and within the **Agreement Territory**:

A. Because of **bodily injury**, **property damage**, **advertising injury**, or **personal injury** to which this coverage applies as stated in the **Agreement**, including **claims** within the **completed operations hazard** and the **products hazard**; and

B. Because of **bodily injury** that arises from rendering or failure to render:

1. Incidental medical services or first aid (including transportation) at the scene of an accident or injury by any **Covered Party** not regularly engaged in the medical profession;

2. Medical services (including transportation) by emergency medical technicians, paramedics, nurses, and aides employed by or volunteering on behalf of the **Member's** emergency medical service, if any, while in the course of their employment or duties as such; or

3. Medical services or treatments administered on behalf of the **Member's** public health district, local health units, or local health department by the following employees or volunteers of a **Member** and performed at a location not providing 24-hour overnight bed care;

   a. Licensed medical professional employees and volunteers of the **Member** other than physicians, surgeons and dentists; and

   b. Non-licensed employees and volunteers of the **Member** trained to perform specific medical services or treatments.

The coverage provided under this paragraph shall be excess over any policy of insurance that provides coverage for the **Covered Party** identified in a. and b. of this paragraph and applies only after all other available insurance coverage is exhausted.

II. COVERED PARTIES

Each of the following is a **Covered Party** under this Part of the Liability Coverage Document to the extent set forth below:

A. The **Member**;

B. Any officer, director, elected or appointed official, any member of a board or commission of the **Member**, and any employee of the **Member**, when such person is acting within the scope of their duties or employment as such; and

C. Any volunteer while acting within the scope of duties assigned by the **Member** and while under the general supervision of an officer, director, elected or appointed official, member of a board or commission of the **Member**, or an employee of the **Member**.

III. LIMITS OF LIABILITY

Regardless of the number of (1) **Members** or **Covered Parties** under this **Agreement**, (2) persons or organizations who sustain **bodily injury**, **property damage**, **personal injury** or **advertising injury**, or (3) **claims** made or **suits** brought on account of **bodily injury**, **property damage**, **personal injury**, or **advertising injury**, the **Fund's** liability for the applicable **Fund Year** is limited as follows:

A. The total liability for the **Fund** for all **damages**, including **damages** for care and loss of services, because of **bodily injury**, **property damage**, **personal injury**, or **advertising injury** sustained by one or more persons as the result of any one **occurrence** shall not exceed the limit of liability stated in the **Declarations** for General Liability for the applicable **Fund Year** as applicable to "each **occurrence**."

B. With respect to the **Member's** liability arising out of any **joint venture** to which this coverage applies, the **Fund** shall not be liable for an amount greater than the pro rata share of any **damages** based on the number of participants in the **joint venture**, unless the **Member's** liability is expressed otherwise contractually in the **joint venture** agreement.

C. For the purpose of determining the limits of the **Fund's** liability, all **bodily injury**, **property**

damage, personal injury, and **advertising injury** arising out of continuous or repeated exposure to substantially the same general conditions or continuous or repeated publication or dissemination of substantially the same information shall be considered as arising out of one **occurrence**.

D. Subject to the above provisions applicable to each **occurrence**, the total liability of the **Fund** for all **damages** because of **bodily injury, property damage, advertising injury,** or **personal injury**, regardless of the number of **occurrences** taking place during the **Fund Year**, shall not exceed the limit of liability stated in the **Declarations** for the applicable **Fund Year** as "aggregate."

IV. EXCLUSIONS

A. For the purpose of General Liability Coverage only, Exclusion B of the "Exclusions Applicable to All Coverages" shall not apply with respect to:

1. **Bodily injury** that arises at an airport or while on board an **aircraft**, which is on the ground, from rendering or failure to render:

   a. Incidental medical services or first aid (including transportation) at the scene of an accident or injury by any **Covered Party** not regularly engaged in the medical profession; or

   b. Medical services (including transportation) by emergency medical technicians, paramedics, nurses, and aides employed by the **Member's** emergency medical service, if any, while in the course of their employment as such;

2. Any premises which, although on premises designated as airport premises, are separate and distinct from those premises normal and customary to the operation of an airport or ownership, servicing, maintenance, or operation of **aircraft**.

B. In addition to those other matters excluded from coverage in the "Exclusions Applicable to All Coverages," this General Liability Coverage does not apply to:

1. Any **occurrences, claims,** or **damages** arising out of the **law enforcement activities** of the **Member** or any **Covered Party** including, but not limited to, the prevention and control of crime, but this Exclusion shall not apply to losses which arise solely from defects in premises occupied by or used by law enforcement or police departments;

2. The ownership, operation, use, loading, unloading, or maintenance of an **automobile**;

3. Any **occurrences, claims,** or **damages** for which coverage is otherwise afforded, or would have been afforded if the **Member** had elected the coverage under the Automobile Liability, Law Enforcement Liability, or Errors and Omissions Liability Coverages, it being intended by the parties that this coverage not overlap nor apply in addition to those coverages to the same **occurrences, claims,** or **damages**; and

4. **Claims** or **suits** against the **Member** or **Covered Party** for the recovery of **damages** or attorney fees based upon the **Member's:**

   a. Enactment or enforcement of allegedly invalid, unlawful or discriminatory ordinances, regulations, requirements, or restrictions; or

   b. Alleged noncompliance with or violation of applicable municipal, state, or federal laws and regulations, unless such noncompliance or violation results in actual physical **damages** to property or actual **bodily injury** to a person.

5. Any medical services performed at any location specifically designed or used for the purpose of providing such medical services, including all hospitals and other medical facilities where overnight medical care is provided or any clinic where emergency medical services are provided, but this Exclusion shall not apply to losses arising out of operations of emergency medical personnel who are not employees of such medical facility, while in training, or moving injured persons into or out of such facility, except that the coverage shall be excess of any other insurance available to the **Member** or **Covered Party**.

6. Any **occurrences, claims,** or **damages** arising from employment matters with employees or officials of the **Member**.

C. For the purpose of this coverage only, subparagraph 1.d(1) of the Exclusion D of the "Exclusions Applicable to All Coverages" shall not apply to **bodily injury** or **property**

damage arising out of the escape of fuel, lubricants, or other operating fluids that are needed to perform the normal electrical, hydraulic, or mechanical functions necessary for the operation of **mobile equipment** or its parts, if such fuels, lubricants, or operating fluids escape from a vehicle part designed to hold, store, or receive them. Subparagraph 1.d(1) of said Exclusion D shall apply if the fluids, lubricants, or other operating fluids are intentionally discharged, dispersed, or released, or if such fuels or lubricants or other operating fluids are brought on or to the premises, site, or location with the intent to be discharged, dispersed, or released as part of the operations being performed by the **Member** or any contractor or subcontractor.

PART IV - A
AUTOMOBILE LIABILITY COVERAGE

I. INSURING AGREEMENT

The **Fund** will pay on behalf of the **Member** or **Covered Party** all sums which the **Member** or **Covered Party** shall become legally obligated to pay as **damages** arising out of an **occurrence** that takes place during the **Fund Year** and within the **Agreement Territory** because of **bodily injury** or **property damage**, to which this coverage applies as stated in the **Agreement,** arising out of the ownership, operation, use, loading, unloading, or maintenance of an **automobile**.

II. COVERED PARTIES

Each of the following is a **Covered Party** under this Part of the Liability Coverage Document to the extent set forth below:

A. The **Member**;

B. Any officer, director, elected or appointed official, any member of a board or commission of the **Member**, and any employee of the **Member**, when such person is acting within the scope of his or her duties or employment as such or the actual use is with the permission of the **Member** (subject to paragraphs E and F with respect to the use of **automobiles**);

C. Any volunteer while acting within the scope of duties assigned by the **Member**, and while under the general supervision of an officer, director, elected or appointed official, member of a board or commission of the **Member**, or an employee of the **Member** (subject to paragraphs D, E, and F with respect to the use of **automobiles**);

D. With respect to use of an owned **automobile** or one hired by or on behalf of the **Member**, any person not listed in paragraphs B or C above or organization, provided the actual use is with the permission of the **Member.** The **Fund's** total liability for all **damages** for such person or organization arising out of any one **occurrence** shall be limited to the lesser of the limit of liability shown on the **Declarations** for Automobile Liability for the applicable **Fund Year** or the limits of recovery provided for the **Member's** type of government unit in Chapter 101 of the Texas Civil Practice and Remedies Code, commonly known as the Texas Tort Claims Act, regardless of whether or not that Act applies to the **occurrence**. Coverage shall not extend to the owner or lessor of an **automobile** hired by or on behalf of the **Member** unless coverage for such owner or lessor is required by **contract**. However, this coverage shall not extend to any person with respect to the loading or unloading of such owned or **hired automobile** unless that person or organization is:

1. A lessee or borrower of the **automobile** or an employee of such lessee or borrower; or

2. A **Covered Party** as defined in A, B, or C above;

E. Any officer, director, elected or appointed official, employee, volunteer, or any member of a board or commission of the **Member** with respect to use of a **non-owned automobile** while such **automobile** is being used in the business of the **Member**; and

F. This coverage does not apply to any person while employed in or otherwise engaged in duties in connection with an **Automobile Business**, other than an **Automobile Business** operated by the **Member**.

III. EXTENSION OF COVERAGE

AGREEMENT TERRITORY is extended to include infrequent trips to Mexico that:

A. Do not exceed 25 miles from the boundary of the United States of America; and

B. Do not exceed 10 days at any one time.

This extension applies only to **Covered Parties** who live in the United States of America, and an **automobile** which is principally garaged and used in the United States of America. If either of these two requirements is not met, this extension will not apply.

AUTOMOBILE ACCIDENTS IN MEXICO ARE SUBJECT TO THE LAWS OF MEXICO ONLY - NOT THE LAWS OF THE UNITED STATES OF AMERICA. UNLIKE THE UNITED STATES, THE REPUBLIC OF MEXICO CONSIDERS AN **AUTOMOBILE** ACCIDENT A CRIMINAL OFFENSE AS WELL AS A CIVIL MATTER.

IN SOME CASES, THE COVERAGE UNDER THIS **AGREEMENT** MAY NOT BE RECOGNIZED BY MEXICAN AUTHORITIES AND THE **FUND** MAY NOT BE ALLOWED TO IMPLEMENT THIS COVERAGE AT ALL IN MEXICO. THE **COV-**

ERED PARTY SHOULD CONSIDER PURCHASING **AUTOMOBILE** COVERAGE FROM AN INSURANCE COMPANY LICENSED IN MEXICO BEFORE DRIVING INTO MEXICO.

IV. LIMITS OF LIABILITY

Regardless of the number of (1) **Members** or **Covered Parties** under this **Agreement**, (2) persons or organizations who sustain **bodily injury** or **property damage,** or (3) **claims** made or **suits** brought on account of **bodily injury** or **property damage**, the **Fund's** liability for the applicable **Fund Year** is limited as follows:

A. The total liability for the **Fund** for all **damages**, including **damages** for care and loss of services, because of **bodily injury** or **property damage** sustained by one or more persons as the result of any one **occurrence** shall not exceed the limit of liability stated in the **Declarations** for Automobile Liability for the applicable **Fund Year** as applicable to "each **occurrence**," or as further limited under Section II. of this Automobile Liability Coverage;

B. With respect to the **Member's** liability arising out of any **joint venture** to which this coverage applies, the **Fund** shall not be liable for an amount greater than the pro rata share of any **damages** based on the number of participants in the **joint venture,** unless the **Member's** liability is expressed otherwise contractually in the **joint venture** agreement; and

C. For the purpose of determining the limits of the **Fund's** liability, all **bodily injury** and **property damage** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

V. EXCLUSIONS

A. For the purpose of this coverage only, Exclusion B of the "Exclusions Applicable to All Coverages" shall not apply with respect to the ownership, operation, use, loading, unloading, or maintenance of **automobiles** at an airport, except when such **automobiles** are on runways or other airport premises where **aircraft** are operated, serviced, maintained, or stored.

B. For the purpose of this coverage only, Exclusion D of the "Exclusions Applicable to All Coverages" shall not apply to:

1. **Bodily injury** or **property damage** arising out of the overturn or collision of an **automobile;** or

2. **Pollutants** (as defined in Exclusion D of the "Exclusions Applicable to All Coverages") that are needed for or result from the normal electrical, hydraulic, or mechanical functioning of an **automobile** or its parts if:

   a. The **pollutants** escape, seep, migrate, or are discharged, dispersed, or released from an **automobile** part designed to hold, store, receive, or dispose of such **pollutants**; and

   b. The **bodily injury** or **property damage** does not arise out of the operation of compressors, pumps, and generators, including spraying, welding, building, cleaning, geophysical exploration, lighting, and well servicing equipment.

C. This coverage does not apply to those matters excluded in the "Exclusions Applicable to All Coverages" portion of this **Agreement**, nor to the following:

Any **occurrences, claims**, or **damages** for which coverage is otherwise afforded, or would have been afforded if the **Member** had elected the coverage under the General Liability, Law Enforcement Liability, or Errors and Omissions Liability Coverages, it being intended by the parties that this coverage not overlap nor apply in addition to those coverages to the same **occurrences, claims**, or **damages**.

D. This coverage does not apply to **claims** or **suits** for **damages** that arise out of the use of an **automobile** by the **Member's** Law Enforcement Agency in pursuit of a criminal offender, unless those **damages** are the result of physical contact with the pursuit vehicle.

VI. FINANCIAL RESPONSIBILITY LAWS

A. When the **Agreement** is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such coverage as is provided by the **Agreement** for **bodily injury** liability or for **property damage** liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. The **Member** agrees to reimburse the **Fund** for any payment made by the **Fund** which the **Fund** would not have been obligated to make under the terms of the **Agreement** except the agreement contained in this paragraph.

B. If under the provisions of a motor vehicle financial responsibility law or a motor vehicle

compulsory insurance law or any similar law of any state or province, a nonresident is required to maintain insurance with respect to the operation or use of a motor vehicle in such state or province and such insurance requirements are greater than the coverage provided by the **Agreement**, the limits of the **Fund's** liability and the kinds of coverage afforded by the **Agreement** shall be as set forth in such law, in lieu of the coverage otherwise provided by the **Agreement**, but only to the extent required by such law and only with respect to the operation or use of a motor vehicle in such state or province, provided that the coverage under this provision shall be reduced to the extent that there is other valid and collectible insurance under this or any other motor vehicle insurance policy. In no event shall any person be entitled to receive duplicate payments for the same elements of loss.

PART IV - B
AUTOMOBILE MEDICAL PAYMENTS COVERAGE

I. INSURING AGREEMENT

The **Fund** will pay reasonable expenses incurred for necessary medical and funeral services to or for an **eligible person** who sustains **bodily injury** caused by an **accident** involving a **covered automobile**.

II. LIMITS OF COVERAGE

A. Regardless of the number of **covered automobiles**, **eligible persons**, **claims** made, or vehicles involved in an **accident**, the most the **Fund** will pay for **bodily injury** for any one **eligible person** is $25,000, unless a different limit of liability is stated in the **Declarations** for the applicable **Fund Year**, but in no event shall the **Fund** pay more than $10,000 for funeral services.

B. Any amounts otherwise payable for expenses under this coverage shall be reduced by any amounts paid or payable for the same expenses under the General and Automobile Liability Coverages provided by the **Fund.**

C. No payment will be made unless the **eligible person** or that person's legal representative agrees in writing that such payment shall be applied to, and the **Fund** shall receive credit toward, any judgment that person may ultimately obtain against the **Fund Member** or **Covered Party**, and payable by the **Fund** on behalf of its **Member** or **Covered Party** under its Automobile Liability Coverage.

D. Payments under this provision shall be only for medical services rendered within 90 days of the date of the **accident.**

III. ADDITIONAL DEFINITIONS

A. **ACCIDENT** means the collision of a **covered automobile** with another object or with a vehicle to which it is attached, or upset of such **covered automobile**.

B. **COVERED AUTOMOBILE** means an **automobile** with a design capacity of eight passengers, in addition to the driver, or less which is owned or leased by the **Fund Member** or an **automobile** while temporarily used as a substitute for an owned **covered automobile** that has been withdrawn from normal use because of its breakdown, repair, servicing, loss, or destruction. (This coverage is only applicable to passengers in **covered automobiles** with a design capacity in excess of eight passengers if an endorsement to that effect is a part of the **Declarations**.)

C. **ELIGIBLE PERSON** means any person who sustains **bodily injury** while **occupying** a **covered automobile** with the reasonable belief that such person is entitled to do so. Persons in the custody of the **Member** arising out of the **Member's law enforcement activities** are not **eligible persons**.

D. **OCCUPYING** means in; upon; or getting in, on, out, or off.

IV. EXCLUSIONS

This coverage does not apply to **bodily injury**:

A. To any employee of the **Member** while in the course and scope of his or her duties;

B. To any volunteer or elected or appointed official of the **Member** while in the course and scope of their duties as such if the volunteer or elected or appointed official is entitled to receive workers' compensation benefits;

C. To any **eligible person** who, as a result of their injuries in an **accident**, is entitled to workers' compensation benefits under applicable laws. This Exclusion applies whether the injured person is an employee of the **Fund Member** or someone else;

D. For that portion of medical or funeral expenses which any **eligible person** is entitled to collect from any insurance company or insurance plan or self-insurance plan. This Exclusion does not apply to deductibles or co-insurance payments which must be paid by or on behalf of the **eligible person**; or

E. For any medical or funeral expenses which are payable under any other section of the **Agreement**.

V. ADDITIONAL CONDITIONS

A. In the event that the **Fund** makes any payment under this coverage, the **Fund** shall be subrogated to the **eligible person's** right of recovery against any other person or organization, and the **eligible person** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. If the **eligible person** recovers from

another party, he or she shall hold the proceeds in trust for the **Fund** and reimburse the **Fund** to the extent of the **Fund's** payment.

B. This coverage shall be non-contributory with any other coverage or insurance. To the extent any other coverage or insurance is available to the **eligible person**, whether on a primary or excess basis, this coverage shall not apply.

C. No person or entity other than the **eligible person** or his or her heirs or legal guardian shall have any **claim** against the **Fund** under this coverage.

VI. DEDUCTIBLE

Payments under this provision will be subject to the Automobile Liability Coverage deductible shown on the **Declarations**.

PART V
AUTOMOBILE PHYSICAL DAMAGE COVERAGE

I. INSURING AGREEMENT

The **Fund** will pay for **loss** to **covered automobiles** which occurs during the **Agreement Period** while the **covered automobile** is within the **Agreement Territory**.

II. COVERAGES

A. COMPREHENSIVE - from any cause except collision; but, for the purpose of this coverage, breakage of glass, or **loss** caused by missiles, falling objects, fire, theft or larceny, windstorm, hail, earthquake, explosion, riot or civil commotion, malicious mischief or vandalism, water, flood, or colliding with a bird or animal shall not be deemed **loss** caused by collision;

B. COLLISION - caused by collision of a **covered automobile** with another object or with a vehicle to which it is attached, or upset of such **covered automobile**.

III. LIMIT OF LIABILITY AND DEDUCTIBLES

A. The limit of the **Fund's** liability for **loss** to any one **covered automobile** shall not exceed the **actual cash value** of such **covered automobile** or, if the **loss** is to a part thereof, the **actual cash value** of such part at the time of **loss** less any applicable deductible.

B. Such coverage and respective deductible apply separately to each **covered automobile**. A land motor vehicle and one or more trailers or semi-trailers attached thereto shall be held to be separate **covered automobiles** with respect to limits of liability and any deductible provisions applicable thereto.

C. Except for **damage** resulting from hail, the maximum deductible a **Member** must pay for all **covered automobiles** for **loss** arising out of a single **occurrence** involving more than one **covered automobile** is the amount shown on the **Declarations** as the Automobile Physical Damage "occurrence deductible."

For damage resulting from hail, the maximum deductible is the lesser of:

1. The applicable Automobile Physical Damage deductible for each **covered automobile**;

2. The Automobile Catastrophe Coverage deductible, provided Automobile Catastrophe Coverage is elected in addition to Automobile Physical Damage Coverage on each **covered automobile**; or

3. The Automobile Catastrophe Coverage deductible, if elected without Automobile Physical Damage Coverage.

D. Any deductibles applicable to any **loss** covered by this Automobile Physical Damage Coverage section shall not be reduced by any deductibles applicable to any other coverage provided through the **Fund**, and such other applicable deductibles shall not be reduced because of the deductibles applicable under this coverage. However, if, in a single **occurrence**, a **loss** to an **automobile(s)** is covered by this Automobile Physical Damage Coverage and the personal property in the **automobile(s)** is covered by the **Fund** under its Property Coverage Document, but there is no **loss** to any structure or premise identified in the property schedule referenced in the Property Coverage Document, the total deductible shall not exceed the largest deductible which is applicable either under this Automobile Physical Damage Coverage or the Property Coverage Document.

IV. SUPPLEMENTARY PAYMENTS

In addition to the applicable limits of liability, the **Fund** will, with respect to such coverage as is afforded herein, pay towing, handling, and storage charges for which the **Member** becomes legally liable, reimburse the **Member** in the event of a theft covered by this coverage of an entire **covered automobile** for expense incurred for the rental of a substitute for such **automobile** during the period commencing 48 hours after such theft has been reported to the **Fund** and the police. This period will terminate, regardless of expiration of the **Agreement Period**, when such **automobile** is returned to use or the **Fund** pays for the **loss**; but, as to any one such theft, such reimbursement shall not exceed $20 for any one day nor $600 total.

V. ADDITIONAL DEFINITIONS

When used in reference to this coverage:

A. **ACTUAL CASH VALUE** means the lesser of:

1. The cost to repair;

2. The cost to replace with like kind and quality less proper deduction for depreciation; or

3. The amount actually expended to replace, if replaced.

B. **AGREEMENT TERRITORY** means the United States of America, its territories or possessions, or Canada, including infrequent trips to Mexico that:

1. Do not exceed 25 miles from the boundary of the United States of America; and

2. Do not exceed ten days at any one time.

C. **COVERED AUTOMOBILE** means:

1. An **automobile** owned by the **Member**, or leased for six months or longer by the **Member**, and for which the Automobile Schedule attached to the **Declarations** indicates that Automobile Physical Damage Coverage is provided; or

2. A rented, leased, borrowed, or **commandeered automobile** for less than six months by the **Member**, provided that the Automobile Schedule attached to the **Declarations** indicates that Automobile Physical Damage Coverage is provided for one or more **automobiles** owned by the **Member** or leased for six months or longer.

D. **FLEET AUTOMATIC BASIS** means coverage is afforded for **automobiles** for which the Automobile Schedule attached to the **Declarations** at inception indicates that Automobile Physical Damage Coverage is provided, and for all newly acquired **automobiles**. By endorsement to the **Member's Declaration, Fleet Automatic Basis** may be defined to apply only to **automobiles** equal to or exceeding specific age and/or **actual cash value** requirements, or other conditions as agreed to by the **Fund** and **Fund Member**.

E. **LOSS** means direct and accidental loss or damage.

VI. EXCLUSIONS

This coverage does not apply:

A. To **damage** which is due and confined to:

1. Wear and tear;

2. Freezing; or

3. Mechanical failure;

unless such **damage** is the result of other **loss** covered by this **Agreement**.

B. To tires, unless:

1. **Loss** is determined to be coincidental with and from the same cause as other **loss** covered by this coverage; or

2. Stolen, or damaged by fire, malicious mischief, or vandalism.

C. To **loss** to:

1. Any device or instrument designed for the recording, reproduction, or recording and reproduction of sound unless such device or instrument is permanently installed in the **covered automobile**; or

2. Any tape, wire, record disk, or other medium for use with any device or instrument designed for the recording, reproduction, or recording and reproduction of sound.

D. To **loss** resulting from hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending, or expected attack:

1. By any government or sovereign power (de jure or de facto) or by any authority maintaining or using military, naval, or air forces;

2. By military, naval, or air forces; or

3. By an agent of any such government, power, authority, or forces.

E. To **losses** resulting from rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating, or defending against such **occurrence**.

F. To **losses** resulting from seizure or destruction by order of public authority, except destruction by order of public authority to prevent the spread of fire or explosion.

G. Against risks of contraband or illegal trade.

H. Nuclear reaction, nuclear radiation, or radioactive contamination, all whether controlled or uncontrolled, and whether such **loss** be direct or indirect, proximate, or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril(s) covered in this **Agreement**, except:

1. If fire ensues, liability is specifically assumed for direct **loss** by such ensuing fire but not including any **loss** due to nuclear reaction, nuclear radiation, or radioactive contamination;

2. The **Fund** shall be liable for **loss** or **damage** caused by sudden and accidental radioactive contamination, including resultant radiation **damage** for each **occurrence** from material used or stored or

from the processes conducted on covered premises, provided at the time of **loss** there is neither a nuclear reaction capable of sustaining nuclear fission in a self-supporting chain reaction nor any new or used nuclear fuel on the covered premises.

For the purpose of this coverage section only, all exclusions in the "Exclusions Applicable to All Coverages" shall not apply.

VII. AUTOMOBILE CATASTROPHE COVERAGE OPTION

With respect to **covered automobiles** on which the **Declarations** indicate a limit and deductible for Automobile Catastrophe Coverage, the following exclusions are added to the "Exclusions" under paragraph VI of Part V, Automobile Physical Damage Coverage:

A. To Collision Coverage;

B. To **loss** to any **automobile** other than a **covered automobile**;

C. To **loss** to any **covered automobile** unless two or more **covered automobiles** are damaged in the same **occurrence** and the total **damages** to all **covered automobiles** exceeds the deductible for Automobile Catastrophe Coverage shown on the **Declarations**.

VIII. ADDITIONAL COVERAGE FOR AUTOMOBILES OWNED BY VOLUNTEER FIREFIGHTERS AND VOLUNTEER EMERGENCY MEDICAL SERVICE PERSONS

The **Fund** will pay up to $500 for the cost of repairs for an **automobile** owned by a volunteer firefighter or volunteer emergency medical service person if such **automobile** is damaged when such volunteer is utilizing such **automobile** in responding to an emergency for the **Member**. If the volunteer has other insurance which is applicable to such **automobile**, the **Fund** will pay either up to $500 for the cost of repairs to such **automobile** or the amount of the deductible of such other insurance, whichever amount is less. The payments to be made by the **Fund** under this provision shall not be subject to any deductible amount.

IX. CONDITIONS

A. DEFINED WORDS

Whenever words or phrases appear in this **Plan** in bold type, they are used as defined in the Definitions Section or in the Coverage Parts of this **Plan**.

B. REQUIREMENTS IN CASE OF **LOSS**

1. The **Member** shall give immediate notice to the **Fund** or any of its authorized agents of any **loss**, **claim**, or **suit**, and as soon as is practicable give written information with respect to the time, place, persons, or witnesses involved, and the circumstances of the **loss**, **claim**, or **suit**.

2. The **Member** shall cooperate with the **Fund** and, upon the **Fund's** request, assist in making settlement in the conduct of **suits** and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Member** because of injury or **damage** with respect to which **coverage** is afforded under the **Agreement**.

3. When a **loss** takes place, the **Member** shall give notice thereof to the proper police authority if the **loss** involves a violation of the law.

C. OTHER INSURANCE

The coverage afforded by this **Agreement** is primary coverage except when stated herein or in this **Agreement** to apply in excess of or contingent upon the absence of other insurance. When this coverage is primary and the **Member** has other insurance which is stated to be applicable to the **loss** on an excess or contingent basis, the amount of the **Fund's** liability under this **Agreement** shall not be reduced by the existence of such other insurance. When both this coverage and other insurance apply to the **loss** on the same basis, whether primary, excess, or contingent, the **Fund** shall not be liable under this **Agreement** for a greater proportion of the **loss** than stated in this applicable contribution provision below:

1. CONTRIBUTION BY EQUAL SHARES - If all of such other valid and collectible insurance provides for contribution by equal shares, the **Fund** shall not be liable for a greater proportion of such **loss** than would be payable if each insurer or the **Fund** contributes an equal share until the share of each insurer or the **Fund** equals the lowest applicable limit of liability under any one policy or **Agreement**, or the full amount of the **loss** is paid; and with respect to any amount of **loss** not so paid the remaining insurers or the **Fund** then continue to contribute equal shares of the remaining amount of the **loss** until each such insurer or the **Fund** has paid its limit in full or the full amount of the **loss** is paid; or

2. CONTRIBUTION BY LIMITS - If any such

other insurance does not provide for contribution by equal shares, the **Fund** shall not be liable for a greater proportion of such **loss** than the applicable limit of liability under this **Agreement** for which such **loss** bears to the total applicable limit of liability of all valid and collectible insurance against such **loss**.

D. APPRAISAL

If the **Member** and the **Fund** fail to agree as to the amount of **loss**, each shall, upon the written demand either of the **Member** or of the **Fund** made within 60 days after receipt of proof of **loss** by the **Fund**, select a competent and disinterested appraiser. The appraisers shall then select a competent and disinterested umpire. If they should fail for 15 days to agree upon such umpire, then upon the request of the **Member** or of the **Fund**, such umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. Then, at a reasonable time and place, the appraisers shall appraise the **loss**, stating separately the value at the time of **loss** and the amount of **loss**. If the appraisers fail to agree, they shall submit their differences to the umpire. An award in writing by any two shall determine the amount of **loss**. The **Member** and the **Fund** shall each pay its chosen appraiser and shall bear equally the other expenses of the appraisal and of the umpire.

E. PAYMENT FOR **LOSS**

With respect to any **loss** covered by this coverage, the **Fund** may pay for said **loss** in money, or may:

1. Repair or replace the damaged or stolen property;

2. Return at its expense any stolen property to the **Member**, with payment for any resultant damage thereto, at any time before the **loss** is so paid or the property is so replaced; or

3. Take all or any part of the damaged or stolen property at the agreed or appraised value;

but there shall be no abandonment to the **Fund**.

F. **LOSS** PAYABLE

Loss, if any, shall be adjusted with and payable to the **Member**, whose receipt shall constitute a release in full of all liability under this **Agreement** with respect to such **loss**.

G. NO BENEFITS TO BAILEE

None of the provisions of this **Agreement** shall inure directly or indirectly to the benefit of any carrier or other bailee for hire.

H. SUIT AGAINST THE **FUND**

No **suit** or action on this **Agreement** for the recovery of any **claim** shall be sustainable in any court of law or equity unless the **Member** shall have fully complied with all the requirements of this **Agreement**. The **Fund** agrees that any action or proceeding against it for recovery of any **loss** under this **Agreement** shall not be barred if commenced within the time prescribed therefor in the statutes of the State of Texas.

I. SUBROGATION

1. Any release from liability entered into by the **Member** prior to **loss** hereunder shall not affect this **Agreement** or the right of the **Member** to recover hereunder. The right of subrogation against the **Member** is waived.

2. In the event of any payment under this **Agreement**, the **Fund** shall be subrogated to the extent of such payment to all the **Member's** rights of recovery therefor. The **Member** shall execute all papers required and shall do anything that may be necessary at the expense of the **Fund** to secure such right. The **Fund** will act in concert with all other interests concerned, i.e., the **Member** and any other entity or individual participating in the payment of any **loss** as primary or excess insurers, in the exercise of such rights of recovery. If any amount is recovered as a result of such proceedings, the net amount recovered after deducting the costs of recovery shall be divided between the interests concerned in the proportion of their respective interests. If there should be no recovery, the expense of proceedings shall be borne proportionately by the interests instituting the proceedings.

J. SALVAGE AND RECOVERIES

All salvages, recoveries, and payments, excluding proceeds from subrogation and underlying insurance recovered or received subsequent to a **loss** settlement under this **Agreement**, shall be applied as if recovered or received prior to the said settlement and all necessary adjustments shall be made to the parties involved.

K. TITLES OF PARAGRAPHS

The titles of the paragraphs of this **Agreement** and of endorsements and supplemental **contracts**, if any, now, or hereafter attached hereto, are inserted solely for convenience of reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

L. ERRORS OR OMISSIONS

Any unintentional error or omission made by the **Member** in making reports shall not void or impair the coverage hereunder, provided the **Member** reports such error or omission as soon as reasonably possible after discovery.

M. REPORTING AND CONTRIBUTIONS

Prior to the beginning of each **Fund Year**, the **Member** agrees to report to the **Fund** either the **actual cash values** or the original cost new of all **automobiles** to be **covered automobiles** for Automobile Physical Damage Coverage. Contributions shall be increased or reduced for the next **Fund Year** based on the current report.

PART VI
LAW ENFORCEMENT LIABILITY COVERAGE

I. INSURING AGREEMENT

The **Fund** will pay on behalf of the **Member** or **Covered Party** all sums which the **Member** or **Covered Party** shall become legally obligated to pay as **damages** arising out of an **occurrence** that takes place during the **Fund Year** and within the **Agreement Territory**:

A. Because of **bodily injury**, **property damage**, **advertising injury**, or **personal injury** to which this coverage applies as stated in this **Agreement** that arises from the **Member's law enforcement activities**.

B. Because of **bodily injury** that arises out of the **Member's law enforcement activities** from rendering or failure to render incidental medical services or first aid (including transportation) at the scene of an **accident** or injury by any **Covered Party** not regularly engaged in the medical profession.

II. COVERED PARTIES

Each of the following is a **Covered Party** under this Part of the Liability Coverage Document to the extent set forth below:

A. The **Member**;

B. Any law enforcement commission, board, authority, administrative department, or other similar law enforcement unit operated by and under the jurisdiction of the **Member**;

C. Any duly elected or appointed official or member of a governing body of a public entity which is a **Covered Party** under A or B above, while acting within the scope of his or her law enforcement duties; and

D. Any employee of the **Member** or authorized volunteer, but only while carrying out their duties related to the **Member's law enforcement activities**.

III. LIMITS OF LIABILITY

Regardless of the number of (1) **Members** or **Covered Parties** under this **Agreement**; (2) persons or organizations who sustain **bodily injury**, **property damage**, **personal injury**, or **advertising injury**; or (3) **claims** made or **suits** brought on account of **bodily injury**, **property damage**, **personal injury**, or **advertising injury**, the **Fund's** liability for the applicable **Fund Year** is limited as follows:

A. The total liability for the **Fund** for all **damages**, including **damages** for care and loss of services, because of **bodily injury**, **property damage**, **personal injury**, or **advertising injury** sustained by one or more persons as the result of any one **occurrence** shall not exceed the limit of liability stated in the **Declarations** for Law Enforcement Liability for the applicable **Fund Year** as applicable to "each **occurrence**;"

B. For the purpose of determining the limits of the **Fund's** liability, all **bodily injury**, **property damage**, **personal injury**, and **advertising injury** arising out of continuous or repeated exposure to substantially the same general conditions or continuous or repeated publication or dissemination of substantially the same information shall be considered as arising out of one **occurrence**;

C. With respect to the **Member's** liability arising out of any **joint venture** to which this coverage applies, the **Fund** shall not be liable for an amount greater than the pro rata share of any **damages** based on the number of participants in the **joint venture**, unless the **Member's** liability is expressed otherwise contractually in the **joint venture** agreement; and

D. Subject to the above provisions applicable to each **occurrence**, the total liability of the **Fund** for all **damages** because of **bodily injury**, **property damage**, **advertising injury**, or **personal injury**, regardless of the number of **occurrences** taking place during the **Fund Year**, shall not exceed the limit of liability stated in the **Declarations** for the applicable **Fund Year** as "aggregate."

IV. EXCLUSIONS

For the purpose of this coverage only, Exclusion H.7. in the "Exclusions Applicable to All Coverages" Part shall not apply with respect to property that has been seized or impounded in the course of the **Member's law enforcement activities** while such property is in the care, custody, or control of a **Covered Party**.

For the purpose of this coverage only, Exclusion B of the "Exclusions Applicable to All Coverages" Part shall not apply with respect to the **law enforcement activities** of the **Member** while engaged in **law enforcement activities** at an airport or while on board an **aircraft** which is on the ground.

For purposes of this coverage only, Exclusion T of the "Exclusions Applicable to All Coverages" Part shall not apply to property damage arising from the **Member's law enforcement activities**.

In addition to those other matters excluded from coverage in the "Exclusions Applicable to All Coverages" Part of this **Agreement**, this **Agreement** does not apply to:

A. **Bodily injury** or **property damage** arising out of the ownership, maintenance, operation, use, loading, and unloading of:

1. Any **automobile** or **aircraft** owned or operated by or rented or loaned to any **Member**; or

2. Any other **automobile** or **aircraft** operated by any person in the course of his or her employment by any **Member**.

This Exclusion does not apply to **damages** that arise from the use of either **commandeered automobiles** or an **automobile** by the **Member's** Law Enforcement Agency in pursuit of a criminal offender if such **damages** are not the result of physical contact with the pursuit vehicle; and

B. Any **occurrences**, **claims**, or **damages** for which coverage is otherwise afforded, or would have been afforded if the **Member** had elected the coverage under the General Liability and Automobile Liability Coverages, it being intended by the parties that this coverage not overlap nor apply in addition to those coverages to the same **occurrences**, **claims**, or **damages**.

PART VII
ERRORS AND OMISSIONS LIABILITY COVERAGE

I. INSURING AGREEMENT

A. LIABILITY OF **MEMBER** OR **COVERED PARTY**

The **Fund** will pay on behalf of the **Member** or **Covered Party** all monetary **damages** which the **Member** or **Covered Party** shall be legally obligated to pay for any civil **claim** or **claims** because of a **wrongful act** which occurs during the **Fund Year** and within the **Agreement Territory**.

II. COVERED PARTIES

Each of the following is a **Covered Party** under this Part of the Liability Coverage Document to the extent set forth below:

A. The **Member**;

B. Any officer, director, elected or appointed official, any member of a board or commission of the **Member**, and any employee of the **Member** when such **Covered Parties** are acting within the scope of their duties or employment as such; or

C. Any volunteer while acting within the scope of duties assigned by the **Member** and while under the general supervision of an officer, director, elected or appointed official, member of a board or commission of the **Member** or an employee of the **Member**.

III. LIMITS OF LIABILITY

Regardless of the number of (1) **Members** or other **Covered Parties** under this **Agreement**, (2) persons or organizations who sustain **damages** payable under this **Agreement**, or (3) **claims** made or **suits** brought during the applicable **Fund Year** within the Errors and Omissions Coverage afforded by this **Agreement**, the **Fund's** liability is limited as follows:

A. The total liability for the **Fund** for all **damages** arising out of a **wrongful act** shall not exceed the limit of liability stated in the **Declarations** for Errors and Omissions Liability Coverage for the applicable **Fund Year**;

B. For the purpose of determining the **Fund's** limit of liability, all **claims** and **damages** arising out of a single **wrongful act**, interrelated **wrongful acts**, or a series of related **wrongful acts** by one or more **Covered Party(ies)** shall be considered a single **wrongful act**. If such **wrongful act** takes place over more than one **Fund Year** in which coverage is provided to the **Member** by this **Agreement**, the **wrongful act** shall be deemed to have taken place during the first **Fund Year** during which any of the related **wrongful acts** occurred and coverage was provided under this **Agreement** and only the limit of liability during said first **Fund Year** shall apply;

C. With respect to the **Member's** liability arising out of any **joint venture** to which this coverage applies, the **Fund** shall not be liable for an amount greater than the pro rata share of any **damages** based on the number of participants in the **joint venture**, unless otherwise expressed contractually in the **joint venture** agreement; and

D. Subject to the above provisions, the **Fund's** total limit of liability for all **damages** arising out of **claims** made for **wrongful acts,** regardless of the number of **claims, Members** or other **Covered Parties** involved, shall not exceed the amount stated in the **Declarations** for the applicable **Fund Year** as "aggregate."

IV. EFFECTIVE DATES

For those **Members** participating in the **Fund** for Errors and Omissions Coverage prior to June 1, 1985, this coverage shall extend to include **wrongful acts** occurring prior to the date that the **Member** first joined the **Fund** for Errors and Omissions Coverage if the **Member** did not give notice of such **wrongful act** to any prior insurers or the **Member** had no knowledge of such **wrongful act** likely to give rise to a **claim**. For those **Members** joining after June 1, 1985, this coverage begins on the actual date they entered the **Fund** for Errors and Omissions Coverage and will not provide coverage for any **claim** or **claims** arising from **wrongful acts** which took place prior to the **Prior Acts Period**.

V. RETROACTIVE DATE

Except as provided otherwise under Section IV, Effective Dates above, this coverage does not apply to a **wrongful act** which occurred before the Retroactive Date, if any, shown in the **Declarations**.

VI. ADDITIONAL COVERAGE FOR REIMBURSEMENT OF CRIMINAL DEFENSE EXPENSES

A. Notwithstanding any Exclusions in this **Agreement**, the **Fund** shall reimburse any **Covered Party**, where allowed by law, for: reasonable attorneys' fees; and reasonable and necessary costs, excluding loss of income, when incurred in defense of any **criminal proceeding** arising out of what otherwise would be within the course and scope of the **Covered Party's** duties or employment by the **Member**.

B. Reimbursement shall be made only if the **Covered Party** is exonerated by a court of law from all charges or all charges are subsequently withdrawn or dismissed without any admission of guilt.

C. When a **Covered Party** is one of two or more defendants represented by the same attorney or law firm, payment shall be limited to the **Covered Party's** proportionate share of the total of the reasonable attorneys' fees and the reasonable and necessary costs paid.

D. The term "**Covered Party**" shall be as defined in Section II of this Errors and Omissions Liability Coverage.

E. The term "**criminal proceeding**" means the criminal prosecution of a **Covered Party** commenced by the filing with the court of an information or an indictment, alleging that the **Covered Party** had, during the **Fund Year**, and within the **Agreement Territory**, committed one or more crimes. Any such prosecution shall be considered a single "**criminal proceeding**," notwithstanding the fact that the prosecution may involve multiple incidents, multiple counts or charges, and/or multiple trials and/or multiple appellate proceedings.

F. LIMITS OF LIABILITY

1. The limit of liability of the **Fund** for each **criminal proceeding** shall not exceed $10,000, regardless of the number of **Covered Parties** that may be defendants in the criminal proceeding.

2. In the event there are multiple **Covered Parties** as defendants in the same criminal proceeding, payment or reimbursement shall be limited or divided between the **Covered Parties** according to each **Covered Party's** proportionate share of the total of all reasonable attorneys' fees and reasonable and necessary costs paid.

G. DEDUCTIBLE

Any deductible under this **Agreement** shall not apply to this additional coverage for reimbursement for criminal defense expenses.

VII. EXCLUSIONS

A. For the purpose of this coverage only, Exclusion B. in the "Exclusions Applicable to All Coverages" Part, shall not apply with respect to any airport board or commission of the **Member**.

B. In addition to those matters excluded from coverage in the "Exclusions Applicable to All Coverages" Part of this **Agreement**, the **Fund** shall not be obligated to make any payment, nor to defend any lawsuits in connection with any **claim** made against any **Member** or **Covered Party**:

1. Based on or attributable to the **Member** or **Covered Party** gaining any personal profit or advantages to which the **Member** or **Covered Party** was not legally entitled;

2. For the return by the **Member** or **Covered Party** of any remuneration paid to the **Member** or **Covered Party** in violation of law;

3. Brought about or contributed to by the dishonesty or fraudulent acts of the **Covered Party**; however, notwithstanding the foregoing, the **Member** or **Covered Party** shall be protected under the terms of this **Agreement** as to any **claims** upon which **suit** is brought against them by reason of any alleged dishonesty or fraudulent acts on the part of them, unless a judgment or other final adjudication thereof adverse to them shall establish that acts of active and deliberate dishonesty or fraud committed by them with actual dishonest or fraudulent purpose and intent were material to the cause of action so adjudicated;

4. For the loss of, criminal abstraction of, **damage** to, or destruction of any tangible property or the loss of use of such property by reason of the foregoing;

5. For any **damages** or **claim expense** arising out of the **law enforcement activities** of the **Member**;

6. For any **damages** which result from a **wrongful act** committed intentionally with knowledge of wrongdoing; however, the **Fund** will provide a defense to the **Member** or **Covered Party** for **suits** containing those allegations;

7. Arising from a **Member's** or **Covered**

Party's activities in a fiduciary capacity with respect to public property and funds, bond obligations, and employee benefit and retirement funds and obligations;

8. Arising from activities of any attorney-at-law, medical personnel, architect, engineer, or accountant in the scope of their professional duties; however, notwithstanding the foregoing, the **Member** or **Covered Party** shall be protected under the terms of this **Agreement** as to any **claims** made against them solely as public officials or as employees of the **Member**;

9. Arising from a **Member's** or any **Covered Party's** failure to purchase insurance coverage; or

10. For any **damages**, whether direct, indirect, or consequential, arising from or caused by **bodily injury**, **property damage**, **advertising injury**, **personal injury**, mental anguish, or mental injury, except that **damages** for mental anguish or mental injury shall not be excluded from coverage when those **damages** are sought in connection with the alleged violation of a civil right guaranteed by the U.S. Constitution, the Constitution of the State of Texas, or any state or federal statute. This Exclusion does not apply to the publication or utterance of a libel, slander, or other defamatory or disparaging material, or publication or utterance in violation of the individual's right of privacy which arises out of the employment matters of the **Member**.

C. This coverage does not apply to any **occurrence**, **claim**, or **damages** for which coverage is otherwise afforded, or would have been afforded if the **Member** had elected the coverages, under the General Liability and Automobile Liability or the Law Enforcement Liability Coverages, it being intended by the parties that this coverage not overlap nor apply in addition to any of the other coverages to the same **occurrence**, **claim**, or **damages**.

PART VIII
EXCLUSIONS APPLICABLE TO ALL COVERAGES

Unless otherwise provided in the **Agreement, Declarations,** under specific coverages, or by endorsement, the coverage provided in this **Agreement** does not apply to or provide coverage for the following:

A. **Claims** or **suits** for **damages** arising out of the ownership, maintenance, operation, use, loading, or unloading of any **aircraft** owned or operated by or rented or loaned to any **Member** or **Covered Party**;

B. Liability arising out of the ownership, maintenance, or use of any airport;

C. **Claims** or **suits** for **damages** claimed as a result of the **Member's** failure to supply gas, oil, water, electricity, waste water service, or steam or the **Member's** failure to supply sufficient gas, oil, water, electricity, or steam to meet demand. This Exclusion does not apply if the failure to supply sufficient quantities results from the sudden and accidental injury to tangible property owned or used by the **Member** to procure, produce, process, or transmit the gas, oil, water, electricity, waste water, or steam;

D. 1. **Claims** or **suits** for **damages** arising out of the actual, alleged, or threatened discharge, seepage, migration, dispersal, release, or escape of pollutants:

a. At or from any premises, site, or location which is or was at any time owned, rented, or occupied by the **Member**;

b. At or from any premises, site, or location which is or was at any time used by or for the **Member** or others for the handling, storage, disposal, processing, or treatment of waste;

c. Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for the **Member** or any person or organization for whom the **Member** may be legally responsible;

d. At or from any premises, site, or location on which the **Member** or any contractors or subcontractors working directly or indirectly on the **Member's** behalf are performing operations:

1) If the pollutants are brought on or to the site or location in connection with such operations by the **Member**, contractor, or subcontractor; or

2) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize or in any way respond to, or assess the effects of the pollutants; or

e. Which arises from exposure included within the **completed operations hazard**.

Subparagraphs a. and d.(1) of paragraph 1. of this Exclusion do not apply to **bodily injury** or **property damage** caused by heat, smoke, or fumes from a hostile fire. A hostile fire means one which becomes uncontrollable or breaks out from where it was intended.

This Exclusion D.1. shall not apply to the **claims** within the **products hazard**.

This Exclusion D.1. shall not apply to any **claim** or **suit** for **damages** which resulted from a **sudden event** that takes place during the **Fund Year** and within the **Agreement Territory**, and which was caused by an actual, alleged, or threatened discharge, dispersal, release, or escape of pollutants.

"Sudden event" shall mean an **accident** where the pollution resulting therefrom and the injury resulting from such pollution all occur within 45 days following the **accident**. A related series of **accidents** shall be deemed to be a single event. In the case of a related series of **accidents**, the **sudden event** shall be deemed to have taken place when the first **accident** in the related series of such **accidents** took place. **"Accident"** shall mean an abrupt discharge, dispersal, release, or escape of **pollutants** neither expected nor intended from the standpoint of the **Member** or **Covered Party**.

Subject to the provisions in this **Agreement** concerning limits of liability applicable to each **occurrence** under the General Liability Coverage and the limits of liability for each **occurrence** stated in the **Declarations** for **sudden events** involving **pollutants**, the total liability of the **Fund** for all **damages** resulting from **bodily injury, property damage**, or **personal injury** within the **sudden event** exception described above, regardless of the number of **sudden events**, shall not exceed the limits of liability stated in the **Declarations** for the applicable **Fund Year** as "aggregate" for General Liability Coverage.

2. Any loss, cost, or expense arising out of any request, demand, order or statutory or regulatory requirement that the **Member** test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize or in any way respond to, or assess the effects of **pollutants**.

"Pollutants" means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste, but does not include chlorine used for the treatment of water at swimming pools, water treatment plants, or sewage treatment plants. Waste includes materials to be recycled, reconditioned, or reclaimed;

E. **Claims** or **suits** due to war, whether or not declared, civil war, insurrection, rebellion, or revolution or to any act or condition incident to any of the foregoing;

F. Any obligation for which the **Member** or any carrier as its insurer may be held liable under the workers' compensation, unemployment compensation, or disability benefits laws, or under any similar laws; nor any **claims** or **suits** by or **damages** to volunteers, elected officials, or appointed officials if the **Member** provided coverage to the volunteer, elected official, or appointed official under the above laws;

G. **Claims** or **suits** for **damages** due to **bodily injury** to any employee of the **Member** arising out of and in the course of his or her employment by the **Member**; provided, however, this Exclusion shall not apply to **claims** asserted under the Jones Act, 46 U.S.C. §688, or liability assumed by the **Member** under a **covered contract** to indemnify another against **claims**, **suits**, or **damages** due to **bodily injury** to an employee of the **Member**;

H. **Claims** or **suits** for **property damage** to:

1. Personal property rented or leased by a **Member** or **Covered Party**, or equipment on loan to the **Member** or **Covered Party**;

2. Real property or to structures or portions thereof rented to or occupied by the **Member** or **Covered Party**, including fixtures permanently attached thereto. This Exclusion shall not apply to **property damage** caused by a **Covered Party's** negligence to real property rented to the **Member** or **Covered Party**;

3. Property while on premises owned by or rented to the **Member** or **Covered Party** for the purpose of having operations performed on such property by or on behalf of the **Member**;

4. Property in the custody of the **Member** or **Covered Party** which is to be installed, erected, or used in construction by the **Member**;

5. Work performed by or on behalf of the **Member** or **Covered Party** arising out of such work or any portion thereof, or out of such materials, parts, or equipment furnished in connection therewith;

6. That particular part of any property, not on premises owned by or rented to the **Member** or **Covered Party**, upon which operations are being performed by or on behalf of the **Member** or **Covered Party**;

7. Property being used by the **Member** or **Covered Party**, or in the care, custody, or control of the **Member** or **Covered Party**, or as to which the **Member** or **Covered Party** is for any purpose exercising physical control, except for **property damage** by fire to real property rented to the **Member** or **Covered Party** to the extent addressed under Paragraph H.2. above. This Exclusion shall not apply to **commandeered automobiles** or **commandeered boats** or to the coverage provided under Part V of this **Agreement** entitled "Automobile Physical Damage Coverage;" or

8. Real property which the **Member** has sold, given away, or abandoned, if the **property damage** arises out of any part of that real property;

I. **Claims** or **suits** for **damages** due to loss of use of tangible property which has not been physically injured or destroyed resulting from:

1. A delay in or lack of performance by or on behalf of the **Member** of a **contract** or agreement; or

2. The failure of the **Member's Products** or work performed by or on behalf of the **Member** to meet the level of performance, quality, fitness, or durability warranted or represented by the **Member**.

But this Exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the **Member's products** or work performed by or on behalf of the **Member** after such products or work have been put to use by any person or organization other than the **Member**;

J. **Claims** or **suits** for **property damage** to the

Member's products arising out of such products or any part of such products;

K. **Claims** or **suits** for **damages** claimed for or due to the withdrawal, inspection, repair, replacement, or loss of use of the **Member's products** or work completed by or for the **Member** or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

L. **Damages**, fines, civil penalties, or attorneys' fees for which the **Member** or **Covered Party** is obligated to pay by reason of the assumption of liability under any ordinance, resolution, or **contract**. This Exclusion does not apply to liability:

1. That the **Member** would have in absence of the **contract**; or

2. For **bodily injury** or **property damage** assumed in a **contract** that is a **covered contract**, provided the **bodily injury** or **property damage** occurs after the execution of the **contract**. Solely for the purpose of liability assumed in a **covered contract,** reasonable attorneys' fees and litigation expenses incurred by or for a party other than the **Member** are deemed to be **damages** because of **bodily injury** or **property damage**, provided:

   a. Liability to such party for, or the cost of, that party's defense has also been assumed in the same **covered contract**; and

   b. Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which **damages** to which this coverage applies are alleged.

In no event shall there be coverage for liability assumed under a **covered contract** if the **occurrence**, conduct, **wrongful act**, **claim**, or **damages** is otherwise excluded from coverage under this **Agreement**. In no event shall there be coverage for liability to indemnify another for punitive or exemplary damages of whatever kind or nature;

M. Any **claim** or **suit** for breach of **contract** to which a **Covered Party** is a party or third-party beneficiary, or failing to procure a bond as required by law.

For purposes of this Exclusion, the term "**contract**" shall include express **contracts**, implied in fact **contracts**, and implied in law **contracts**;

N. Any **claims** or **suits** for **damages** due to:

1. The rendering of or failure to render:

   a. Medical, surgical, dental, x-ray or nursing service or treatment, or the furnishing of food or beverages in connection therewith; or

   b. Any service or treatment conducive to health of a professional nature;

2. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances;

3. The handling of or performing of autopsies; or

4. Any liability of any **Member** or **Covered Party** arising out of the **Member's** ownership, operation, control, or direction of any hospital or other premises providing medical services where overnight bed care is provided.

In reference to subparagraphs 1, 2, and 3 above, coverage shall not be excluded to the extent specifically provided by paragraph B of Section I of Part III, General Liability Coverage;

O. The liability of the **Member** or any **Covered Party** arising out of its activities or participation in a **joint venture** with others involving amusement parks, skateboard facilities, dams and water reservoirs, jails, prisons or any facility utilized to confine or detain those confined under legal process, nursing homes and sanitariums, day care for minors (other than temporary recreation programs), electric or gas utility operations, railroads, sewage treatment plants, water treatment plants, wharves, or other facilities for boats or vessels unless:

1. Disclosed in the application for coverage for the applicable **Fund Year**; or

2. If commenced during the **Fund Year**, reported to the **Fund** within 30 days of commencement and the appropriate additional contribution paid to the **Fund**;

P. **Claims** or **suits** for:

1. **Damages** arising out of any publication or utterance, if the first injurious publication or utterance of the same or similar material by or on behalf of the **Member** was made prior to the effective date of this coverage; or

2. **Damages** arising out of any publication or utterance of material concerning any person

or organization or goods, products, or services, or in violation of an individual's right of privacy, made by or at the direction of the **Member** or **Covered Party** with actual malice;

3. **Damages** arising out of:

   a. Failure of performance of a **contract**, but this Exclusion does not apply to the unauthorized appropriation of ideas based upon alleged breach of implied **contract**;

   b. Infringement of trademark, service mark, or trade name, other than titles or slogans, by use thereof on or in connection with goods, products, or services sold, offered for sale, or advertising; or

   c. Incorrect description or mistake in advertised price of goods, products, or services sold, offered for sale, or advertised;

4. **Damages** arising out of an offense committed by any **Member** or **Covered Party** in the business of advertising, broadcasting, publishing, or telecasting;

Q. **Claims** or **suits** for **damages** arising from:

1. Any dishonest, fraudulent, criminal, malicious, or recklessly indifferent act or omission of any **Member** or **Covered Party**;

2. Acts or omissions performed by a **Covered Party** for personal financial gain; or

3. Acts or omissions by a **Covered Party** who knowingly violated a rule, regulation, ordinance, or law of the **Member** or the State of Texas or of the United States;

R. Any **claim** or **suit** for **damages**, or portion thereof, for back salary or wages, front pay in lieu of reinstatement, any **damages** under the Fair Labor Standards Act or Texas Minimum Wage Act, any employment benefits, or any other benefits wrongfully withheld.

Notwithstanding the foregoing, the **Fund** shall pay as **damages** 50% of back salary or back wages, not to exceed a maximum payment by the **Fund** of $25,000, for **Members** participating in the **Fund** for Errors and Omissions Coverage. Such payment shall be subject to the terms, conditions, limits of liability, and deductible for Errors and Omissions Coverage. However, the **Fund** shall not pay any back salary or back wages unless such are awarded in connection with other **damages** covered under Errors and Omissions Coverage and shall not pay any **damages** or wages awarded under the Fair Labor Standards Act, the Texas Minimum Wage Act, any civil service statute, or any collective bargaining agreement;

S. Fines imposed by law, or matters which may be deemed uninsurable under the law pursuant to which this **Agreement** shall be construed;

T. **Claims** or **suits** based:

1. On the Texas Private Real Property Rights Preservation Act; or

2. Upon the operation of the principles of eminent domain, including condemnation proceedings or inverse condemnation by whatever name called, whether such liability accrues directly against the **Member** or by virtue of any agreement entered into by or on behalf of the **Member**;

U. Any **claim** or **suit** for **damages** whether direct, indirect, or consequential to any exposure to asbestos or lead, nor shall the **Fund** have the duty to defend any such action. This Exclusion shall not apply to the claims within the **products hazard**.

V. **Claims** or **suits** for **damages** arising out of the ownership, maintenance, operation, use, loading, or unloading of any watercraft in excess of 26 feet in length owned or operated by or rented or loaned to any **Member** or **Covered Party**; but this Exclusion does not apply to watercraft while ashore on premises owned by, rented to, or controlled by the **Member**;

W. Any **claims** or **suits** based upon the **Member's** or **Covered Party's** exercise of or failure to exercise its zoning or subdivision regulatory powers, except where or to the extent that such **claim** or **suit** seeks **damages,** unless otherwise excluded from coverage under this **Agreement**;

X. **Claims** or **suits** against the **Member** or **Covered Party** which do not seek civil **damages** or monetary relief other than costs of court or attorneys' fees for prosecuting the **suit**, such as, but not limited to: criminal prosecutions and proceedings; election contests; actions for injunctions or declaratory judgments; actions to enforce or invalidate ordinances, city charter provisions, or code provisions; actions specifically to enforce or invalidate **contracts** with the **Member** or between the **Member** and others; actions by government agencies against the **Member** or **Covered Party** to require compliance with applicable law or regulation; and actions by any person seeking exemption from applicable ordinances or regulations of the **Member**; except

claims or **suits** filed with the Equal Employment Opportunity Commission, the Texas Work Force Commission Civil Rights Division, or any state or local commission created to enforce anti-discrimination in employment laws shall not be excluded;

Y. Liability assumed under a **contract**:

1. If the **Member** or **Covered Party** is acting in the capacity of or providing the services of an architect, engineer, or surveyor, for **damages** arising out of the rendering or providing or failure to render or provide such architect, engineer, or surveyor services by such **Covered Party**, including:

   a. The preparation or approval of maps, plats, drawings, opinions, reports, surveys, change orders, designs, or specifications; and

   b. Supervisory, inspection, or engineering services;

2. If the indemnitee of the **Member** or **Covered Party** is an architect, engineer, or surveyor, to the liability of the indemnitee, his or her agents or employees, arising out of:

   a. The preparation or approval or the failure to prepare or approve maps, plats, drawings, opinions, reports, surveys, change orders, designs, or specifications; or

   b. The giving of or the failure to give directions or instruction by the indemnitee, his or her agents or employees, provided such giving or failure to give is the primary cause of the **damages**; and

3. That indemnifies any person or organization for **damage** by fire to premises rented or loaned to the **Member** or **Covered Party**;

Z. **Claims** or **suits** for **damages** of any kind or character arising out of the bursting, breach, failure, or structural defect of any dam or water reservoir disclosed each **Fund Year** in the application for coverage under this **Agreement** and for which coverage would otherwise be provided under this **Agreement**, where such bursting, breach, or failure occurs while the dam is classified as "unsafe" by the United States Army Corps of Engineers, the Texas Water Commission, or successor agencies; and

AA. **Claims** or **suits** for **damages** of any kind or character by the **Member** against any of the **Member's** officers, elected or appointed officials, any member of a board or commission of the **Member**, any volunteer of the **Member**, any agent of the **Member**, any employee of the **Member**, or any non-profit organization added by endorsement as a **Covered Party** by virtue of the **Member's** participation in the **Fund**.

BB. Any **claim** or **suit** for **damages**, or portion thereof, for the refund of taxes, assessments, fees, or charges as a result of an improper or illegal levy, tax, imposition, assessment, or valuation of property or for the refund of any governmental grant or subsidy.

CC. **Claims** or **suits** for **damages** based on physical or architectural barriers in violation of Title II of the Americans with Disabilities Act, Chapter 504 of the Rehabilitation Act of 1973, or Chapter 121 of the Texas Human Resources Code, including any amendments to those laws.

DD. **Damages**, including, but not limited to, **advertising injury, personal injury, bodily injury, property damage**, fines, civil penalties, and attorneys' fees arising out of:

1. Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information or any other type of nonpublic information; or

2. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if **damages** are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by the **Member** or others arising out of that which is described in Paragraph 1. or 2., above.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

PART IX
NUCLEAR ENERGY LIABILITY EXCLUSION

THIS EXCLUSION MODIFIES THE PROVISIONS OF THE **AGREEMENT**.

I. It is agreed that the **Agreement** does not apply:

A. Under any liability coverage to **bodily injury** or **property damage**:

1. With respect to which a **Member** under the **Agreement** is also an insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

2. Resulting from the **hazardous properties** of **nuclear material** and with respect to which:

   a. Any person or organization is required to maintain financial position pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or

   b. The **Member** is or, had the **Agreement** not been entered into, would be entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;

B. Under any "Extensions of Coverage" provision relating to first aid, to expenses incurred with respect to **bodily injury** resulting from the **hazardous properties** of **nuclear material** and arising out of the operation of a **nuclear facility** by any person or organization; or

C. Under any liability coverage, to **bodily injury** or **property damage** resulting from the **hazardous properties** of **nuclear material**, if:

1. The **nuclear material**:

   a. Is at any **nuclear facility** owned by, or operated by, or on behalf of a **Member**; or

   b. Has been discharged or dispersed therefrom;

2. The **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of a **Member**; or

3. The **bodily injury** or **property damage** arises out of the furnishing by a **Member** of services, materials, parts, or equipment in connection with the planning, construction, maintenance, operation, or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions, or Canada, this Exclusion C.3. applies only to **property damage** to such **nuclear facility** and any property thereafter.

II. DEFINITIONS

As used in this Exclusion:

A. HAZARDOUS PROPERTIES include radioactive, toxic, or explosive properties;

B. NUCLEAR FACILITY means:

1 Any **nuclear reactor**;

2. Any equipment or device designed or used for:

   a. Separating the isotopes of uranium or plutonium,

   b. Processing or utilizing **spent fuel**, or

   c. Handling, processing, or packaging **waste**;

3. Any equipment or device used for the processing, fabricating, or alloying of **special nuclear material**, if at any time the total amount of such material in the custody of the **Member** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof or more than 250 grams of uranium 235; or

4. Any structure, basin, excavation, premises, or place prepared or used for the storage or disposal of **waste**, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

C. **NUCLEAR MATERIAL** means **source material, special nuclear material,** or **byproduct material**;

D. **NUCLEAR REACTOR** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

E. **PROPERTY DAMAGE** includes all forms of radioactive contaminations of property;

F. **SOURCE MATERIAL, SPECIAL NUCLEAR MATERIAL,** and **BYPRODUCT MATERIAL** have the meanings given them in the Atomic Energy Act of 1954, or in any law amendatory thereof;

G. **SPENT FUEL** means any fuel element or fuel component, solid, or liquid, which has been used or exposed to radiation in a **nuclear reactor**; and

H. **WASTE** means any **waste** material:

1. Containing **byproduct material** other than the tailings or **wastes** produced by the extraction or concentration of uranium or thorium from any ore processed for its **source material** content; and

2. Resulting from the operation by any person or organization of any **nuclear facility** included under the first two paragraphs of the definition of **nuclear facility**.

TML
INTERGOVERNMENTAL RISK POOL

CYBER LIABILITY & DATA BREACH RESPONSE

COVERAGE DOCUMENT

C-500
10-1-16
KEEP IN PERMANENT FILES

Texas Municipal League
JOINT SELF-INSURANCE FUND

Cyber Liability &
Data Breach Response
Coverage Document

OCTOBER 1, 2016

Texas Municipal League Intergovernmental Risk Pool
1821 Rutherford Lane, First Floor • Austin, Texas 78754
P.O. Box 149194 • Austin, Texas 78714-9194
(512) 491-2300 • (800) 537-6655
www. tmlirp.org

CYBER LIABILITY AND DATA BREACH RESPONSE COVERAGE DOCUMENT

This Cyber Liability and Data Breach Response Coverage Document shall be a part of the TML Municipal Liability Self-Insurance Plan and the TML Municipal Property Self-Insurance Plan, but none of the terms, conditions, definitions or exclusions in the Texas Municipal League Joint Self-Insurance Fund Liability Coverage Document or the Texas Municipal League Joint Self-Insurance Fund Property Coverage Document shall apply to this Coverage Document. The Interlocal Agreement executed by the Member to become a Member of the Fund, this Cyber Liability and Data Breach Response Coverage Document, and the declarations of coverage designating the coverages, limits, and retentions of this coverage shall constitute and herein be referred to as the "Coverage Document."

Various provisions in this Coverage Document restrict coverage. Read the entire Coverage Document carefully to determine rights, duties and what is and is not covered.

Throughout this Coverage Document, the word "Member" refers to the "Fund Member" shown in the Declarations of this Coverage Document and any other person(s) or organization(s) qualifying as a "Covered Party" under this Coverage Document. The words "the Fund" refers to the Texas Municipal League Joint Self-Insurance Fund.

Other words and phrases that appear in "quotations" have special meaning. Refer to Section XI. DEFINITIONS.

Paragraphs **A.**, **C.**, **D.**, **E.** and **F.** of **SECTION I – COVERAGE AGREEMENTS** provide coverage on a claims made and reported basis and apply only to claims first made and reported to the "Member" during the "coverage period" or the optional extension period (if applicable) and reported to the "Fund" during the "coverage period."

Paragraphs **B.**, **G.**, and **H.** of **SECTION I – COVERAGE AGREEMENTS** provide first party coverage on an incident discovered and reported basis and apply only to incidents first discovered and reported to the "Fund" during the "coverage period".

SECTION I – COVERAGE AGREEMENTS

A. Information Security And Privacy Liability

The "Fund" shall pay on behalf of the "Covered Party," "damages" and "claims expenses," in excess of the "retention," which the "Covered Party" shall become legally obligated to pay because of any "claim," including a "claim" for violation of a "privacy law," for:

1. Theft, loss, or "unauthorized disclosure" of "personally identifiable information" or "third party information" that is in the care, custody or control of the "Member," or a third party for whose theft, loss or "unauthorized disclosure" of "personally identifiable information" or "third party information" the "Member" is legally liable;

2. One or more of the following acts or incidents that directly result from a failure of "computer security" to prevent a "security breach":

   a. The alteration, corruption, destruction, deletion, or damage to data stored on "computer systems;"

   b. The failure to prevent transmission of malicious code from "computer systems" to computer or network systems that are not owned, operated or controlled by a "Member;" or

   c. The participation by the "Member's computer system" in a denial of service attack directed against computer or network systems that are not owned, operated or controlled by a "Member;"

3. The "Member's" failure to timely disclose an incident described in paragraphs **A.1.** or **A.2.** in violation of any "breach notice law;"

4. Failure by a "Covered Party" to comply with that part of a "privacy policy" that specifically:

   a. Prohibits or restricts the "Member's" disclosure, sharing or selling of a person's "personally identifiable information;"

b. Requires the “Member” to provide access to “personally identifiable information” or to correct incomplete or inaccurate “personally identifiable information” after a request is made by a person; or

c. Mandates procedures and requirements to prevent the loss of “personally identifiable information;”

provided the “Member” must, at the time of such acts, errors or omissions have in force a “privacy policy” that addresses subsections **4(a) – (c)** above that are relevant to such “claim;” or

5. Failure by a “Covered Party” to administer:

a. An identity theft prevention program required by regulations and guidelines promulgated pursuant to 15 U.S.C. §1681m(e), as amended; or

b. An information disposal program required by regulations and guidelines promulgated pursuant to 15 U.S.C §1681W, as amended.

All acts, incidents, failures to timely disclose, failures to comply, thefts, losses, errors or omissions described in **SECTION I – COVERAGE AGREEMENTS, A. Information Security And Privacy Liability** must first take place on or after the “retroactive date” and before the end of the “coverage period” to be eligible for coverage under **SECTION I – COVERAGE AGREEMENTS, A. Information Security And Privacy Liability.**

B. Privacy Breach Response Services

The “Fund” shall provide to the “Member” “privacy breach response services” in excess of the “retention” because of an incident described in Paragraphs **1.** and **2.** of **SECTION I – COVERAGE AGREEMENTS, A. Information Security And Privacy Liability.**

“Privacy breach response services” means:

1. “Computer expert services;”

2. “Legal services;”

3. “Public relations and crisis management expenses.”

Paragraphs B(1) – (3) are subject to a monetary limit in excess of the “retention” noted in the Declarations.

4. “Notification services” to provide notification to:

a. Individuals who are required to be notified by the “Member” under the applicable “breach notice law;” or

b. Individuals, who at “the Fund’s” discretion, have been affected by an incident in which their “personally identifiable information” has been subject to theft, loss, or “unauthorized disclosure” in a manner which compromises the security or privacy of such individual by posing a significant risk of financial, reputational or other harm to the individual;

5. “Call center services;” and

6. “Breach resolution and mitigation services;”

Paragraphs B(4) – (6) are subject to a maximum notified individual limit and the “retention” noted in the Declarations.

“Privacy breach response services” also includes assistance from the Beazley Breach Response Services Team and access to education and loss control information at no charge.

“Privacy breach response services” will be provided subject to the terms and conditions of this Coverage Document and the “information packet” and shall not include any internal salary or overhead expenses of the “Member.”

C. Regulatory Defense And Penalties

The “Fund” shall pay on behalf of the “Covered Party,” “claims expenses” and “penalties” in excess of the “retention,” which the “Covered Party” shall become legally obligated to pay because of any “claim” in the form of a “regulatory proceeding,” caused by an incident described in Paragraphs **1.**, **2.**, and **3.** of **SECTION I –**

COVERAGE AGREEMENTS, A. Information Security And Privacy Liability that first takes place on or after the "retroactive date" and before the end of the "coverage period."

D. Website Media Content Liability

The "Fund" shall pay on behalf of the "Covered Party," "damages" and "claims expenses," in excess of the "retention," which the "Covered Party" becomes legally obligated to pay for one or more of the following acts first committed on or after the "retroactive date" and before the end of the "coverage period" in the course of the "Member's" display of "media material" on its web site or on social media web pages created and maintained by or on behalf of the "Member":

1. Defamation, libel, slander, trade libel, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;

2. A violation of the rights of privacy of an individual, including false light and public disclosure of private facts;

3. Invasion or interference with an individual's right of publicity, including commercial appropriation of name, persona, voice or likeness;

4. Plagiarism, piracy, misappropriation of ideas under implied contract;

5. Infringement of copyright;

6. Infringement of domain name, trademark, trade name, trade dress, logo, title, metatag, or slogan, service mark, or service name; or

7. Improper deep-linking or framing within electronic content.

E. PCI Fines, Expenses And Costs

The "Fund" shall indemnify the "Covered Party" for "PCI Fines, Expenses, and Costs," in excess of the "retention," which the "Covered Party" shall become legally obligated to pay. Coverage under **SECTION I – COVERAGE AGREEMENTS, E. PCI Fines, Expenses And Costs** is sublimited to the amount set forth in the Declarations. "The "Fund" has no duty to defend any "claim" or to pay any "claims expenses" associated with a "claim" brought under **SECTION I – COVERAGE AGREEMENTS, E. PCI Fines, Expenses And Costs**.

F. Cyber Extortion

The "Fund" shall reimburse the "Member" for "cyber extortion loss," in excess of the "retention," which the "Member" pays as a direct result of an "extortion threat" first made against the "Member" on or after the "retroactive date" and before the end of the "coverage period" by a person, other than the "Member's" employees, directors, officers, principals, trustees, governors, "managers," members, management committee members, members of the management or governing board, partners, contractors, outsourcers, or any person in collusion with any of the foregoing. Coverage under this Coverage Agreement is subject to the applicable conditions and reporting requirements, including those set forth in **SECTION XV**, **OBLIGATIONS IN THE EVENT OF AN EXTORTION THREAT**.

G. First Party Data Protection

The "Fund" shall reimburse the "Member" for "data protection loss" in excess of the "retention," which the "Member" pays as a direct result of one or more of the following that first takes place on or after the "retroactive date" and before the end of the "coverage period":

1. alteration, corruption, destruction, deletion or damage to a "data asset," or

2. inability to access a "data asset,"

and is directly caused by a failure of "computer security" to prevent a "security breach;" provided that such "security breach" must take place on or after the "retroactive date" and before the end of the "coverage period."

H. First Party Network Business Interruption

The "Fund" shall indemnify the "Member," for "business interruption loss," in excess of the "retention," incurred by the "Member" during the "period of restoration" or the "extended interruption period" (if applicable) as a direct result of the actual and necessary interruption or suspension of "computer systems" that first takes place during the "coverage period" and is directly caused by a failure of "computer security" to prevent a "security breach;" provided that such "security breach" must first take place on or after the "retroactive date" and before the end of the "coverage period."

SECTION II – DEFENSE AND SETTLEMENT OF CLAIMS

A. The "Fund" shall have the right and duty to defend:

1. Any "claim" against the "Covered Party" seeking "damages" even if any of the allegations of the "claim" are groundless, false or fraudulent; or

2. Under **SECTION I – INSURED AGREEMENTS, C. Regulatory Defense And Penalties**, any "claim" in the form of a "regulatory proceeding."

Selection of defense counsel shall be solely the "Fund's" decision. The "Member" hereby appoints the "Fund" staff and its contractors as its agents to act in all matters pertaining to processing and handling of "claims" covered under this "Coverage Document" and shall cooperate fully in supplying any information needed or helpful in settlement or defense of such "claims." The "Fund" staff and its contractors shall carry on all negotiations concerning the "claim" and negotiate within authority previously granted by the "Fund." The "Fund" and its contractors will retain and supervise legal counsel for the prosecution and defense of any "claim." All decisions on individual cases shall be made by the "Fund" through the "Fund" staff and its contractors, which includes the decision to appeal or not to appeal. However, any "Member" shall have the right in any case to consult with the "Fund" on any decision made by the "Fund" staff or its contractors. The "Fund" Board of Trustees shall hear the objections of the "Member" at its next regularly scheduled meeting and its decision will be final and binding on all parties. In the event that there is a conflict between the "Fund" and the "Member" or "Covered Party," the "Fund" shall retain its contractual right to select defense counsel and control the defense of the "claim" without waiving its right to pay only those "damages" which are covered under the terms of this Coverage Document.

B. With respect to any covered "claim" against the "Covered Party" seeking "damages" or "penalties," the "Fund" will pay "claims expenses" incurred. The Limit of Liability available to pay "damages" and "penalties" shall be reduced and may be completely exhausted by payment of "claims expenses." "Damages," "penalties," and "claims expenses" shall be applied against the applicable "retention" stated in the Declarations payable by the "Member."

C. If the "Member's" consent to any settlement or compromise is needed for any reason and the "Covered Party" refuses to consent to any settlement or compromise recommended by the "Fund" and acceptable to the claimant and elects to contest the "claim," "the Fund's" liability for any "damages," "penalties," and "claims expenses" shall not exceed the lesser of:

1. The amount for which the "claim" could have been settled, less the remaining "retention," plus the "claims expenses" incurred up to the time of such refusal; or

2. The applicable Limit of Liability whichever is less, and "the "Fund" has the right to withdraw from further defense by tendering control of said defense to the "Covered Party." The portion of any proposed settlement or compromise that requires the "Covered Party" to cease, limit or refrain from actual or alleged infringing or otherwise injurious activity or is attributable to future royalties or other amounts that are not "damages" (or "penalties" for "claims" covered under **SECTION I – COVERAGE AGREEMENTS, C. Regulatory Defense And Penalties**) shall not be considered in determining the amount for which a "claim" could have been settled.

SECTION III – WHO IS A COVERED PARTY

Whether expressed in singular or plural, "Covered Party" shall mean:

A. The "Member" ;

B. Any officer, director, elected or appointed official, any member of a board or commission of the "Member" and any employee of the "Member" when such "Covered Parties" are acting within the scope of their duties or employment as such; or

C. Any volunteer while acting within the scope of duties assigned by the "Member" and while under the general supervision of an officer, director, elected or appointed official, member of a board or commission of the "Member" or an employee of the "Member."

D. Any person previously qualified as a "Covered Party" under Paragraphs **B. or C.** of **SECTION III – WHO IS A COVERED PARTY** prior to the termination of the required relationship with the "Member," but only with respect to the performance of their duties as such on behalf of the "Member."

SECTION IV – EXCLUSIONS

This coverage does not apply to any "claim" or "loss":

A. Arising out of or resulting from any contractual liability or obligation, or arising out of or resulting from breach of contract or agreement either oral or written. However, this exclusion will not apply:

1. Only with respect to the coverage provided pursuant to Paragraph **1.** of **SECTION I – COVERAGE AGREEMENTS, A. Information Security And Privacy Liability**, to any obligation of the "Member" to maintain the confidentiality or security of "personally identifiable information" or of "third party information;"

2. Only with respect to Paragraph **4.** of **SECTION I – COVERAGE AGREEMENTS, D. Website Media Content Liability**, for only misappropriation of ideas under implied contract; or

3. To the extent the "Member" would have been liable in the absence of such contract or agreement;

B. Arising out of or resulting from any liability or obligation under a "merchant services agreement" except this exclusion does not apply to "PCI Fines, Expenses, and Costs" covered under **SECTION I – COVERAGE AGREEMENTS, E. PCI Fines, Expenses, and Costs**, or to "computer expert services" or "legal services" covered under **SECTION I – COVERAGE AGREEMENTS, B. Privacy Breach Response Services**.

C. Arising out of or resulting from any actual or alleged false, deceptive or unfair trade practices; however, this exclusion does not apply to:

1. Any "claim" covered under Paragraphs **1.**, **2.**, or **3.** of **SECTION I – COVERAGE AGREEMENTS, A. Information Security And Privacy Liability** or **SECTION I – COVERAGE AGREEMENTS, C. Regulatory Defense and Penalties**; or

2. The providing of "privacy breach response services" covered under **SECTION I – COVERAGE AGREEMENTS, B. Privacy Breach Response Services**.

D. Arising out of or resulting from the actual or alleged unlawful collection, acquisition or retention of "personally identifiable information" (except as otherwise covered under Paragraph **5.** of **SECTION I – COVERAGE AGREEMENTS, A. Information Security And Privacy Liability**) or other personal information by, on behalf of, or with the consent or cooperation of the "Member;" or the failure to comply with a legal requirement to provide individuals with the ability to assent to or withhold assent (e.g. opt-in or opt-out) from the collection, disclosure or use of "personally identifiable information;" provided that this exclusion shall not apply to the actual or alleged unlawful collection, acquisition or "retention" of "personally identifiable information" by a person or entity that is not a "related party" and without the knowledge of the "Member."

E. Arising out of or resulting from any act, error, omission, incident, failure of "computer security," or "security breach" committed or occurring prior to the inception date of this Coverage Document:

1. If any member of the "control group" on or before the "continuity date" knew or could have reasonably foreseen that such act, error or omission, incident, failure of "computer security," or "security breach" might be expected to be the basis of a "claim" or "loss;" or

2. In respect of which any "Covered Party" has given notice of a circumstance, which might lead to a "claim" or "loss," to the insurer of any other policy in force prior to the inception date of this Coverage Document.

F. Arising out of or resulting from any related or continuing acts, errors, omissions, incidents or events, where the first such act, error, omission, incident or event was committed or occurred prior to the "retroactive date."

G. Arising out of or resulting from any actual or alleged:

1. infringement of patent or patent rights or misuse or abuse of patent;

2. infringement of copyright arising from or related to software code or software products other than infringement resulting from a theft or "unauthorized access or use" of software code by a person who is not a "related party;"

3. use or misappropriation of any ideas, trade secrets or "third party corporate information" (i) by, or on behalf of, the "Member," or (ii) by any other person or entity if such use or misappropriation is done with the knowledge, consent or acquiescence of a member of the "control group;"

4. disclosure, misuse or misappropriation of any ideas, trade secrets or confidential information that came into the possession of any person or entity prior to the date the person or entity became an employee, officer, director or "manager" of the "Member;" or

5. under Paragraph 2. of **SECTION I – COVERAGE AGREEMENTS, A. Information Security And Privacy Liability**, theft of or "unauthorized disclosure" of a "data asset."

H. In connection with or resulting from a "claim" brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any other state, federal, local or foreign governmental entity, in such entity's regulatory or official capacity; provided, this exclusion shall not apply to an otherwise covered "claim" under **SECTION I – COVERAGE AGREEMENTS, C. Regulatory Defense and Penalties** or to the providing of "privacy breach response services" under **SECTION I – COVERAGE AGREEMENTS, B. Privacy Breach Response Services** to the extent such services are legally required to comply with a "breach notice law;"

I. Arising out of or resulting from a "claim" by or on behalf of one or more "Covered Parties" under this coverage against any other "Covered Party" under this Coverage; provided this exclusion shall not apply to an otherwise covered "claim" under Paragraphs **1.**, **2.**, or **3.** of **SECTION I – COVERAGE AGREEMENTS, A. Information Security And Privacy Liability** made by a current or former employee of the "Member;"

J. Arising out of or resulting from:

1. Any "claim" made by any business enterprise in which any "Covered Party" has greater than a fifteen percent (15%) ownership interest; or

2. The "Covered Party's" activities as a trustee, partner, member, "manager," officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the "Member;"

K. Arising out of or resulting from:

1. The actual or alleged obligation to make licensing fee or royalty payments;

2. Any costs or expenses incurred or to be incurred by the "Covered Party" or others for the reprinting, reposting, recall, removal or disposal of any "media material" or any other information, content or media, including any media or products containing such "media material," information, content or media;

3. Any "claim" brought by or on behalf of any intellectual property licensing bodies or organizations;

4. The actual or alleged inaccurate, inadequate or incomplete description of the price of goods, products or services, cost guarantees, cost representations, or contract price estimates, the authenticity of any goods, products or services, or the failure of any goods or services to conform with any represented quality or performance;

5. Any actual or alleged gambling, contest, lottery, promotional game or other game of chance; or

6. Any "claim" made by or on behalf of any independent contractor, joint venture or venture partner arising out of or resulting from disputes over ownership of rights in "media material" or services provided by such independent contractor, joint venture or venture partner;

L. With respect to **SECTION I – COVERAGE AGREEMENTS, F. Cyber Extortion, G. Data Protection Loss and H. First Party Network Business Interruption** arising out of or resulting from any criminal, dishonest, fraudulent, or malicious act, error or omission, any "security breach," "extortion threat," or intentional or knowing violation of

the law, if committed by any member of the "control group" or any person in participation or collusion with any member of the "control group;"

M. With respect to **SECTION I – COVERAGE AGREEMENTS, G. Data Protection Loss and H. First Party Network Business Interruption**: Arising out of or resulting from:

1. Any failure or malfunction of electrical or telecommunications infrastructure or services, provided that this exclusion shall not apply to any otherwise covered "claim" or "loss" arising out of failure of "computer security" to prevent a "security breach" that was solely caused by a failure or malfunction of telecommunications infrastructure or services under the "Covered Party's" direct operational control;

2. Fire, flood, earthquake, volcanic eruption, explosion, lightning, wind, hail, tidal wave, landslide, act of God or other physical event; or

3. Any satellite failures.

N. With respect to **SECTION I – COVERAGE AGREEMENTS, F. Cyber Extortion** arising out of or resulting from:

1. any threat to physically harm or kidnap any person; or

2. any threat to harm, take, or transfer property other than any "data asset," even if such threat is made in conjunction with a threat to a "data asset" or by carrying out such threat to, harm, take, or transfer, a "data asset" may be damaged, corrupted, altered, taken, disseminated or transferred;

O. With respect to **SECTION I – COVERAGE AGREEMENTS, H. First Party Network Business Interruption:** Arising out of or resulting from the failure to prevent a "security breach" of "computer security" that is operated by a third party service provider and used for the purpose of providing hosted computer application services to the "Member" or for processing, maintaining, hosting or storing the "Member's" electronic data, pursuant to written contract with the "Member" for such services, provided such coverage is subject to the sublimit of liability set forth in the Declarations.

P. Arising out of or resulting from any seizure, nationalization, confiscation, or destruction of "computer systems" or "data assets" by order of any governmental or public authority;

Q. Arising out of or resulting from, directly or indirectly occasioned by, happening through or in consequence of: war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority;

SECTION V – LIMIT OF LIABILITY AND COVERAGE

A. The "coverage aggregate limit of liability" set forth in the Declarations is the "Fund's" combined total limit of liability for all "damages," "penalties," "PCI Fines, Expenses, and Costs," "cyber extortion loss," "data protection loss," "business interruption loss" and "claims expenses" payable under this Coverage Document.

B. The Regulatory Defense and Penalties sublimit of liability stated in the Declarations is the aggregate sublimit of liability payable under **SECTION I – COVERAGE AGREEMENTS, C. Regulatory Defense and Penalties** of this Coverage Document and is part of and not in addition to the "coverage aggregate limit of liability."

C. The "PCI Fines, Expenses, and Costs" sublimit of liability stated in the Declarations is the aggregate sublimit of liability payable under **SECTION I – COVERAGE AGREEMENTS, E. PCI Fines, Expenses, and Costs** of this Coverage Document and is part of and not in addition to the "coverage aggregate limit of liability."

D. The Cyber Extortion sublimit of liability stated in the Declarations is the aggregate sublimit of liability payable under **SECTION I – COVERAGE AGREEMENTS, F. Cyber Extortion** of this Coverage Document and is part of and not in addition to the "coverage aggregate limit of liability."

E. The First Party Data Protection sublimit of liability stated in the Declarations is the aggregate sublimit of liability payable under **SECTION I – COVERAGE AGREEMENTS, G. First Party Data Protection** of this Coverage Document and is part of and not in addition to the "coverage aggregate limit of liability."

F. The First Party Network Business Interruption sublimit of liability stated in the Declarations is the aggregate sublimit of liability payable under **SECTION I – COVERAGE AGREEMENTS, H. First Party Network Business Interruption**.

G. Neither the inclusion of more than one "Covered Party" under this Coverage Document, nor the making of "claims" by more than one person or entity shall increase the Limit of Liability.

H. The Limit of Liability for the "optional extension period" shall be part of and not in addition to the "coverage aggregate limit of liability."

I. The "Fund" shall not be obligated to pay any "damages," "penalties," or "claims expenses," or to undertake or continue defense of any suit or proceeding after the "coverage aggregate limit of liability" has been exhausted by payment of "damages," "penalties," "PCI Fines, Expenses and Costs," "crisis management and public relations expenses," "cyber extortion loss," "data protection loss," "business interruption loss" or "claims expenses," or after deposit of the "coverage aggregate limit of liability" in a court of competent jurisdiction. Upon such payment, the "Fund" shall have the right to withdraw from further defense of any "claim" under this Coverage Document by tendering control of said defense to the "Covered Party."

J. The "Notified Individuals" limit stated in the Declarations is the maximum total number of "notified individuals" to whom notification will be provided or attempted for all incidents or series of related incidents giving rise to an obligation to provide "notification services," "call center services" or "breach resolution and mitigation services."

K. The aggregate limit of coverage stated for "Computer Expert Services," "Legal Services," and "Public Relations and Crisis Management Services" in the Declarations is the aggregate limit of coverage for all "Computer Expert Services," "Legal Services" and "Public Relations and Crisis Management Services" combined. This is a separate limit, apart from, and in addition to the "coverage aggregate limit of liability."

L. If the total number of notifications made pursuant to Paragraph **3.** of **SECTION I – COVERAGE AGREEMENTS, B. Privacy Breach Response Services** aggregates to more than the "Notified Individuals" Limit of Coverage stated in the Declarations, the "Member" will be responsible for paying for "privacy breach response services" with respect to any excess notification, and such costs will not be covered under this Coverage Document. If an incident involves notifications made pursuant to Paragraph **3.** of **SECTION I – COVERAGE AGREEMENTS, B. Privacy Breach Response Services** both within the "Notified Individuals" Limit of Coverage stated in the Declarations and in excess of such limit, all excess notifications will be provided by the same service provider that provides "notification services" covered under this Coverage Document, and the costs will be allocated between the "Fund" and the "Member" pro rata based on the number of covered and non-covered notifications.

M. Unless otherwise specified in this Coverage Document, "privacy breach response services" will be provided by a service provider selected by the "Fund" from the service providers listed in the "information packet."

N. To the extent that costs to provide **Privacy Breach Response Services** are covered pursuant to a **Claim** described in Paragraph **E.4.** of **SECTION XI -- DEFINITIONS**., such costs shall be covered solely under **SECTION I – COVERAGE AGREEMENTS, A. Information Security and Privacy Liability.**

SECTION VI – RETENTION

A. The each "claim" "retention" amount set forth in the Declarations applies separately to each incident, event or related incidents or events, giving rise to a "claim." The "Fund" may pay any part or all of the "retention" for "damages," "claims expenses," "crisis management and public relations expenses," "penalties," "cyber extortion loss," "data protection loss," "business interruption loss," or "PCI Fines, Expenses and Costs" and upon notification of the action taken, the "Member" shall promptly reimburse the "Fund" for such part of the "retention" amount as has been paid by the "Fund."

B. For all "notification services," "call center services" and "breach resolution and mitigation services" for each incident, the notified individuals sublimit set forth in the Declarations applies separately to each incident, event or related incidents or events, giving rise to an obligation to provide such services.

C. For all "computer expert services," "legal services," and "public relations and crisis management services," the "retention" amounts set forth in the Declarations apply separately to each incident, event or related incidents or events, giving rise to an obligation to provide such services; and the applicable "retention" stated in the Declarations shall be satisfied by monetary payments by the "Member" for such services. The "Fund" may pay any part or all of the "retention" for such services and upon notification of the action taken, the "Member" shall promptly reimburse the "Fund" for such part of the "retention" amount as has been paid by the "Fund."

D. In the event that "loss" arising out of a "claim" is subject to more than one "retention," the applicable "retention" amounts shall apply to such "loss," provided that the sum of such "retention" amounts shall not exceed the largest applicable "retention" amount.

E. Reimbursement to the "Fund" or satisfaction by the "Member" of the applicable "retention" is a condition precedent to the payment by the "Fund" of any amounts or providing of any services hereunder, and the "Fund" shall be liable only for the amounts in excess of such "retention" subject to the "Fund's" total liability not exceeding the "coverage aggregate limit" or Limits of Coverage for "privacy breach response services" set forth in the Declarations. Should the "Member" satisfy all or part of the "retention" by direct payments, the "Member" shall make direct payments within the "retention" to appropriate other parties designated by the "Fund."

F. With respect to **SECTION I – COVERAGE AGREEMENT, H. First Party Network Business Interruption**, the retention applies separately to each "business interruption loss." The retention shall be the greater of:

1. the amount of "business interruption loss" during the "waiting period;" or

2. the retention specified in the Declarations.

SECTION VII – OPTIONAL EXTENSION PERIOD

A. The "Fund" will provide an "optional extension period" as described below in the event of the termination of this Coverage Document for any reason except the non-payment of contribution.

B. The "optional extension period" does not extend the "coverage period" or change the scope of the coverage provided. The "optional extension period" only extends the "claims" reporting period.

C. A "claim" first made against any "Covered Party" and reported to the "Fund" during the "optional extension period" will be deemed to have been made on the last day of the coverage period provided that the "claim" is for any act, error, or omission committed on or after the "retroactive date" and before the end of the "coverage period."

D. The Limit of Liability for the "optional extension period" shall be part of, and not in addition to, the applicable Limit of Liability for the "coverage period." The purchase of the "optional extension period" does not in any way increase the "coverage aggregate limit of liability" or any sublimit of liability.

E. The "optional extension period" does not apply to **SECTION I – COVERAGE AGREEMENTS, B. Privacy Breach Response Services, SECTION I – COVERAGE AGREEMENTS, G. First Party Data Protection, SECTION I – COVERAGE AGREEMENTS, H. First Party Network Business Interruption."**

F. The "Member" must give the "Fund" a written request within thirty (30) days of the "Member's" election of the "optional extension period." Payment of the full additional contribution for the "optional extension period" endorsement is due within thirty (30) days of the termination of this Coverage Document. If notice of election and payment for the "optional extension period" is not given to the "Fund" within such thirty (30) day period, there shall be no right to purchase the "optional extension period."

G. At the commencement of the "optional extension period" the entire contribution shall be deemed earned, and in the event the "Member" terminates the "optional extension period" for any reason prior to its natural expiration, the "Fund" will not be liable to return any contribution paid for the "optional extension period."

SECTION VIII – NOTICE OF CLAIM, LOSS OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM

A. If any "claim" is made against a "Covered Party," the "Covered Party" shall forward as soon as practicable to the "Fund" written notice of such "claim" in the form of a facsimile, email, or express or certified mail, together with every demand, notice, summons or other process received by the "Covered Party" or the "Covered Party's" representative.

B. With respect to **SECTION I – COVERAGE AGREEMENTS, B. Privacy Breach Response Services**, for a legal obligation to comply with a "breach notice law" because of an incident described in Paragraph **1.** or **2.** of **SECTION I – COVERAGE AGREEMENTS, A. Information Security And Privacy Liability**, such incident or reasonably suspected incident must be reported as soon as practicable during the "coverage period" after discovery by the "Covered Party."

C. If during the "coverage period,," the "Covered Party" becomes aware of any circumstance that could reasonably be the basis for a "claim," it may give written notice to the "Fund" in the form of a facsimile, email, or express or certified mail as soon as practicable during the "coverage period." Such a notice must include:

1. The specific details of the act, error, omission, or "security breach" that could reasonably be the basis for a "claim;"

2. The injury or damage which may result or has resulted from the circumstance; and

3. The facts by which the "Covered Party" first became aware of the act, error, omission or "security breach."

Any subsequent "claim" made against the "Covered Party" arising out of such circumstance which is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to the "Fund."

An incident or reasonably suspected incident reported to the "Fund" during the "coverage period" and in conformance with Paragraph **B.** of **SECTION VIII – NOTICE OF CLAIM, LOSS OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM** shall also constitute notice of a circumstance under this Paragraph **C.**

D. A "claim" or legal obligation under Paragraphs **A.** or **B.** of **SECTION VIII – NOTICE OF CLAIM, LOSS OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM** shall be considered to be reported to the "Fund" when written notice is first received by the "Fund" in the form of a facsimile, email, or express or certified mail of the "claim" or legal obligation, or of an act, error, or omission, which could reasonably be expected to give rise to a "claim" if provided in compliance with Paragraph **C.** of **SECTION VIII – NOTICE OF CLAIM, LOSS OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM**.

E. With respect to **SECTION I – COVERAGE AGREEMENTS, H. First Party Network Business Interruption**, the "Member" shall forward immediately to the "Fund" written notice of the interruption or suspension of "computer systems" to which this Coverage Document applies in the form of a facsimile, email, or express or certified mail. Such notice must be provided during the "coverage period," or no later than ten (10) days after the end of the "coverage period" for interruptions or suspensions occurring within ten (10) days of the end of the "coverage period;" provided, all covered "business interruption loss" must be reported to the "Fund" (in accordance with **SECTION XIII – Proof of Loss and Appraisal**) no later than six (6) months after the end of the "coverage period."

SECTION IX – OTHER INSURANCE

The coverage under this Coverage Document shall apply in excess of any other valid and collectible insurance available to any "Covered Party," including any self-insured "retention" or deductible portion thereof unless such other insurance is written only as specific excess insurance over the "coverage aggregate limit of liability" or any other applicable Limit of Liability of this Coverage Document.

SECTION X – MEMBER AS AGENT

The "Member" shall be considered the agent of all "Covered Parties" and shall act on behalf of all "Covered Parties" with respect to the giving of or receipt of all notices pertaining to this Coverage Document and the acceptance of any endorsements to this Coverage Document. With respect to **SECTION I COVERAGE AGREEMENT F. – Cyber Extortion**, in the event of an "extortion threat" to which this coverage applies, the "Member" shall notify the "Fund" by calling Tel: (800) 537-6655 immediately upon receipt of any "extortion threat," and shall thereafter also provide written notice by facsimile, email, or certified or express mail within five (5) days following the "extortion threat."

SECTION XI – DEFINITIONS

A. "Breach notice law" means any statute or regulation that requires notice to persons whose "personally identifiable information" was accessed or reasonably may have been accessed by an unauthorized person.

B. "Breach resolution and mitigation services" means a credit monitoring, identity monitoring or other solution selected from the products listed in "information packet" and offered to "notified individuals." The product offered to "notified individuals" will be selected by the "Fund" in consultation with the "Member" and in accordance with the "information packet."

The product offer will be included in the communication provided pursuant to Paragraph **3.** of **SECTION I – COVERAGE AGREEMENTS, B. Privacy Breach Response Services**.

C. "Business interruption loss" means the total of:

1. "Income loss" and "extra expense" during the "period of restoration," and

2. "Extended income loss" if the "income loss" during the "period of restoration" is in excess of the applicable "retention."

Provided that "business interruption loss" shall not mean and **SECTION I – COVERAGE AGREEMENTS, H. First Party Network Business Interruption** shall not cover any of the following: "loss" arising out of any liability to any third party for whatever reason; legal costs or legal expenses of any type; "loss" incurred as a result of unfavorable business conditions, loss of market or any other consequential loss; or costs or expenses the "Member" incurs to identify and remove software program errors or vulnerabilities.

All "business interruption loss" resulting from multiple covered interruptions or suspensions of "computer systems" that arise out of the same or a continuing "security breach," from related or repeated "security breaches," or from multiple "security breaches" resulting from a failure of "computer security" shall be deemed to be a single "business interruption loss;" provided, however, that a separate "waiting period" shall apply to each "period of restoration."

D. "Call center services" means the provision of a call center to answer calls during standard business hours for a period of ninety (90) days following notification (or longer if required by applicable law or regulation) of an incident for which notice is provided pursuant to Paragraph **3.** of **SECTION I – COVERAGE AGREEMENTS, B. Privacy Breach Response Services** (Notification Services).

"Call center services" will be provided by a service provider selected by the "Fund" in consultation with the "Member" from the list of service providers in the "information packet."

E. "Claim" means:

1. A written demand received by any "Covered Party" for money or services; including service of a suit or institution of regulatory or arbitration proceedings;

2. With respect to coverage provided under **SECTION I – COVERAGE AGREEMENTS, C. Regulatory Defense And Penalties** only, institution of a "regulatory proceeding" against any "Covered Party;"

3. A written request or agreement to toll or waive a statute of limitations relating to a potential "claim" described in Paragraph **1.,** above; and

4. With respect to coverage provided under Paragraph **1.** of **SECTION I – COVERAGE AGREEMENTS, A. Information Security And Privacy Liability** only, a demand received by any "Covered Party" to fulfill the "Member's" contractual obligation to provide notice of an incident (or reasonably suspected incident) described in Paragraph **1.** of **SECTION I – COVERAGE AGREEMENTS, A. Information Security And Privacy Liability** pursuant to a "breach notice law."

Multiple "claims" arising from the same or a series of related or repeated acts, errors, or omissions, or from any continuing acts, errors, omissions, or from multiple "security breaches" arising from a failure of "computer security," shall be considered a single "claim" for the purposes of this Coverage Document, irrespective of the number of claimants or "insureds" involved in the "claim." All such "claims" shall be deemed to have been made at the time of the first such "claim."

F. "Claims expenses" means:

1. Reasonable and necessary fees charged by an attorney designated pursuant to Paragraph **A.** of **SECTION II – DEFENSE AND SETTLEMENT OF CLAIMS**.

2. All other legal costs and expenses resulting from the investigation, adjustment, defense and appeal of a "claim," suit, or proceeding arising in connection therewith, or circumstance which might lead to a "claim," if incurred by the "Fund," or by the "Covered Party" with the prior written consent of the "Fund;" and

3. The premium cost for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required in any "claim" against a "Covered Party" provided that the "Fund" shall have no obligation to appeal or to obtain bonds.

"Claims expenses" do not include any salary, overhead, or other charges by the "Covered Party" for any time spent in cooperating in the defense and investigation of any "claim" or circumstance that might lead to a "claim" notified under this Coverage Document, or costs to comply with any regulatory orders, settlements or judgments.

G. "Computer expert services" means costs for:

1. A computer security expert to determine the existence and cause of an actual or suspected electronic data breach which may require the "Member" to comply with a "breach notice law" and to determine the extent to which such information was accessed by an unauthorized person or persons;

2. A Payment Card Industry (PCI) Forensic Investigator that is approved by the PCI Security Standards Council and is retained by the "Member" in order to comply with the terms of a "merchant services agreement" to investigate the existence and extent of an actual or suspect compromise of credit card data; and in the "Fund's" discretion, where a computer security expert described in Paragraph **1.**, above, has not been retained, for a computer security expert to provide advice and oversight in connection with the investigation conducted by the PCI Forensic Investigator; and

3. A computer security expert which amount is part of and not in addition to the combined aggregate limit of coverage for all "computer expert services," "legal services," and "public relations and crisis management expenses" stated in the Declarations to demonstrate the "Member's" ability to prevent a future electronic data breach as required by a "merchant services agreement."

"Computer expert services" will be provided in accordance with the terms and conditions set forth in this Coverage Document and will be provided by a service provider selected by the "Member" in consultation with the "Fund" from the list of service providers in the "information packet."

H. "Computer security" means software, computer or network hardware devices, as well as the "Member's" written information security policies and procedures, the function or purpose of which is to prevent "unauthorized access or use," a denial of service attack against "computer systems," infection of "computer systems" by malicious code or transmission of malicious code from "computer systems." "Computer security" includes anti-virus and intrusion detection software, firewalls and electronic systems that provide access control to "computer systems" through the use of passwords, or biometric or similar identification of authorized users.

I. "Computer systems" means computers and associated input and output devices, data storage devices, networking equipment, and backup facilities operated by and either owned by or leased to the "Member;" or

With respect to **SECTION I – COVERAGE AGREEMENTS, A – G**, systems operated by a third party service provider and used for the purpose of providing hosted computer application services to the "Member" or for processing, maintaining, hosting or storing the "Member's" electronic data, pursuant to written contract with the "Member" for such services.

J. "Continuity date" means the date stated in the Declarations that coverage was first written with respect to the "Member" and any "subsidiaries" acquired before such date. Any litigation initiated before this date is not subject to coverage under this Coverage Document, even if the allegations were not part of a potentially covered "claim."

K. "Control group" means the individuals holding the following positions in the "Member" organization:

1. President;

2. Members of the Governing Body;

3. Executive Officers, including the Chief Executive Officer, City Manager, Chief Operating Officer, Chief Financial Officer; General Counsel, City Attorney, Chief Information Officer, Chief Security Officer, and Chief Privacy Officer;

4. Staff attorneys employed by the "Member;"

5. "Manager;" and

6. Any individual in a substantially similar position or with substantially similar responsibilities as those referenced above.

L. "Coverage period" means the period of time between the effective date and either the Anniversary date as shown in the Declarations or the effective date of termination, or cancellation of this coverage, whichever is sooner. "Coverage period" specifically excludes any "optional extension period" or any prior coverage period or renewal period.

M. "Cyber extortion loss" means:

1. Any "extortion payment" that has been made under duress by or on behalf of the "Member" with the "Fund's" prior written consent, but solely to prevent or terminate an "extortion threat" and in an amount that does not exceed the covered "damages" and "claims expenses" that would have been incurred had the "extortion payment" not been paid;

2. An otherwise covered "extortion payment" that is lost in transit by actual destruction, disappearance or wrongful abstraction while being conveyed by any person authorized by or on behalf of the "Member" to make such conveyance; and

3. Fees and expenses paid by or on behalf of the "Member" for security consultants retained with the "Fund's" prior written approval, but solely to prevent or terminate an "extortion threat."

N. "Damages" means a monetary judgment, award or settlement, provided that the term "damages" shall not include or mean:

1. Future profits, restitution, disgorgement of unjust enrichment or profits by a "Covered Party," or the costs of complying with orders granting injunctive or equitable relief;

2. Return or offset of fees, charges, or commissions charged by or owed to a "Covered Party" for goods or services already provided or contracted to be provided;

3. Any damages which are a multiple of compensatory damages, fines, taxes or loss of tax benefits, sanctions or penalties;

4. Punitive or exemplary damages, unless insurable by law in any applicable venue that most favors coverage for such punitive or exemplary damages;

5. Discounts, coupons, prizes, awards or other incentives offered to the "Covered Party's" customers or clients;

6. Liquidated damages to the extent that such damages exceed the amount for which the "Covered Party" would have been liable in the absence of such liquidated damages agreement; or

7. Any amounts for which the "Covered Party" is not liable, or for which there is no legal recourse against the "Covered Party."

O. "Data asset" means any software or electronic data that exists in computer systems and that is subject to regular backup procedures, including computer programs, applications, account information, customer information, private or personal information, marketing information, financial information, and any other information maintained by the "Member" in its ordinary course of business.

P. "Data protection loss" means:

1. With respect to any "data asset" that is altered, corrupted, destroyed, deleted or damaged, the actual, reasonable and necessary costs and expenses incurred by the "Member" to restore a "data asset" from backups or from originals or to gather, assemble and recollect such "data asset" from other sources to the level or condition in which it existed immediately prior to its alteration, corruption, destruction, deletion or damage; or

2. With respect to any "data asset" that the "Member" is unable to access, the lesser of the actual, reasonable and necessary costs and expenses incurred by the "Member" to:

   a. Regain access to such "data asset;" or

   b. Restore such "data asset" from backups or originals or gather, assemble and recollect such "data asset" from other sources, to the level or condition in which it existed immediately prior to the "insured's" inability to access it.

Provided that if such "data asset" cannot reasonably be accessed, restored, gathered, assembled or recollected, then "data protection loss" means the actual, reasonable and necessary costs and expenses incurred by the "Member"" to reach this determination.

Provided further that "data protection loss" shall not exceed, and shall not mean, any amount in excess of the amount by which the net revenue of the "Member" would have decreased had the "Member" failed to restore, gather, assemble or recollect as set forth in sub-paragraphs **O.1.** and **O.2.**, above.

A "data protection loss" will be deemed to occur at the time such alteration, corruption, destruction, deletion or damage to or inability to access a "data asset" is first discovered by the "Member." All "data protection loss" that arises out of the same or a continuing "security breach," from related or repeated "security breaches," or from multiple "security breaches" resulting from a failure of "computer security" shall be deemed to be a single "data protection loss."

"Data protection loss" shall not mean, and there shall be no coverage under **SECTION I – COVERAGE AGREEMENTS, G. First Party Data Protection** for:

1. Costs or expenses incurred by the "Member" to identify or remediate software program errors or vulnerabilities or update, replace, restore, gather, assemble, reproduce, recollect or enhance a "data asset" or "computer systems" to a level beyond that which existed prior to the alteration, corruption, destruction, deletion or damage of such "data asset;"

2. Costs or expenses to research or develop any "data asset," including, but not limited to, trade secrets or other proprietary information;

3. The monetary value of profits, royalties, or lost market share related to a "data asset," including, but not limited, to trade secrets or other proprietary information or any other amount pertaining to the value of the "data asset;"

4. Loss arising out of any liability to any third party for whatever reason; or

5. Legal costs or legal expenses of any type.

Q. "Denial of service attack" means an attack intended by the perpetrator to overwhelm the capacity of a "computer system" by sending an excessive volume of electronic data to such "computer system" in order to prevent authorized access to such "computer system."

R. "Extended income loss" means the "income loss" during the "extended interruption period."

S. "Extended interruption period" means the period of time that:

1. begins on the date and time that the "period of restoration" ends; and

2. terminates on the date and time the "Member" restores, or would have restored if the "Member" had exercised due diligence and dispatch, the net revenue that would have been earned by the "Member" directly through its operations had the actual and necessary interruption or suspension of "computer systems" not occurred;

provided that in no event shall the "extended interruption period" mean more than or exceed thirty (30) days.

T. "Extortion payment" means cash, marketable goods or services demanded to prevent or terminate an "extortion threat."

U. "Extortion threat" means a threat to breach "computer security" in order to:

1. Alter, destroy, damage, delete or corrupt any "data asset;"

2. Prevent access to "computer systems" or a "data asset," including a "denial of service attack" or encrypting a "data asset" and withholding the decryption key for such "data asset;"

3. Perpetrate a theft or misuse of a "data asset" on "computer systems" through external access;

4. Introduce "malicious code" into "computer systems" or to third party computers and systems from "computer systems;"

5. Interrupt or suspend "computer systems;" or

6. Unless an "extortion payment" is received from or on behalf of the "Member."

Multiple related or continuing "extortion threats" shall be considered a single "extortion threat" for purposes of this coverage and shall be deemed to have occurred at the time of the first such "extortion threat."

V. "Extra expense" means reasonable and necessary expenses that are incurred by the "Member" during the "period of restoration" to minimize, reduce or avoid an "income loss," provided that such expenses:

1. Are over and above those the "Member" would have incurred had no interruption or suspension of the "computer systems" occurred; and

2. Do not exceed the amount by which the "income loss" in excess of the "retention" and covered under this coverage is thereby reduced;

provided that "extra expense" shall not mean, and there shall be no coverage under **SECTION I – COVERAGE AGREEMENTS, H. First Party Network Business Interruption** for expenses incurred by the "Member" to update, upgrade, enhance or replace "computer systems" to a level beyond that which existed prior to the actual and necessary interruption or suspension of "computer systems;" or the costs and expenses incurred by the "Member" to restore, reproduce, or regain access to any "data asset" that was altered, corrupted, destroyed, deleted, damaged or rendered inaccessible as a result of the failure of "computer security" to prevent a "security breach."

W. "Fund" means the Texas Municipal League Joint Self-Insurance Fund.

X. "Fund Member" or "Member" means the governmental entity which is a present participant in the "Fund" and shown in the Declarations of the Coverage Document.

Y. "Income loss" means:

1. The net revenue that the "Member" is prevented from collecting through its operations or the loss of revenue that the "Member" is unable to avoid through its business operations as a direct result of the actual and necessary interruption or suspension of "computer systems;" and

2. Fixed operating expenses incurred by the "Member" (including payroll), but only to the extent that:

   a. such operating expenses must necessarily continue during the "period of restoration" (or "extended interruption period," if applicable); and

   b. such expenses would have been incurred by the "Member" had such interruption or suspension not occurred.

"Income loss" shall be reduced to the extent the "Member" is able, with reasonable dispatch and due diligence, to reduce or limit such interruption or suspension of "computer systems" or conduct its business operations by other means.

In determining "income loss," due consideration shall be given to the prior experience of the "Member's" operations before the beginning of the "period of restoration" and to the probable operations the "Member" could have performed had no actual and necessary interruption or suspension occurred as result of a failure of "computer security" to prevent a "security breach."

"Income loss" will be calculated on an hourly basis based on the "Member's" net revenue (or loss) and fixed operating expenses as set forth above.

Z. "Information Packet" means the Information Packet, which is incorporated into and forms part of this Coverage Document and which includes a list of service providers who provide "privacy breach response services."

AA. "Legal services" means fees charged by an attorney:

1. To determine the applicability of and actions necessary for the "Member" to comply with "breach notice laws" due to an actual or reasonably suspected theft, loss or "unauthorized disclosure" of "personally identifiable information;"

2. To provide necessary legal advice to the "Member" in responding to actual or suspected theft, loss or "unauthorized disclosure" of "personally identifiable information;" and

3. To advise the "Member" in responding to credit card system operating regulation requirements for any actual or suspected compromise of credit card data that is required to be reported to the "Member's" merchant bank under the terms of a "merchant services agreement," but "legal services" does not include fees incurred in any actual or threatened legal proceeding, arbitration or mediation, or any advice in responding to credit card system operating regulation in connection with an assessment of "PCI Fines, Expenses, and Costs."

"Legal services" will be provided in accordance with the terms and conditions set forth in this Coverage Document and will be provided by an attorney selected by the "Fund."

BB. "Loss" means:

1. "Business Interruption Loss;"
2. "Damages;"
3. "Claims Expenses;"
4. "Cyber Extortion Loss;"
5. "Data Protection Loss;"
6. "Crisis Management and Public Relations;"
7. "Penalties;"
8. "PCI Fines, Expenses and Costs;" and
9. "Privacy Breach Response Services."

CC. "Malicious code" means any virus, Trojan horse, worm or any other similar software program, code or script intentionally designed to insert itself into computer memory or onto a computer disk and spread itself from one computer to another.

DD. "Management control" means:

1. Owning, directly or indirectly, more than fifty percent (50%) of the outstanding securities, representing the present right to vote for the election of an entity's directors, members of the board of managers, management committee members or persons serving in a functionally equivalent role for such an entity operating or organization outside of the United States; or
2. Having the right, pursuant to a written contract or the bylaws, charter, operating agreement or similar documents of an entity to elect, appoint or designate a majority of:
   a. The Board of Directors of a corporation;
   b. The Management Committee of a joint venture or partnership;
   c. The Management Board of a Limited Liability Company; or
   d. Persons serving in a functionally equivalent role for such an entity operating or organized outside of the United States.

EE. "Manager" means manager of the "Member."

FF. "Media material" means any information in electronic form, including words, sounds, numbers, images, or graphics and shall include advertising, video, streaming content, web-casting, online forum, bulletin board and chat room content, but does not mean computer software or the actual goods, products or services described, illustrated or displayed in such "media material."

GG. "Merchant services agreement" means any agreement between a "Member" and a financial institution, credit/debit company, credit/debit card processor or independent service operator enabling a "Member" to accept credit card, debit card, prepaid card, or other payment cards for payments or donations.

HH. "Net Revenue" means gross revenues less normal operational expenses.

II. "Notification services" means:

1. Notification by first class mail or email to United States or Canadian residents; and

2. Notification by first class mail or email to individuals residing outside the United States or Canada, but only to the extent reasonably practicable.

"Notification services" will be provided by a service provider selected by the "Fund" in consultation with the "Member" from the list of service providers in the "information packet" and will be provided in accordance with the terms and conditions set forth in the "information packet."

JJ. "Notified individual" means an individual person to whom notice is given or attempted to be given under Paragraph **3.** of **SECTION I – COVERAGE AGREEMENTS, B. Privacy Breach Response Services** pursuant to a "breach notice law" as defined in Paragraph **A.** of **SECTION XI – DEFINITIONS**.

KK. "Optional extension period" means period of time described in **SECTION VII – OPTIONAL EXTENSION PERIOD**, Paragraph **B**.

LL. "PCI Fines, Expenses and Costs" means the direct monetary fines, penalties, reimbursements, fraud recoveries or assessments owed by the "Member" under the terms of a "merchant services agreement," but only where such fines, penalties, reimbursements, fraud recoveries or assessments result both from the "Member's" actual or alleged noncompliance with published Payment Card Industry (PCI) Data Security Standards and from a data breach caused by an incident (or reasonably suspected incident) described in Paragraphs **1.** and **2.** of **SECTION I – COVERAGE AGREEMENTS, A. Information Security And Privacy Liability**; provided, that the term "PCI Fines, Expenses and Costs" shall not include, or mean any charge-backs, interchangeable fees, discount fees or prospective service fees.

MM. "Penalties" means:

1. Any civil fine or punitive sum of money payable to a governmental entity that was imposed in a "regulatory proceeding" by the Federal Trade Commission, Federal Communications Commission, or any other federal, state, local or foreign governmental entity, excluding the "Member," in such entity's regulatory or official capacity; the insurability of "penalties" shall be in accordance with the law in the applicable venue that most favors coverage for such "penalties;" and

2. Amounts which the "Member" is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to an adverse judgment or settlement of a "regulatory proceeding;" but shall not include payments to charitable organizations or disposition of such funds other than for payment of consumer claims for losses caused by an event covered pursuant to Paragraphs **1.**, **2.**, or **3.** of **SECTION I – COVERAGE AGREEMENTS, A. Information Security And Privacy Liability**;

"Penalties" does not mean:

1. Costs to remediate or improve "computer systems;"

2. Costs to establish, implement, maintain, improve or remediate security or privacy practices, procedures, programs or policies;

3. Audit, assessment, compliance or reporting costs; or

4. Costs to protect the confidentiality, integrity and/or security of "personally identifiable information" from theft, loss or disclosure.

NN. "Period of restoration" means the time period that:

1. Begins on the specific date and time that the actual and necessary interruption or suspension of "computer systems" first occurred; and

2. Ends on the specific date and time that the actual and necessary interruption or suspension of "computer systems" ends, or would have ended had the "Member" or "dependent business" (if applicable) acted with due diligence and dispatch;

provided that in no event shall the "period of restoration" mean more than or exceed thirty (30) days; and provided further that restoration of "computer systems" will not end the "period of restoration" if such systems are actually and necessarily interrupted or suspended again within one (1) hour of such restoration due to the same cause as the original interruption or suspension.

OO. "Personally identifiable information" means:

1. Information concerning the individual that constitutes nonpublic personal information as defined in the Gramm-Leach Bliley Act of 1999 (GLBA), as amended, and regulations issued pursuant the Act;

2. Medical or health care information concerning the individual, including protected health information as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and regulations issued pursuant to the Act;

3. Information concerning the individual that is defined as private personal information under statutes enacted to protect such information in foreign countries, for "claims" subject to the law of such jurisdiction;

4. Information concerning the individual that is defined as private personal information under a "breach notice law;"

5. Education records as defined by the Family Educational Rights and Privacy Act (FERPA), which are directly related to an individual's attendance as a student; or

6. The individual's drivers' license or state identification number, social security number, unpublished telephone number, and credit, debit, or other financial account numbers in combination with associated security codes, access codes, passwords or pins;

if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual's financial account or medial record information.

"Personally identifiable information" does not include publicly available information that is lawfully made available to the general public from government records.

PP. "Privacy breach response services" means the services and coverage provided by **SECTION I - COVERAGE AGREEMENTS, B. Privacy Breach Response Services**.

QQ. "Privacy law" means a federal, state or foreign statute or regulation requiring the "Member" to protect the confidentiality and/or security of "personally identifiable information."

RR. "Privacy policy" means the "Member's" public declaration of its policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to "personally identifiable information."

SS. "Public relations and crisis management expense" shall mean the following costs approved in advance by the "Fund," and which are directly related to mitigating harm to the "Member's" reputation or potential "loss" covered by this Coverage Document resulting from an incident described in Paragraphs **1.** and **2.** of **SECTION I – COVERAGE AGREEMENTS, A. Information Security And Privacy Liability** or from a "public relations event:"

1. Costs incurred by a public relations or crisis management consultant;

2. Costs for media purchasing or for printing or mailing materials intended to inform the general public about the incident, such costs to be limited to the amount noted in the Declarations for **SECTION I – COVERAGE AGREEMENTS, B. Privacy Breach Response Services**;

3. For incidents or events in which notifications services are not otherwise provided pursuant to **SECTION I – COVERAGE AGREEMENTS, A. Information Security And Privacy Liability** and **B. Privacy Breach Response Services**, costs to provide notifications and notices via e-mail or first class mail to customers where such notifications are not required by law (voluntary notifications), including non-affected customers of the "Member"

4. Costs to provide government mandated public notices related to breach events (including such notifications required under HIPAA/Health Information Technology for Economic and Clinical Health Act (HITECH);

5. Costs to provide services to restore healthcare records of "notified individuals" residing in the United States whose "personally identifiable information" was compromised as a result of theft, loss or "unauthorized disclosure;" and

6. Other costs approved in advance by the "Fund."

"Public relations and crisis management expenses" must be incurred no later than twelve (12) months following the reporting of such "claim" or breach event to the "Fund" and, with respect to Paragraphs **1.** and **2.**, above, within ninety (90) days following the first publication of such "claim" or incident. If voluntary notifications are provided, email notification will be provided in lieu of first class mail to the extent practicable.

TT. "Public relations event" means the publication or imminent publication in a newspaper (or other general circulation print publication) or on radio, television or a publically accessible website of a covered "claim" under this Coverage Document.

UU. "Regulatory proceeding" means a request for information, civil investigative demand or civil proceeding commenced by service of a compliant or similar proceeding brought by or on behalf of the Federal Trade Commission, Federal Communications Commission, or any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity in connection with such proceeding.

VV. "Related party" means the "Member" and any past, present or future employees, directors, officers, "managers," partners or natural person independent contractors of the "Member."

WW. "Security breach" means:

1. "Unauthorized access or use of computer systems," including "unauthorized access or use" resulting from the theft of a password from a "computer system" or from any "Covered Party;"

2. A denial or service attack against "computer systems" or computer systems that are not owned, operated or controlled by a "Member;" or

3. Infection of "computer systems" by malicious code or transmission of malicious code from "computer systems."

A series of continuing "security breaches," related or repeated "security breaches," or multiple "security breaches" resulting from a continuing failure of "computer security" shall be considered a single "security breach" and be deemed to have occurred at the time of the first such "security breach."

XX. "Third party information" means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party not insured under this Coverage Document which is not available to the general public and is provided to the "Member" subject to a mutually executed written confidentiality agreement or which the "Member" is legally required to maintain in confidence; however, "third party information" shall not include "personally identifiable information."

YY. "Unauthorized access or use" means the gaining of access to or use of "computer systems" by an unauthorized person or persons or the use of "computer systems" in an unauthorized manner.

ZZ. "Unauthorized disclosure" means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by the "Member" and is without knowledge of, consent, or acquiescence of any member of the "control group."

AAA. "Waiting period" means the period of time beginning when the "period of restoration" begins and expiring after the elapse of the number of hours set forth in the Declarations. A "waiting period" shall apply to each "period of restoration."

SECTION XII – CONDITIONS APPLICABLE TO PRIVACY BREACH RESPONSE SERVICES AND COVERAGE

A. With respect to **SECTION I – COVERAGE AGREEMENTS, H.** - **First Party Network Business Interruption**, the "Member" must forward written notice by express or certified mail, email, or facsimile to the "Fund" immediately upon discovery of alteration, corruption, destruction, deletion or damage to or inability to access a "data asset" to which this coverage applies. All covered "data protection loss" must be discovered and reported (in accordance

with **SECTION XIII. Proof and Appraisal of Loss**, below) to the "Fund" no later than six (6) months after the end of the "coverage period."

B. **COVERAGE AGREEMENTS A.**, **C**., **D**., **G**. and **H**. only apply if:

1. The "Member" initiates the notification services described in **Paragraph 3. SECTION I – COVERAGE AGREEMENTS, B. Privacy Breach Response Services** as soon as practicable after the "Covered Party's" discovery of the "claim;"

2. The "claim" is made against the "Covered Party" no later than two (2) years after the "Member" initiates the notification services described in **Paragraph 3. SECTION I – COVERAGE AGREEMENTS, B. Privacy Breach Response Services**; and

3. The "Covered Party" reports the "claim" to the "Fund" in writing as soon as practicable.

SECTION XIII – PROOF AND APPRAISAL OF LOSS

A. Proof of Loss. With respect to **SECTION I – COVERAGE AGREEMENTS, G. First Data Protection Loss, and H. First Party Network Business Interruption**, before coverage will apply, the "Member" must:

1. prepare and submit to the "Fund" or its appointed representative a written and detailed proof of loss sworn by an officer of the "Member" within sixty (60) days after the "Covered Party" discovers a "data protection loss" or the "Member" sustains a "business interruption loss" (as applicable). Such proof of loss shall include a narrative with full particulars of such "data protection loss" or "business interruption loss," including, the time, place and cause of the "data protection loss" or "business interruption loss," a detailed calculation of any "data protection loss" or "business interruption loss," the "Member's" interest and the interest of all others in the property, the sound value thereof and the amount of "data protection loss" or "business interruption loss" or damage thereto and all other insurance thereon; and

2. upon the "Fund's" request, submit to an examination under oath and provide copies of the underlying documents, data and materials that reasonably relate to or are part of the basis of the "claim" for such "data protection loss" or "business interruption loss."

   The costs and expenses of preparing and submitting a proof of loss, and establishing or proving "data protection loss," "business interruption loss" or any other "loss" under this coverage shall be the "Member's" obligation, and are not covered under this coverage.

B. Appraisal of Loss. If the "Fund" and the "Member" fail to agree on the amount of a "loss," each party shall, upon the written demand of either party made within sixty (60) days after receipt of proof of loss by the "Fund," select and pay a qualified and disinterested appraiser or other qualified expert (the "Appraiser") to state the amount of the loss or reasonable expenses, and the Appraisers shall choose an umpire. If the Appraisers fail for fifteen (15) days to agree on an umpire, the "Member" or the "Fund" may request a judge of a court having jurisdiction to make the selection. Each Appraiser shall submit the amount of the "loss" or reasonable expenses to the umpire, and agreement by the umpire and at least one of the Appraisers as to the amount of a "loss" shall be binding on all "Covered Parties" and the "Fund." The "Member" and the "Fund" will equally share the costs of the umpire and any other costs other than the cost of the Appraisers. This provision shall govern only the appraisal of the amount of a "loss," and shall not control the determination of whether such "loss" is otherwise covered by this coverage. The "Fund" will still retain and does not waive its rights to deny coverage or enforce any obligation under this coverage.

SECTION XIV – RECOVERED PROPERTY

If the "Covered Party" or the "Fund" recover any property, money or "data assets" after a loss payment is made, the party making the recovery must give prompt notice of the recovery to the other party. If the recovered property is money or other funds, the recovery shall be applied first to any costs incurred by the "Fund" in recovering the property, second to loss payments made by the "Fund," and third to any "retention" payment made by the "Member." If property other than money or funds is recovered, then the "Member" may keep the recovered property and return the loss payment, plus the costs of recovery incurred by the "Fund," or keep the loss payment less the costs of recovery incurred by the "Fund" and transfer all rights in the property to the "Fund."

SECTION XV – OBLIGATIONS IN THE EVENT OF AN EXTORTION THREAT

A. "Member's" Duty of Confidentiality

The "Member" shall use its best efforts at all times to ensure that knowledge regarding the existence of this coverage for "cyber extortion loss" afforded by this coverage is kept confidential. However, this information may be subject to disclosure under the Texas Public Information Act, Chapter 552, Texas Government Code, or other law. If the Member receives a request for any information concerning this coverage, it shall comply with such applicable law concerning disclosure.

B. "Member's" Obligation to Investigate Extortion Threat and Avoid or Limit Extortion Payment

Prior to the payment of any "extortion payment," the "Member" shall make every reasonable effort to determine that the "extortion threat" is not a hoax, or otherwise not credible. The "Member" shall take all steps reasonable and practical to avoid or limit the payment of an "extortion payment."

C. Conditions Precedent

As conditions precedent to this coverage for "cyber extortion loss" under the terms of this coverage:

1. **"Member's" Obligation to Demonstrate Duress**

   The "Member" must be able to demonstrate that the "extortion payment" was surrendered under duress.

2. **Notification of Police**

   The "Member" shall allow the "Fund" or its representative to notify the police or other responsible law enforcement authorities of any "extortion threat."

SECTION XVI – INTERPRETATION

This Coverage Document will be construed according to general rules of contract construction. This Coverage Document is drafted on behalf of all "Members" of the "Fund" and will be construed in a manner which most reasonably and accurately reflects the intent of the Coverage Document.

SECTION XVII – ACTION OR SUIT AGAINST THE FUND

A. No suit or action shall lie against the "Fund" unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of the Coverage Document, nor until the amount of the "Member's" or "Covered Party's" obligation to pay shall have been finally determined either by judgment against the "Member" or "Covered Party" after actual trial or by written agreement of the "Member" or "Covered Party," the claimant (if applicable) and the "Fund." The "Member" or "Covered Party" shall not assign, transfer, or pledge all or any portion of the "Member's" or "Covered Party's" rights or interests under this Coverage Document, and the "Fund shall not be liable to any person claiming any such rights by virtue of any reported assignment, transfer, or pledge thereof. Breach of the "Fund's" obligation to provide a defense shall not relieve the "Member" or "Covered Party" of complying with the provisions of this paragraph. Further, any such assignment, transfer, or pledge shall relieve the "Fund" of all duties and obligations under this Agreement to the "Member" or "Covered Party" in respect to the "claim" in which the rights were assigned, transferred, or pledged.

B. Any person or organization or legal representative thereof who has secured judgment or written agreement shall thereafter be entitled to recover under this Coverage Document to the extent of the coverage afforded by this Coverage Document. No person or organization shall have any right under the Coverage Document to join the "Fund" as a party to any action against the "Member" or "Covered Party" to determine the "Member's" or "Covered Party's" liability, nor shall the "Fund" be impleaded by the "Member" or "Covered Party" or its legal representative.

Texas Municipal League Intergovernmental Risk Pool

1821 Rutherford Lane • Austin, TX 78754

P.O. Box 149194 • Austin, TX 78714-9194

(512) 491-2300 • (800) 537-6655

www.tmlirp.org

Liability Settlements > $50,000
Five (5) Year Period

(includes attorney's fees and other costs)

Liability Category	Date Filed	Dept	Description	Total Paid
Errors & Omissions	06/17/2014	Public Works	Employment, wrongful termination settlement	$764,554.00
Errors & Omissions	06/17/2014	Public Works	City's own attorney's fees and other costs	$458,417.53
Errors & Omissions	03/23/2018	Police	Civil rights, race discrimination settlement	$99,000.00
Errors & Omissions	07/03/2018	Police	Civil rights, sex discrimination settlement	$125,000.00
Total Errors & Omissions				**$1,446,971.53**
Law Enforcement	10/01/2017	Police	Civil rights, police excessive force settlement	$99,000.00
Law Enforcement	10/01/2017	Police	Other costs	$7,191.69
Total Law Enforcement				**$106,191.69**

Comparative Cities – Self-insured or TMLIRP (Risk Pool)

Abilene is self-insured and uses in-house attorneys for most litigation.

Are Self-Insured and use in-house attorneys for litigation:

1. Denton
2. Odessa
3. Wichita Falls

Use TMLIRP (Risk Pool) and hire outside attorneys for most/all litigation not covered:

4. San Angelo
5. Midland
6. Waco
7. Killeen
8. Grand Prairie
9. Carrollton

Texas Municipal League
Intergovernmental Risk Pool

1821 Rutherford Lane, First Floor • Austin, Texas 78754

LIABILITY/PROPERTY INTERLOCAL AGREEMENT

This Contract and Interlocal Agreement is entered into by and between political subdivisions of this state (hereinafter referred to as "Pool Members") to form a joint self-insurance pool to be named the Texas Municipal League Joint Self-Insurance Fund (hereinafter referred to as the "Fund") for the purpose of providing coverages against risks which are inherent in operating a political subdivision.

WITNESSETH:

The undersigned Pool Member, in accordance with the Interlocal Cooperation Act, Tex. Gov't Code § 791.001, et seq., and the interpretation thereof by the Attorney General of the State of Texas (Opinion #MW-347, May 29, 1981), and in consideration of other political subdivisions executing like agreements, does hereby agree to become one of the Pool Members of this self-insured pool. The conditions of membership agreed upon by and between the parties are as follows:

1. Definitions of terms used in this Interlocal Agreement.

   a. Board. Refers to the Board of Trustees of the Texas Municipal League Joint Self-Insurance Fund.

   b. Fund Year. 12:01 a.m. October 1 through 12:01 a.m. the following October 1.

   c. Manual Rates. The basic rates applicable to each liability classification promulgated by the Insurance Service Office or the Board of Trustees.

   d. TML Municipal Liability Self-Insurance Plan. The liability coverage document that sets forth in exact detail the coverages provided as part of the overall plan.

   e. Adjustments. Refers to any offsets to manual premium that may result from the Pool Member's election of deductibles, loss experience or Fund Modifier which reflects the savings to the Pool Member by entering into this Agreement.

   f. TML Municipal Property Self-Insurance Plan. The property coverage document that sets forth in exact detail the coverages provided as part of the overall plan.

   g. Premium and Contribution. Used interchangeably in some parts of this Interlocal Agreement. Any reference at any time in this Interlocal Agreement to an insurance term not ordinarily a part of self-insurance shall be deemed for convenience only and is not construed as being contrary to the self-insurance concept except where the context clearly indicates no other possible interpretation such as but not limited to the reference to "reinsurance."

   h. Reimbursable Deductible. The amount that was chosen by this Pool Member to be applicable to the first monies paid by the Fund to effect judgment or settlement of any claim or suit. The Pool Member, upon notification of the action taken, shall promptly reimburse the Fund for all or such part of the deductible amount as has been paid by the Fund. Further, however, the Fund's obligation to pay damages shall be subject to the Limits of Liability stated in the Declarations of Coverage or Endorsements to this Interlocal Agreement less the stated deductible amount.

   i. Fund Modifier. A percentage figure that is applied to the manual rates by the Fund to reflect the savings to the Pool Member by entering into the Interlocal Agreement.

   j. Agreement Period. The continuous period since the Pool Member first became a member of this Fund excluding, however, any period or periods of time therein that the member did not participate as a member of the Pool.

   k. Declarations of Coverage. The specific indication of the coverages, limits, deductibles, contributions and special provisions elected by each individual Pool Member. The Declarations of Coverages may be modified by Endorsement.

2. The Board of Trustees, acting through its agents and Fund staff, is responsible for the administration of all Fund business on behalf of the Pool Members.

3. In consideration of the execution of this Agreement by and between the Pool Member and the Fund and of the contributions of the Pool Member, the coverage elected by the Pool Member is afforded according to the terms of the TML Liability Self-Insurance Plan and the TML Property Self-Insurance Plan. The affirmative declaration of contributions and limits of liability in the Declarations of Coverage and Endorsements determines the applicability of the Self-Insurance Plans.

   Each Pool Member agrees to adopt and accept the coverages, provisions, terms, conditions, exclusions and limitations as further provided for in the TML Self-Insurance Plans or as specifically modified by the Pool Member's Declarations of Coverage. This Interlocal Agreement shall be construed to incorporate the TML Liability Self-Insurance Plan and/or the TML Property Self-Insurance Plan, Declarations of Coverage, and Endorsements and addenda whether or not physically attached hereto.

4. It is understood that by participating in this risk sharing mechanism to cover liability exposures, the Pool Member does not intend to waive any of the immunities that its officers or its employees now possess. The Pool Member recognizes the Texas Tort Claims Act and its limitations to certain governmental functions as well as its monetary limitations and that by executing this Agreement does not agree to expand those limitations.

   The Pool Member, upon the execution of this Agreement, shall supply the Fund with a current copy of its charter provisions or ordinance that sets out its requirement as to the number of days in which a third party liability claim must be made against it.

   If the Pool Member does not have such an ordinance provision that establishes a set number of days or if it has an ordinance provision which provides for less than sixty (60) days notice and for good cause shown up to six (6) months notice the Pool Member agrees to adopt an ordinance providing for such notice reasonably describing the damage or injury claimed and the time, manner and place of the incident from which it arose. The notice requirement shall not be changed by the Pool Member without first giving the Fund thirty (30) days written notice. Violation of this provision may, at the Fund's discretion, void this Interlocal Agreement.

5. The term of this Agreement and the self-insurance provided to the Pool Member shall be continuous commencing 12:01 a.m. on the date designated in this Agreement until terminated as provided below. Although the self-insurance provided for in this Agreement shall be continuous until terminated, the limit of liability of the Fund under the coverages that the Pool Member elects shall be limited during any Fund Year to the amount stated in the Declarations of Coverage for that Fund Year.

   This Agreement may be terminated by either party giving to the other sixty (60) days prior written notice of intent to terminate except the Pool Member may terminate this Agreement and its coverages thereunder without giving the sixty (60) days notice if the reason is because of a change by the Fund in the Pool Member's contribution, coverage, or other change in the limits of liability, terms, conditions, exclusions and limitations provided for in the Texas Municipal League Self-Insurance Plans provided that no termination by the Member shall be effective prior to the date that written notice of termination is actually received in the offices of the Texas Municipal League Joint Self-Insurance Fund and provided that the Pool Member agrees to and shall pay the applicable premium and contribution for those coverages it is terminating until the date the notice of termination is actually received by the Fund.

   The Fund shall provide the Pool Member with Declarations of Coverage and any Endorsements that determine the applicability of the Texas Municipal League Self-Insurance Plans annually by December 1. Such Declarations of Coverage shall include, but not be limited to, the coverage period which shall be the applicable Fund Year, limits, deductibles, contributions, special provisions and limitations. Changes made during the Fund Year, whether requested by the Pool Member or required by the Fund, will be handled by Endorsement.

   It is the intention of the parties that the Pool Member's coverages under this Agreement shall remain in full force and effect from Fund Year to Fund Year, subject to the limits of liability that the Fund can provide each Fund Year and the terms, conditions, limitations that the Fund may require to protect its solvency and to comply with reinsurance requirements, until notice of termination is given as herein provided. Realizing that the Pool Member needs the earliest possible information concerning the Fund coverages, limits, and exclusions and the Pool Member's contribution that will be required for any new Fund Year, the Fund will endeavor to provide this information as soon as possible before the beginning of each Fund Year. The parties recognize, however, that conditions in the reinsurance industry are such that the Fund may not be able to provide this information to the Pool Member before the beginning of a Fund Year for various reasons including the failure of the Pool Member to timely submit the appropriate exposure summary or delays on the part of reinsurers in getting information to the Fund, and so, to protect the Pool Member from gaps in its coverage and to protect the solvency of the Fund, the parties agree as follows:

   If, for any reason other than the Pool Member's failure to provide the information requested in the exposure summary, the Fund has not been able to provide the Pool Member with information concerning available coverages for a new Fund Year or advise the Pool Member of the amount of its contribution for the new Fund Year by the beginning of the Fund Year, the Fund shall nevertheless continue the Pool Member's coverages at the same limits of liability (if still available and if not, then at the highest limit of liability available for the new Fund Year) so that the Pool Member shall at all times remain covered as herein provided and the Pool Member's initial contributions for the new Fund Year shall be determined by a "tentative contribution" as determined by

the Board with the Pool Member's actual annual contribution to be credited by the amount paid in accordance with the tentative contribution and adjusted during the Fund Year. In the event the Pool Member does not wish to have its coverages extended or renewed at the end of any Fund Year, the burden shall be upon the Pool Member to give written notice to the Fund as provided hereinabove and the Pool Member agrees to pay as hereinabove stated all contributions or pro rata contributions until the date such written notice is received in the offices of the Fund or the date of termination of this Agreement, whichever is later.

6. Commensurate with the execution of this Agreement and annually thereafter, the Pool Member shall complete the appropriate exposure summary and deliver it or cause it to be delivered to the Fund, or, if so instructed, to a designated contractor, no later than September 1 of each year and new annual contributions shall be calculated using manual rates times exposure, less any adjustments. Intentional or reckless misstatements on the exposure summary shall be grounds for cancellation. In the event that the Pool Member fails or refuses to submit the appropriate exposure summary, the Fund reserves the right to terminate such Pool Member by giving thirty (30) days written notice and to collect any and all contributions that are earned pro rata for the period preceding contract termination.

   The Pool Member agrees to pay the annual contribution to the Fund in four (4) equal quarterly installments, in advance, commencing at the beginning of this Agreement with subsequent installments due the first quarter thereafter. Pool Members who elect a deductible in excess of $25,000 shall comply with the monthly payment schedule outlined to them in advance of assuming such a large deductible. In the event this Agreement is terminated as herein provided, the Fund shall promptly repay to the Pool Member any such unearned annual contribution prorated as of the date of termination and the Pool Member agrees during the term of this Agreement to promptly pay all reimbursable deductibles upon receipt of statement.

   At the end of each and every Fund Year, the Fund may require the Pool Member to submit the actual data requested on the exposure summary as reflected by the books and records of the Pool Member. The Fund reserves the right to audit the records of any Pool Member and adjust contributions accordingly.

   In the event that the Pool Member fails or refuses to make the payments, including accrued interest, as herein provided, the Fund reserves the right to terminate such Pool Member by giving them ten (10) days written notice and to collect any and all amounts that are earned pro rata for the period preceding contract termination. If the amounts owed, including reimbursable deductibles, have to be collected by suit, the Pool Member agrees to pay attorneys' fees and costs incurred in such suit.

7. The Fund shall maintain adequate protection from catastrophic losses to protect its financial integrity. Aggregate protection shall also be maintained. The Member's contributions shall be limited to that amount as calculated under this Agreement.

8. Notwithstanding the provisions of the foregoing paragraph, it is agreed the Board shall have the right to adjust the financial protection outlined above and/or amend coverages as it finds available or deems necessary to maintain the fiscal soundness of the Fund at the beginning of or during any Fund Year.

9. The Fund will make available loss control services to the Pool Members to assist them in following a plan of loss control that may result in reduced losses. The Pool Member agrees that it will cooperate in instituting any and all reasonable loss control recommendations. In the event that the recommendations submitted seem unreasonable, the Pool Member has a right to appeal to the Board of Trustees. The Board shall hear the objections of the Pool Member at its next regularly scheduled meeting and its decisions will be final and binding on all parties. Any Pool Member who does not agree to follow the decision of the Board shall be withdrawn from the Fund immediately.

10. The Pool Member agrees that it will appoint a contact of department head rank, and the Fund shall not be required to contact any other individual except this one person. Any notice to or any agreements with the contact shall be binding upon the Pool Member. The Pool Member reserves the right to change the contact from time to time by giving written notice to the Fund.

11. The Fund agrees to handle all liability and property claims, and provide a defense for any and all liability claims covered under this Agreement after prompt notice has been given. The Pool Member hereby appoints the Fund staff and Contractors as its agents to act in all matters pertaining to processing and handling of claims covered under this Agreement and shall cooperate fully in supplying any information needed or helpful in settlement or defense of such claims. As respects liability claims, the Fund staff and Contractors shall carry on all negotiations with the claimant and his attorney and negotiate within authority previously granted by the Fund. If a personal appearance by the Pool Member or an employee is necessary, the expense of this appearance will not be the responsibility of the Fund. With the advice and consent of the Fund, the Fund staff and the Contractors will retain and supervise legal counsel for the prosecution and defense of any litigation. All decisions on individual cases shall be made by the Fund through the Fund staff and the Contractors, which includes the decision to appeal or not to appeal. However, any Pool Member shall have the right in any case to consult with the Fund on any decision made by the Fund staff or Contractors. The Board shall hear the objections of the Pool Member at its next regularly scheduled meeting and its decision will be final and binding on all parties. Any suit brought or defended by the Fund shall be brought or defended only in the name of the Pool Member and/or its officers or employees. There shall be supplied

periodically to each Pool Member a computer printout involving a statement of claims. As respects the TML Municipal Liability Self-Insurance Plan, the Fund shall have priority in enforcing its subrogation claims against the claims of Pool Member except as to claims of the Texas Municipal League Workers' Compensation Joint Insurance Fund, which shall take preference.

12. The Pool Member acknowledges that it has received a copy of the Bylaws of the Fund and agrees to abide by the Bylaws and any amendments thereto.

13. The Fund agrees that all Fund transactions will be annually audited by a nationally recognized certified public accounting firm.

14. If legally required, the Fund shall cause to be filed the necessary tax forms with the Internal Revenue Service.

15. As the administrators of the Fund, the Board shall primarily and consistently keep foremost in their deliberations and decisions in operating the Fund that each of the participating Pool Members is a "self-insured." At least annually, the Board shall carefully review, study and consider the actual claims or loss experience (including reserves for future claims payments) of each of the Pool Members, the pro rata savings to the Fund resulting from overall loss experience attributed to each Pool Member, and the pro rata portion of the cost of all catastrophic loss protection and aggregate stop loss protection allocated to each Pool Member as well as the pro rata allocation, as determined by the Board of the other and necessary administrative expenses of the Pool, in order to reasonably determine the actual pro rata cost, expense and loss experience of each Pool Member in order to maintain as nearly as possible an equitable and reasonable self-insurance administration of the Fund as applied to each Pool Member.

    The Fund shall maintain case reserves and supplemental reserves computed in accordance with standard actuarial principles, taking into account historical and other data, designed to measure claims development and claims incurred but not yet reported, so that funds will be available to meet these claims as they become due. The Fund shall also establish and maintain a reserve for Return of Contributions to further ensure the fiscal integrity of the Fund in the event of a potential adverse loss development. Only current Pool Members may receive return of contribution.

16. The Pool Member may elect to participate in the Fund only to the extent of obtaining administrative services, and, if desired and available, reinsurance. In that event, the Pool Member shall not make contributions as provided in Paragraph 5 nor receive the coverages provided for in the TML Self-Insurance Plan, nor shall the TML Joint Self-Insurance Fund be liable for the payment of claims against the Pool Member. The Fund shall only handle and service claims for the Pool Member and pay same out of funds to be deposited by the Pool Member in a separate account administered by the Fund for the payment of claims and judgments only against that Pool Member as hereinafter provided.

    Notwithstanding the provisions of any other section of this Interlocal Agreement, a Pool Member who elects to receive Administrative Services Only as specified in the attached Declarations (hereinafter referred to as the "ASO Pool Member") shall be subject to the following requirements and conditions:

    A. Although the ASO Pool Member will receive coverage documents setting forth the coverages, provisions, terms, conditions, exclusions and limitations provided for in the TML Self-Insurance Plans, these documents are not intended to and shall not create an insured-insurer relationship between the Fund or any of its other Pool Members and the ASO Pool Member, but rather are provided solely for the purposes of: (1) defining the scope of claims the Fund will handle on behalf of the ASO Pool Member, and (2) defining the nature and scope of claims and conditions applicable thereto that will be covered by reinsurance, if available and obtained by the ASO Pool Member, beyond the ASO Pool Member's self-insured retention. The Fund shall not itself be liable for the payment of claims or judgments against the electing ASO Pool Member, nor to provide the electing ASO Pool Member with a defense of any such claims or suits at the expense of the Fund. The Fund will only make payments on behalf of the ASO Pool Member out of the ASO Pool Member's claims account. The ASO Pool Member shall comply with all requirements of any reinsurer including but not limited to furnishing timely claims reports, proposed settlements that would impact the reinsurer as well as progress reports involving litigation. The ASO Pool Member further agrees to hold the Fund harmless from any and all claims (including attorney fees) that may be asserted against the Fund for the non-payment of any claims due to the failure of the ASO Pool Member to maintain adequate reserves for the payment of claims as well as claims based upon breach of a duty of good faith and fair dealing because of the ASO Pool Member's or their agents' conduct toward the claimant.

    B. In connection with claims within the scope of the coverage documents, the Fund shall provide the following services or on behalf of the ASO Pool Member as confirmed specifically in the attached Declarations:

        1. Overall contract and claims administration;

        2. Loss control services to the ASO Pool Member to assist it in developing a plan of loss control to attempt to control or reduce the frequency and severity of claims against it;

3. Claims servicing including investigation and recommendation by the Fund's contractors; periodic meetings with the ASO Pool Member's claims official or claims committee attended by representatives of Contractors;

4. Claims administration including coordination and recommendation of defense; reserve recommendations; claims handling and defense recommendations by the Fund claims manager and assistants, as well as review of all files to monitor the ASO Pool Member's self-insurance exposure; participation by Fund staff member(s) in the periodic meetings to review claims with the ASO Pool Member's claims official or claims committee.

5. Storage and retention of claims records; periodic MIS reports detailing claims and loss information and history.

The Fund shall charge the ASO Pool Member its usual and customary charges for the aforesaid services based on actual services provided. Allocated claim expenses, including defense attorney's fees, discovery fees, expert and witness fees and court costs shall be paid by the Fund on behalf of the ASO Pool Member out of the ASO Pool Member's claims account as part of the administrative services provided by the Pool, but shall never be an expense or liability of the Fund but rather is solely that of the ASO Pool Member.

The Fund shall handle all liability and automobile physical damage claims and oversee, coordinate and make recommendations in connection with the defense of any and all liability lawsuits covered under this Agreement after prompt notice has been given. The ASO Pool Member hereby appoints Fund staff and Contractors as its agents to act in all matters pertaining to processing and handling of claims covered under this Agreement and shall cooperate fully in supplying any information needed or helpful in settlement or defense of such claims. As respects liability claims, the Fund staff and Contractors shall carry on all negotiations with the claimant or his attorney, but no settlement shall be made without express prior approval of the ASO Pool Member. All claims will be discussed with the ASO Pool Member's claims official or claims committee on a periodic basis. As information on each claim develops, the Fund staff and Contractors shall make recommendations concerning claim reserves, settlement and whether or not a case should be tried or settled or a judgment should be appealed, but all decisions on individual cases shall be made by the ASO Pool Member. In the event of litigation, the Fund staff and Contractors will retain on behalf of the ASO Pool Member legal counsel approved by the ASO Pool Member to represent it and will supervise the defense of the litigation, including any appeals.

The ASO Pool Member shall establish in its name a "claims account" at a bank designated by the Fund, out of which the Fund, through its agents, shall pay on behalf of the ASO Pool Member qualified claims or losses and allocated claims expense including court costs, fees and expenses of attorneys, independent investigators, experts and witnesses and all other costs, charges or expense properly chargeable to a qualified claim or loss. Funds shall be provided at the inception of the ASO Member's self-insurance program and promptly from time to time under the following formula based on estimates furnished by the Fund of the anticipated or actual level and volume of qualified claims or losses and allocated expenses: The ASO Pool Member shall deposit into the account initially an amount equal to one-fourth (¼) of the estimated volume of qualified claims or losses and allocated claim expenses during the first twelve (12) months of its self-insurance program and each month thereafter, or sooner if necessary, shall deposit into the account an amount sufficient to restore, maintain or increase the account balance to an amount equal to one-fourth (¼) of the estimated volume of qualified claims or losses and allocated claim expenses during the next twelve (12) months.

The Fund shall account to the ASO Pool Member monthly for all expenditures from the claims account. If at any time the claims account balance drops to below fifty percent (50%) of the balance currently called for under the above formula, the ASO Pool Member shall promptly deposit additional funds to restore the full balance. During any period of time that the claims account balance is fifty percent (50%) or less of that currently called from under the formula, only allocated claim expenses shall be paid out and the ASO Pool Member shall directly pay qualified claims or losses out of other funds until it deposits into the claims account the amount necessary to restore the account to its full balance. In the event payment of a qualified claim or loss would reduce the claims account balance to less than fifty percent (50%) of that called for under the formula, the ASO Pool Member shall be promptly notified and shall either pay the qualified claim or loss directly out of other funds or deposit into the claims account sufficient funds for its payment.

It is expressly understood that the Fund shall not be required to advance its own funds or those of the Joint Self-Insurance Fund to pay claims or losses or allocated expenses hereunder, or continue to perform any services hereunder if the ASO Pool Member fails to provide necessary and adequate funds as herein set forth.

It shall be the sole responsibility of the ASO Pool Member to establish and maintain adequate reserves in addition to the limited funds in the claims account for payment of all claims, including catastrophic claims. The Fund will provide reserve recommendations and estimates of liability exposures, but both parties realize that judges and juries have wide discretion in assessing damage awards and the award in any particular case may be greatly in excess of or greatly less than a recommended reserve.

Either party to this agreement may at any time terminate it upon sixty (60) days written notice for any reason as to either all pending and future claims, or alternatively, only as to future claims. In the event cancellation is with respect to both pending and future claims, the Fund will no longer be obligated to perform the services outlined in this Agreement and shall promptly and in an orderly manner forward to the ASO Pool Member or its designee all pending claim files. In the event termination is only as to future claims, this Agreement shall continue in full force and effect with respect to all pending claims and claims occurring but not reported prior to cancellation until concluded. In either event, the ASO Pool Member shall be entitled, if it so requests and at its own expense, to have the closed claim filed retrieved from storage and delivered to it. In the event the ASO Pool Member does not request closed files in the notice of cancellation, however, they will be retained or destroyed at the Fund's option and the ASO Pool Member shall have no recourse against the Fund for failure to retain them.

Member Fax Number_____

Fund Contact Information (if different from member)
Address_____
Telephone_____ Fax_____
E-mail_____

TO BE COMPLETED BY MEMBER:

EMPLOYER MEMBERS' FUND CONTACT (See Section 10):

Member Name City of Abilene

Name of Contact Mark Hoover Title Assistant Director Administrative Services

Mailing Address P.O. Box 60, Abilene, TX 79604

Street Address (if different from above) 555 Walnut

City Abilene Zip 79601 Phone 325-676-6482

Mark Z. Hoover
SIGNATURE OF AUTHORIZED MEMBER OFFICIAL

Assistant Director Administrative Services 10-05-2012
Title Date

Member's Federal Tax I.D. Number 75-6000440
This Information is MANDATORY

TO BE COMPLETED BY FUND: (OFFICE USE ONLY)

Effective Date of This Agreement 10-1-12

Member Name Abilene

Contract Number 1407

SIGNATURE OF AUTHORIZED FUND OFFICIAL

Executive Director 10/11/12
Title Date

Revised 10/90

Liability Coverages through Texas Municipal League Intergovernmental Risk Pool (TMLIRP)

Liability Coverages through TMLIRP

- Council resolution adopted on October 25, 1979
  - Established a self-insurance program
  - Funded $500,000 for the self-insurance fund

- City is self-insured for most exposures -
    - General liability
    - Law enforcement liability
    - Automobile liability
    - Errors & omissions liability
    - Cyber liability

- City litigates and settles its self-insured liability claims

Liability Coverages through TMLIRP

- City already has a few liability insurance coverages -
  - Medical professional liability for Public Health and COACH
  - Events liability for the Convention Center
  - Aviation liability for the Airport
- City desires to stay self-insured for Automobile liability
- Survey of sister cities indicated only 3 of the 9 responding are self-insured
- If covered by TMLIRP, cases would be litigated by outside attorneys

Liability Coverages through TMLIRP

Liability Settlements > $50,000				
Five (5) Year Period				
(includes attorney's fees and other costs)				
Liability Category	**Date Filed**	**Dept**	**Description**	**Total Paid**
Errors & Omissions	06/17/2014	Public Works	Employment, wrongful termination settlement	$764,554.00
Errors & Omissions	06/17/2014	Public Works	City's own attorney's fees and other costs	$458,417.53
Errors & Omissions	03/23/2018	Police	Civil rights, race discrimination settlement	$99,000.00
Errors & Omissions	07/03/2018	Police	Civil rights, sex discrimination settlement	$125,000.00
Total Errors & Omissions				**$1,446,971.53**
Law Enforcement	10/01/2017	Police	Civil rights, police excessive force settlement	$99,000.00
Law Enforcement	10/01/2017	Police	Other costs	$7,191.69
Total Law Enforcement				**$106,191.69**

Liability Coverages through TMLIRP

- **Costs –**

Coverage Type	Limits	Deductible	FY20 June 1 - Oct 1	FY21 Oct 1 - Oct 1
General Liability	$2,000,000 each occurrence $4,000,000 aggregate	$50,000 each occurrence	$ 16,040.00	$ 48,122.00
Law enforcement liability	$2,000,000 each occurrence $4,000,000 aggregate	$50,000 each occurrence	20,264.00	60,797.00
Errors & omissions liability	$2,000,000 each occurrence $4,000,000 aggregate	$50,000 each occurrence	29,804.00	89,412.00
Cyber liability (highest tier)	Various as per proposal	Various as per proposal	16,263.75	21,685.00
Total cost			$ 82,371.75	$ 220,016.00

Liability Coverages through TMLIRP

- **City Recommendation –**

  Accept the proposals received from TMLIRP for the additional liability coverages as quoted.

Questions?

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Robert Hanna, City Manager**

FROM: **Cande Flores, Fire Chief**

SUBJECT: **11. Ordinance (Final Reading): Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Amending Budget Ordinance No. 050-2019 to Include Updated Staffing Levels for the Fire Department *(Cande Flores)***

GENERAL INFORMATION

The FY 2020 budget ordinance, in regards to Fire Department staffing, currently designates (13) Fire Captain positions and (32) Fire Lieutenant positions.

The Fire Chief desires to implement a restructuring strategy that will reduce the Captain positions by one (1), and increase the Lieutenant positions by one (1). This will result in an overall staffing of (12) Fire Captains and (33) Fire Lieutenants.

SPECIAL CONSIDERATIONS

There is an active Fire Lieutenant promotional list in place. An upcoming retirement will create an opening in the fire officer ranks which will be filled utilizing the current Fire Lieutenant promotional list.

FUNDING/FISCAL IMPACT

Estimated cost savings of approximately $11,000 will be generated when considering the salary savings between an entry level Fire Captain and an entry level Fire Lieutenant.

STAFF RECOMMENDATION

Staff recommends amending the budget ordinance to designate 12 Fire Captain positions and 33 Fire Lieutenant positions.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Amended Budget Enacting Ordinance
2. Amended Budget Attachment A clean
3. Amended Budget Attachment A redline
4. 050-2019 - Approving and Adopting Budget for Fiscal Year 19-20 for the City of Abilene Appropriating Funds
5. Budget Ordinance Amendment Presentation

ORDINANCE NO._____

AN ORDINANCE APPROVING A REVISION TO SECTION 6 OF ORDINANCE NUMBER 050-2019; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; CALLING A PUBLIC HEARING.

WHEREAS, City Council has adopted Ordinance Number 050-2019; and,

WHEREAS, said Ordinance established the number, classification, and designation of each position, as provided in the Texas Local Government Code Ann., Chapter 143, Municipal Civil Service, for the Police and Fire Departments; and,

WHEREAS, Section 6 of said Ordinance allows amendment by the City Council during the fiscal year the Ordinance is in effect; and,

WHEREAS, the Chief of the Abilene Fire Department has requested changes to the classifications of position within the ranks of the Abilene Fire Department; and,

WHEREAS, the overall number of approved positions will remain the same.

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

PART 1: That Ordinance No. 050-2019 is amended as set forth in Attachment A.

PART 2: That any ordinance, resolution, policy, or any provision or section of the code of the City of Abilene, Texas, as amended, in conflict herewith, be hereby repealed to the extent of any conflict.

PASSED ON FIRST READING this 28th day of May, 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 7th day of June, 2020, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 11th day of June, 2020, to permit the public to be heard.

PASSED ON SECOND AND FINAL READING this 11th day of June, 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

ATTACHMENT A

PART 6 OF ORDINANCE NO. 050-2019 IS HEREBY AMENDED TO READ AS FOLLOWS:

PART 6: That the number, classification, and designation of each position, as provided in Texas Local Government Code Ann., Chapter 143 (Vernon 1988), Municipal Civil Service, for the Police and Fire Departments, as set out below, are hereby created, established, and adopted as the official plan for the classified services of the Police and Fire Departments of the City of Abilene for the fiscal year October 1, 2019, through September 30, 2020, or as may be amended by City Council. Any position in the classified service of the Police and Fire Departments of the City of Abilene not below listed, is hereby abolished:

Police Department	
Assistant Police Chief	2
Police Lieutenant	11
Police Sergeant	24
Police Officers	179
	216

Fire Department	
Deputy Fire Chief	2
Battalion Chief	5
Fire Captain	12
Fire Lieutenant	33
Fire Fighter	146
	198

ATTACHMENT A

PART 6 OF ORDINANCE NO. 050-2019 IS HEREBY AMENDED TO READ AS FOLLOWS:

PART 6: That the number, classification, and designation of each position, as provided in Texas Local Government Code Ann., Chapter 143 (Vernon 1988), Municipal Civil Service, for the Police and Fire Departments, as set out below, are hereby created, established, and adopted as the official plan for the classified services of the Police and Fire Departments of the City of Abilene for the fiscal year October 1, 2019, through September 30, 2020, or as may be amended by City Council. Any position in the classified service of the Police and Fire Departments of the City of Abilene not below listed, is hereby abolished:

Police Department	
Assistant Police Chief	2
Police Lieutenant	11
Police Sergeant	24
Police Officers	179
	216

Fire Department	
Deputy Fire Chief	2
Battalion Chief	5
Fire Captain	12~~13~~
Fire Lieutenant	33~~32~~
Fire Fighter	146
	198

ORDINANCE NO. 050-2019

AN ORDINANCE APPROVING AND ADOPTING BUDGET FOR THE FISCAL YEAR OCTOBER 1, 2019, THROUGH SEPTEMBER 30, 2020, FOR THE CITY OF ABILENE; APPROPRIATING FUNDS; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; CALLING A PUBLIC HEARING.

WHEREAS, the City Manager on July 8th, 2019, filed a proposed budget with the City Secretary for the fiscal year commencing October 1st, 2019; and,

WHEREAS, the City Council has reviewed and considered said proposed budget and made revisions of same; and,

WHEREAS, said proposed budget, as revised by the City Council, was duly set for a public hearing ordered to be called by the City Council and held on September 12th, 2019, after due notice, as required by the Charter of the City of Abilene and laws of the State of Texas; now, therefore,

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

PART 1: That the budget proposed by the City Manager for the fiscal year commencing October 1st, 2019, as revised by the City Council, be, and the same is hereby approved, adopted, and appropriated including transfers of General Fund equity to various Funds.

PART 2: That the City Manager and his authorized and designated employees, at his direction, be, and are hereby, authorized to sign or release easements, permits, licenses, and change orders; to sign interlocal agreements as authorized by state law; to sign documents authorizing the payment of funds, and to expend public funds as authorized by state law unless otherwise authorized by the City Council; to authorize disposition of City assets to appropriate entities when it serves a public purpose; to settle paving assessment, weed mowing, demolition, and other disputes based on legal questions of whether the assessments are enforceable or other extenuating factual circumstances. The City Manager is authorized to adjust compensation, within Council policy guidelines, of any City employee, including appointees, when in his discretion an adjustment needs to be made to retain qualified personnel. The intent of this section is to provide the ability to conduct daily affairs of the City, which involves numerous decisions of a routine nature and to retain qualified personnel.

PART 3: That the City Council hereby approves grants and contracts that are set out by this budget and authorizes the City Manager and his authorized and designated employees, at his discretion, to sign said federal, state, and other such grant and contract documents, including interlocal agreements, on behalf of the City. The funds for said contracts, agreements, and purchases are hereby approved and appropriated. The intent of this section is to approve and simplify the grant process and approve expenditures that are exempt from the Purchasing and Contracting Authority of Municipalities, Chapter 252 of the Local Government Code.

PART 4: That upon passage of this ordinance on first reading, the City Secretary be, and is hereby authorized and directed to have published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, a notice that a public hearing will be held in the Council Chambers of the City Hall in Abilene, Texas, at 8:30 A.M., on the 12th of September, 2019, to permit the public to be heard prior to consideration of this ordinance for second and final reading, said publication to be made on the 29th of August 2019, being more than twenty-four (24) hours prior to the time designated for such public hearing in accordance with Section 18 of the City Charter. 102.0065(b) Local Government Code, Special Notice by publication for Budget – except that if another law requires the governing body to give notice, by publication, of a hearing on a budget this section does not apply.

PART 5: That any ordinance, resolution, policy or any provision or section of the code of the City of Abilene, Texas, as amended, in conflict herewith, be, and the same is hereby repealed to the extent of any conflict. It is specifically provided that Resolution 40-1997 concerning liability claims shall remain in full force and effect.

PART 6: That the number, classification, and designation of each position, as provided in Texas Local Government Code Ann., Chapter 143 (Vernon 1988), Municipal Civil Service, for the Police and Fire Departments, as set out below, are hereby created, established, and adopted as the official plan for the classified service of the Police and Fire Departments of the City of Abilene for the fiscal year October 1, 2019, through September 30, 2020, or as may be amended by City Council. Any position in the classified service of the Police and Fire Departments of the City of Abilene not below listed, is hereby abolished:

Police Department		Fire Department	
Assistant Police Chief	2	Deputy Fire Chief	2
Police Lieutenant	11	Battalion Chief	5
Police Sergeant	24	Fire Captain	13
Police Officers	179	Fire Lieutenant	32
	216	Fire Fighter	146
			198

PASSED ON FIRST READING on the 22nd day of July, A.D. 2019.

After passage on first reading, a notice of the time and place said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene. The same being more than twenty-four (24) hours prior to the time designated for said hearing. After such opportunity for the public to be heard, said ordinance was passed on its second and final reading.

PASSED ON SECOND AND FINAL READING AT A PUBLIC HEARING on the 12th day of September, A.D. 2019.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

Ordinance 50-2019 Amendment

ABILENE FIRE DEPARTMENT

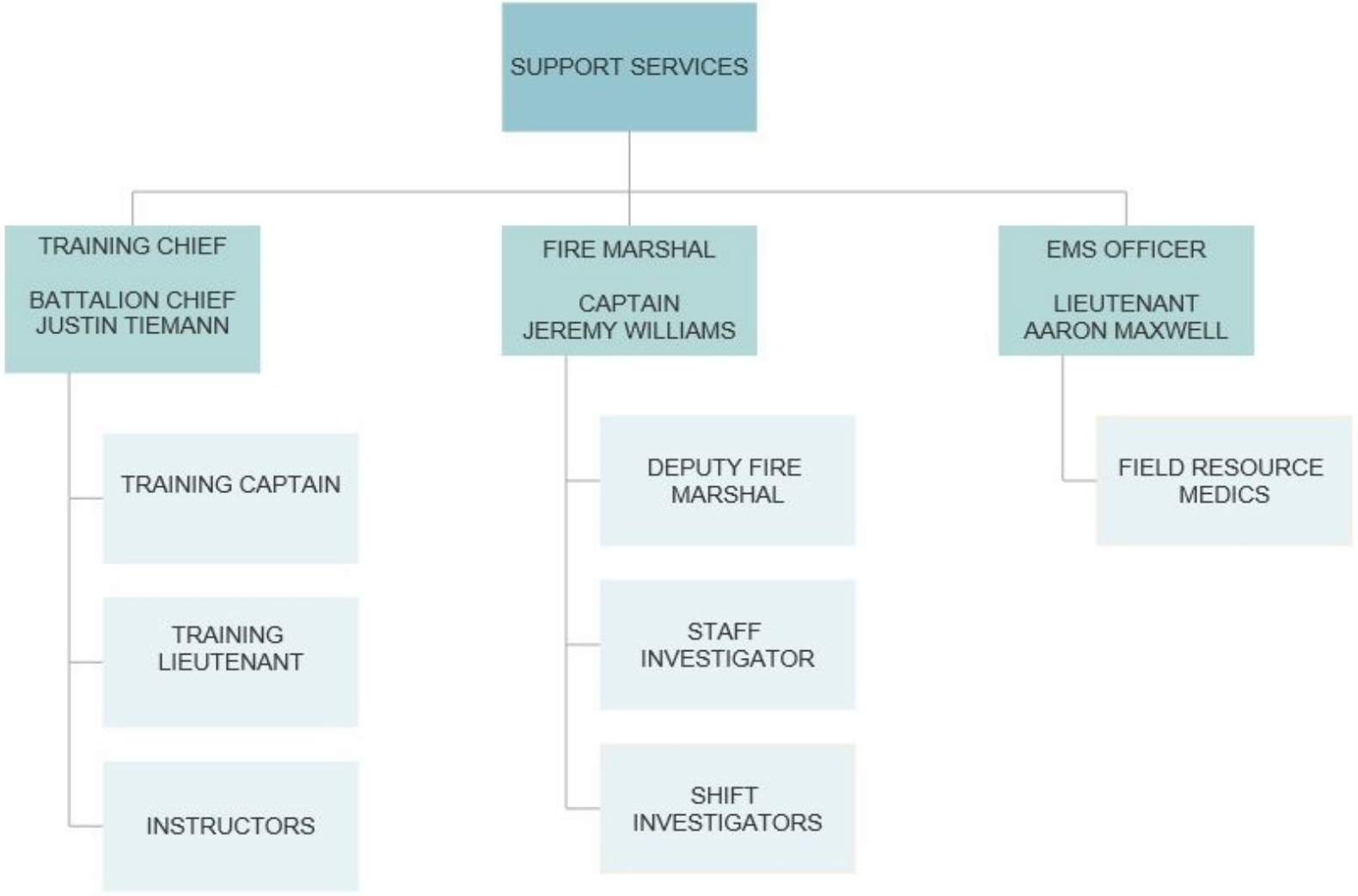
ORGANIZATIONAL CHANGES

- Recent retirement of Battalion Chief Derek Briggs has allowed AFD the opportunity to adjust the organizational structure

- In order to accomplish this, AFD is requesting an amendment to the staffing ordinance as it pertains to Fire Officers

- The Request is to:
  - Reduce the current number of Fire Captain positions by (1)
  - Increase the current number of Fire Lieutenant positions by (1)

AFD SUPPORT SERVICES 6-1-2020



ORDINANCE 050-2019 PART 6

CURRENT	
Deputy Fire Chief	2
Battalion Chief	5
Fire Captain	13
Fire Lieutenant	32
Fire Fighter	146
Total Personnel	198

AMENDED	
Deputy Fire Chief	2
Battalion Chief	5
Fire Captain	12
Fire Lieutenant	33
Fire Fighter	146
Total Personnel	198

IMPACT

- The additional Lieutenant position will create an opening that will be filled through an active Lieutenant promotional list

- Funding Impact
  - Captain I - $86,055 Annual Salary
  - Lieutenant I - $75,030 Annual Salary
  - Savings of over $11,000 Annually

Questions?

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Robert Hanna, City Manager**

FROM: **Cande Flores, Fire Chief**

SUBJECT: **12. Ordinance (Final Reading): Receive a Report, Hold a Discussion and Public Hearing, and Take Action on An Ordinance, in Accordance with Texas Local Government Code 143, Section 143.042(b) Authorizing Assignment Pay for Specialized Functions Within the Abilene Fire Department *(Cande Flores)***

GENERAL INFORMATION

The Deputy Fire Marshal is positioned directly beneath the Fire Marshal on the AFD Organizational Chart. This position is responsible for all fire prevention activities but specializes in overseeing site plans and inspections. The Deputy Fire Marshal is required to maintain the same training, certifications, and knowledge base as the Fire Marshal since he/she will be responsible for the Fire Prevention Division in the absence of the Fire Marshal.

SPECIAL CONSIDERATIONS

The current Deputy Fire Marshal is being appointed to the Fire Marshal position, creating a vacancy in the Deputy Fire Marshal position.

The Deputy Fire Marshal position has historically been staffed by a Fire Captain, however, there is no requirement that the position be filled by a Fire Captain; any firefighter can fill the position if he/she is qualified to perform the duties of the position. Regardless of the rank of the firefighter who fills the role, the responsibilities of the position will remain the same.

FUNDING/FISCAL IMPACT

The firefighter assigned to the Deputy Fire Marshal position will receive $200 per month for Deputy Fire Marshal Assignment Pay.

There is one Deputy Fire Marshal position in Fire Prevention. The fiscal impact for FY20 would be approximately $600.00. Thereafter, the estimated annual impact would be $2,400.00 per year.

The special duty pay of $200 per month will not be paid if the firefighter assigned as the Deputy Fire Marshal holds a rank higher than lieutenant.

STAFF RECOMMENDATION

Staff recommends approval of the Resolution to authorize Deputy Fire Marshal Pay.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Ordinance - Deputy Fire Marshal, Assignment Pay REVISED
2. Deputy FM Assignment Pay Presentation

ORDINANCE NO. _____

AN ORDINANCE ADDING CHAPTER 10, "FIRE PROTECTION AND PREVENTION," ARTICLE II, "FIRE MARSHAL," SECTION 10-22, "DEPUTY FIRE MARSHAL, SPECIAL ASSIGNMENT PAY," OF THE ABILENE MUNICIPAL CODE, BY ADDING THE SECTION AS SET OUT BELOW; AND PROVIDING A SEVERABILITY CLAUSE

WHEREAS, pursuant to Local Government Code Section 143.042, the City Council may authorize assignment pay for fire fighters or police who perform specialized functions within the fire department.

WHEREAS, the assignment pay is in an amount that is payable under conditions set by ordinance and is in addition to the regular pay received by members of the fire department.

WHEREAS, a fire department firefighter assigned as the Deputy Fire Marshal will receive specialized training and certifications in the realm of arson investigations, facility site plan interpretations, and federal, state, and local laws pertaining to building and fire codes.

WHEREAS, the Fire Chief of the Abilene Fire Department is requesting special assignment pay in the form of two hundred dollars ($200.00) per month for the fire department firefighter assigned as the Deputy Fire Marshal.

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

Part 1: That Chapter 10, Article II, Section 10-22 of the Abilene Municipal Code be added as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

Part 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force or effect.

PASSED ON FIRST READING this 28th day of May, 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 7th day of June, 2020, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 11th day of June, 2020, to permit the public to be heard.

PASSED ON SECOND AND FINAL READING this 11th day of June, 2020.

ATTEST:

_____
Shawna Atkinson
City Secretary

_____
Anthony Williams
Mayor

APPROVED:

_____
Stanley Smith
City Attorney

EXHIBIT "A"

Sec. 10-22 Deputy Fire Marshal, Assignment Pay.

The chief of the fire department may assign a firefighter as the Deputy Fire Marshal. Special assignment pay in the amount of $200 per month shall be paid to the firefighter assigned as the Deputy Fire Marshal. The special assignment pay shall not be paid to the firefighter assigned as the Deputy Fire Marshal if the firefighter holds a rank higher than lieutenant.

Sec. 10-23. Reserved.

Deputy Fire Marshal Assignment Pay

ABILENE FIRE DEPARTMENT

CITY OF ABILENE TEXAS

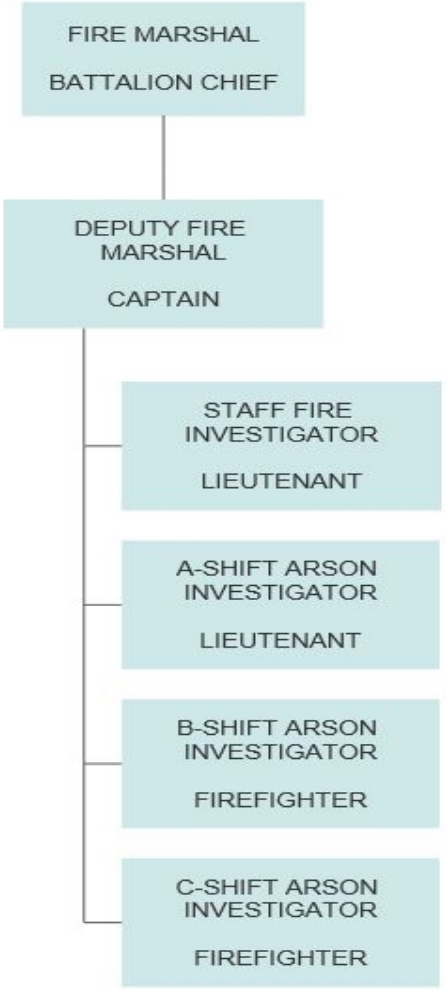
AFD ORGANIZATIONAL STRUCTURE

Recent Organizational Changes

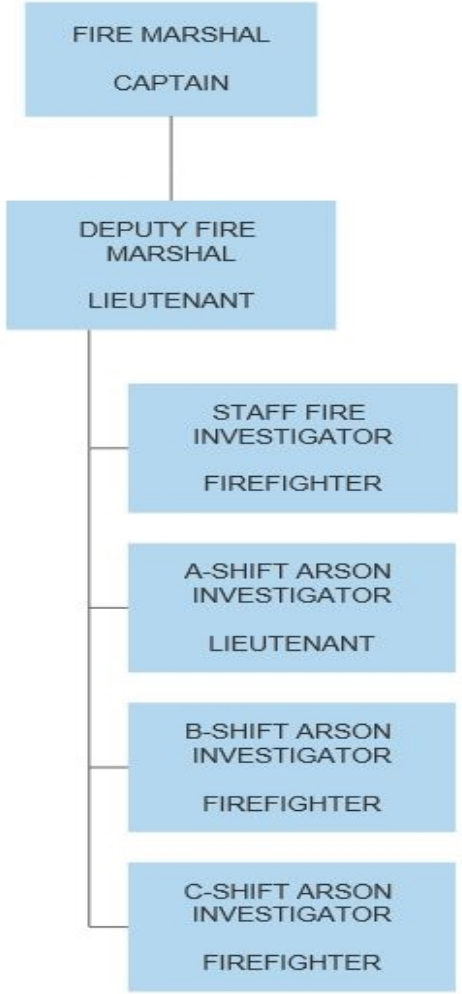
- Fire Marshal
  - Changed from a Battalion Chief to a Captain (Appointed as a Battalion Chief)
- Deputy Fire Marshal
  - Captain rank is no longer required for this position

FIRE PREVENTION STRUCTURE

Current Structure



Effective June 8, 2020



DEPUTY FIRE MARSHAL ROLE

- Certified Fire Inspector
- Certified Arson Investigator (Certified Peace Officer)
- Certified Plans Examiner
- Knowledge of National and Local Fire Code, and Building Codes
- Responsible for:
  - Building Construction Plans Review
  - Fire Protection and Fire Detection Plans Review
  - Vent Hood Suppression Systems Plans Review
  - Acceptance Testing of Fire Protection, Fire Detection, and Vent Hood Suppression Systems
- Serves as a Liaison between the AFD and Local Builders and Contractors
- Fills the Fire Marshal role during his absence

ASSIGNMENT PAY

- In accordance with Texas Local Government Code 143, Section 143.042 (b), Assignment Pay is authorized for personnel assigned to Specialized Functions within the Fire Department.

- Request is to Assignment Pay for the Deputy Fire Marshal
  - $200 Per Month
  - Approximately $2,400 Annually

- Funding Impact
  - Changing the rank of the Deputy Fire Marshal from a Captain to a Lieutenant saves approximately $11,000 annually.
  - Assignment pay still results in approximately $8,600 in savings annually

Questions?

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Robert Hanna, City Manager**

FROM: **Mike Warrix, Director**

SUBJECT: **13. Ordinance (Final Reading) Z-2020-01: (remove from table) Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Prairie Song LLC, agent Nick Coates, to amend the terms of Planned Development (PD) District Number 144 by expanding its original 14.166 acres to include 0.5 acre of additional now-vacant land at 2660 Garfield Avenue, by changing allowed uses to include all those permissible within Residential Medium-Density (MD) zoning districts and by requiring all access to future development of this property to be from Garfield Avenue; Legal description being 12.004 acres out of T&P Railway Co. Section 84 (and located at least 140 feet north of Garfield Avenue) as well as Lots 4-5 in Block 10 and all of Block 11 in the Hillcrest Addition (on north side of 2600 block of Garfield Avenue) *(Mike Warrix)***

GENERAL INFORMATION

The applicant has appealed the Planning & Zoning Commission's denial of the proposed amendments to Planned Development (PD) 144. The proposed amendments would amend the terms of PD 144 by: (1) expanding its original 14.166 acres to include 0.5 acre of additional now-vacant land at 2660 Garfield Avenue; (2) changing allowed uses to include all those permissible within Residential Medium-Density (MD) zoning district; and (3) requiring all access to future development of this property to be from Garfield Avenue. Legal description for this area being 12.004 acres out of T&P Railway Co. Section 84 (and located at least 140 feet north of Garfield Avenue) as well as Lots 4-5 in Block 10 and all of Block 11 in the Hillcrest Addition (on north side of 2600 block of Garfield Avenue)

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Approval

BOARD OR COMMISSION RECOMMENDATION

At its April 7, 2020 regular meeting, the Planning and Zoning Commission voted 2 in favor and 4 against approval of the proposed amendments to the PDD. The Applicant timely appealed the denial to the City Council.

ATTACHMENTS:

1. Z-2020-01 recommended PD ordinance
2. Current Ordinance for PDD-144
3. 55-2014_Abandonment_Campus Court & Garfield Rd
4. Nick Coates Appeal Letter
5. Z-2020-01 Council Staff Report
6. Z-2020-01 Council Presentation

ORDINANCE NO. _____

Comment [RGG1]: Page: 1
To be filled in by the City Secretary's office.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING THE "LAND DEVELOPMENT CODE" OF THE ABILENE CITY CODE AND CONCERNING PD-144, A PLANNED DEVELOPMENT DISTRICT, AS WELL AS ORDINANCE NUMBER 62-2014; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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

PART I: That the Land Development Code of the City of Abilene is hereby amended by repealing Ordinance Number 62-2014 concerning PD 144 (a Planned Development District) and replacing said Ordinance Number 62-2014 with terms and conditions set out in accompanying Exhibit "A," Exhibit "B," and Exhibit "C" concerning the same said PD 144, attached hereto and made a part of this ordinance for all purposes.

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

PASSED ON FIRST READING the 23rd day of April, 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 20th day of March, 2020, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m. on the 14th day of May, 2020, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING THIS 11th day of June, 2020.

ATTEST:

_____ _____

Shawna Atkinson
City Secretary

Anthony Williams,
Mayor

APPROVED:

_____

Stanley Smith,
City Attorney

ORDINANCE NO. _____

Exhibit "A"

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

PART 2: Development Specifications. All use and development within this Planned Development District must be undertaken in compliance with the Land Development Code of the City of Abilene, except as otherwise specifically provided herein.

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

PART 4: Zoning. That the Land Development Code of the City of Abilene is hereby further amended by changing the zoning district boundaries, as hereinafter set forth, from Residential Single-Family (RS-6), Residential Single-Family (RS-8) and Agricultural Open Space (AO) Districts, to Planned Development (PD) District Number 144.

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

PART 5: Legal Description. This Planned Development (PD) District Number 144 includes a certain 14.478 acres out of Section 84 in Block 14 of T & P Railway Company Lands and in the Hillcrest Addition, Section 4, all of which are located in the City of Abilene, Taylor County, Texas. The specific metes-and-bounds description of these 14.478 acres is attached as Exhibit "B" to this ordinance.

PART 6: Purpose. The purpose of this Planned Development District Number 144 is to facilitate medium-density residential use of the subject property, in a manner which is reasonably compatible with the single-family residential character of an adjacent neighborhood, and which discourages through traffic movement unrelated to such residential use.

PART 7: Specific Modifications: The use and development of this Planned Development District shall generally be subject to applicable requirements of the Residential Medium-Density (MD) zoning classification, subject to the following additional conditions and requirements:

A. No more than two (2) dwelling units shall be permitted on any one lot or tract of land.

B. All vehicular access to and from this property shall be available by way of Garfield Avenue.

C. Future (re)subdivision of this subject property shall generally comply with the graphic concept plan attached as Exhibit "C" to this ordinance.

D. Future subdivision or resubdivision of all or any part of this subject property shall be preceded by City Council's approval of an ordinance authorizing abandonment of all right-of-way dedicated for Campus Court north from Garfield Avenue, with such abandonment to be made materially complete by approval and recording of a subdivision plat or replat integrating such right-of-way (authorized to be abandoned) into property located adjacent directly east and/or west of such abandoned right-of-way.

ORDINANCE NO._____

Exhibit "B"

BEING a 14.478-acre tract comprised of a 12.04-acre tract out of Fractional Section 84, Block No. 14, T&P Railway Company Lands in Taylor County, Texas, conveyed to Abilene Independent School District and recorded in Volume 542, Page 132 of Deed Records, Taylor County, Texas (legal description does not form a mathematically closed figure) together with Lots 4 and 5, Block 10 and all of Block 11, Section 4, Corrected Plat of the Hillcrest Addition to the City of Abilene, Taylor County, Texas, recorded in Cabinet 2, Slides 18-A & B, Plat Records, Taylor County, Texas, conveyed to Abilene Independent School District by deed recorded in Volume 542, Page 461 of Deed Records for Taylor County, Texas, said 14.478-acre tract being more particularly described as follows:

BEGINNING at a found 3/8-inch iron rod in concrete at the northwest corner of Campus Court, on the south line of said 12.04-acre tract, for the northeast corner of the said Block 11;

THENCE South 21° 01' 41" West, along the west right-of-way for Campus Court, for a distance of 220.77 feet (called 221.8') to a found, damaged 3/8-inch iron rod at the intersection of the west right-of-way for Campus Court and the north right-of-way for Garfield Avenue, for the southeast corner of the said Block 11;

THENCE North 69° 07' 40" West, along the north right-of-way for Garfield Avenue, for a distance of 32.77 feet, to a found 3/8-inch iron rod for a point-of-curvature;

THENCE along the north right-of-way for Garfield Avenue, being along a curve to the left having a radius of 950.00 feet (called 929.3') and an arc length of 335.25 feet (called 332.7') being subtended by a chord of North 79° 14' 15" West, for a distance of 333.51 feet to a found 3/8-inch iron rod for a point-of-tangency;

THENCE North 89°20' 50" West, along the north right-of-way for Garfield Avenue, for a distance of 157.33 feet, to a found 3/8-inch iron rod, for a point-of-curvature;

THENCE along the north right-of-way for Garfield Avenue, being along a curve to the left having a radius of 530.00 feet and an arc length of 135.80 feet, being subtended by a chord bearing South 83°18' 44" West for a distance of 135.43 feet, to a set ½-inch iron rod with cap stamped "H&T" for the southwest corner of the said Lot 4, same being the southeast corner of Lot 102, A Replat of Lots 1, 2 and 3, Section 4, Hillcrest Addition to the City of Abilene, Taylor County, Texas and recorded in Cabinet 2, Slide 289-D, Plat Records, Taylor County, Texas;

THENCE North 11° 58' 00" West for a distance of 138.66 feet (called 140') to a set ½-inch iron rod with cap stamped "H&T" on the south line of a 20' wide alley, for the northwest corner of the said Lot 4 and from where a found 3/8-inch iron rod bears 1.71 feet South 74° 55' 26" West;

THENCE South 89° 16' 40" East, along the south line of a 20' wide alley, for a distance of 159.14 feet (called 160.68') to a set ½-inch iron rod with cap stamped "H&T" at the southeast corner of a 20' wide alley, for the northeast corner of the said Lot 5;

Exhibit “B” Continued

THENCE North 00° 13’ 20” East for a distance of 20.00 feet to a set ½-inch iron rod with cap stamped “H&T” at the northeast corner of a 20’ wide alley and on the south line of said 12.04-acre tract, for the northwest corner of the said Block 11;

THENCE North 89° 16’ 40” West for a distance of 166.55 feet to a found 3/8-inch iron rod in concrete for the southwest corner of said 12.04-acre tract, same being the southeast corner of a 3.25-acre tract conveyed to the First Baptist Church of Abilene, Texas and recorded in Volume 604, Page 569, Deed Records for Taylor County, Texas;

THENCE North 23°18’ 16” East for a distance of 92.02 feet (called 92.5’) to a found 3/8-inch iron rod in concrete, for an angle point in the west line of said 12.04-acre tract;

THENCE North 24° 20’ 44” East for a distance of 883.01 feet to a found 3/8-inch iron rod in concrete for the northwest corner of said 12.04-acre tract, same being an angle point in the south line of a 12.12-acre tract conveyed to Southwest Housing Providers, LLC and recorded in Volume 2893, Page 644, Official Public Records of Real Property in Taylor County, Texas;

THENCE South 51° 51’ 16” East for a distance of 725.00 feet (called 725.3’) to a found ½-inch iron rod on the west line of a 30’ wide right-of-way dedicated by The Grove Addition, Abilene, Taylor County, Texas and recorded in Cabinet 2, Slide 345-B, Plat Records, Taylor County, Texas, for the northeast corner of said 12.04-acre tract;

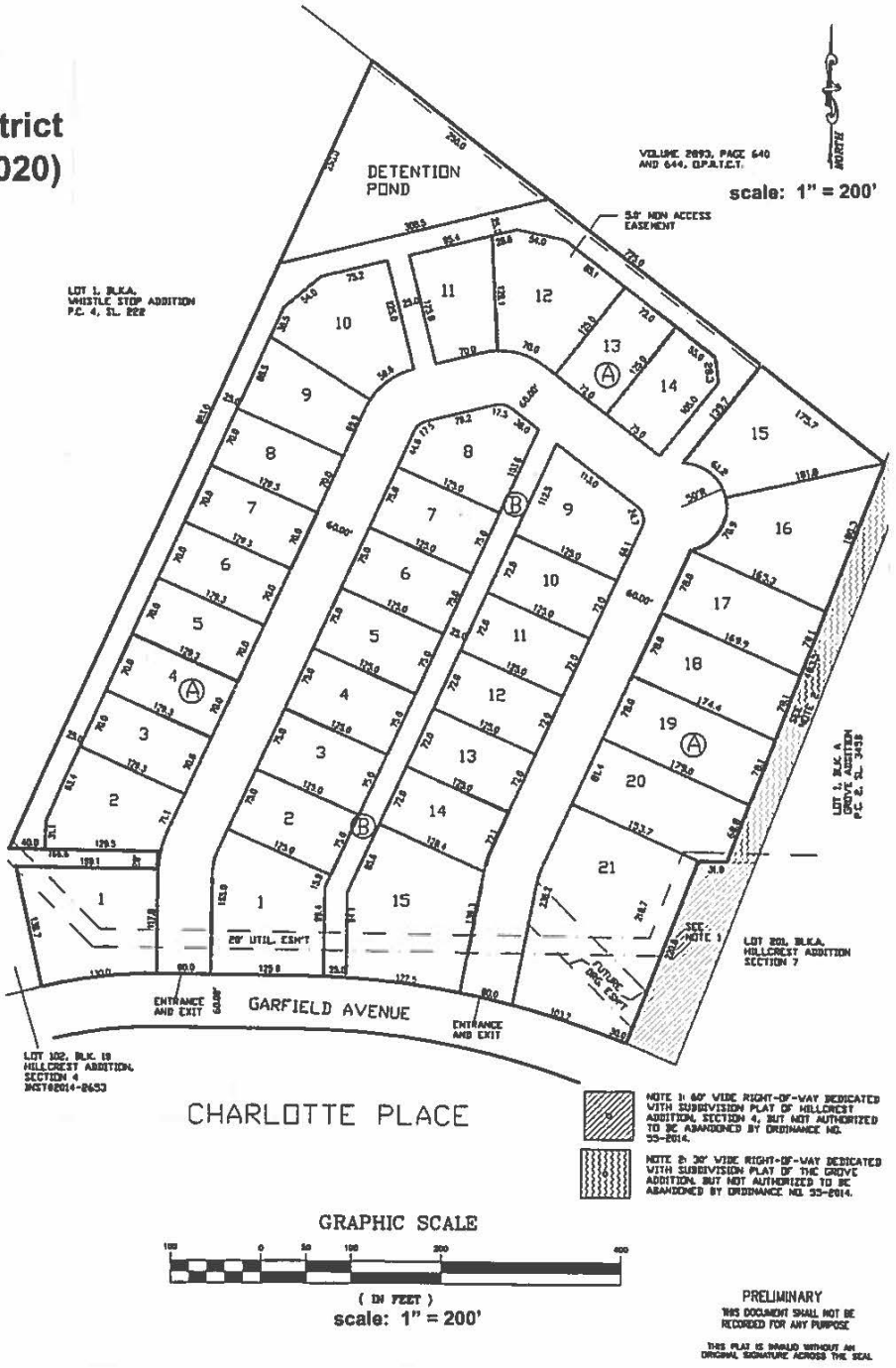
THENCE South 21° 00’ 00” West (being the Reference Bearing for this description) along the west line of the said 30’ wide right-of-way for a distance of 483.48 feet to a found ½-inch iron rod on the north end of Campus Court, for the southeast corner of said 12.04-acre tract;

THENCE North 89° 04’ 03” West for a distance of 31.94 feet to the Point of Beginning and containing 14.478 acres or 630,642 square feet of land.

ORDINANCE NO._____

Exhibit "C"

graphic concept plan for Planned Development District Number 144 (amended 2020)



ORDINANCE NO. 62-2014

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "LAND DEVELOPMENT CODE," OF THE ABILENE MUNICIPAL CODE, CONCERNING PD-144 A PLANNED DEVELOPMENT; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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

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

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

PASSED ON FIRST READING this 25th day of September A.D. 2014.

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 16th day of May, 2014, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 p.m., on the 14th day of August, 2014, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING THIS 9th day of October, A.D. 2014.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

ORDINANCE NO. 62-2014

Exhibit "A"

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

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

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

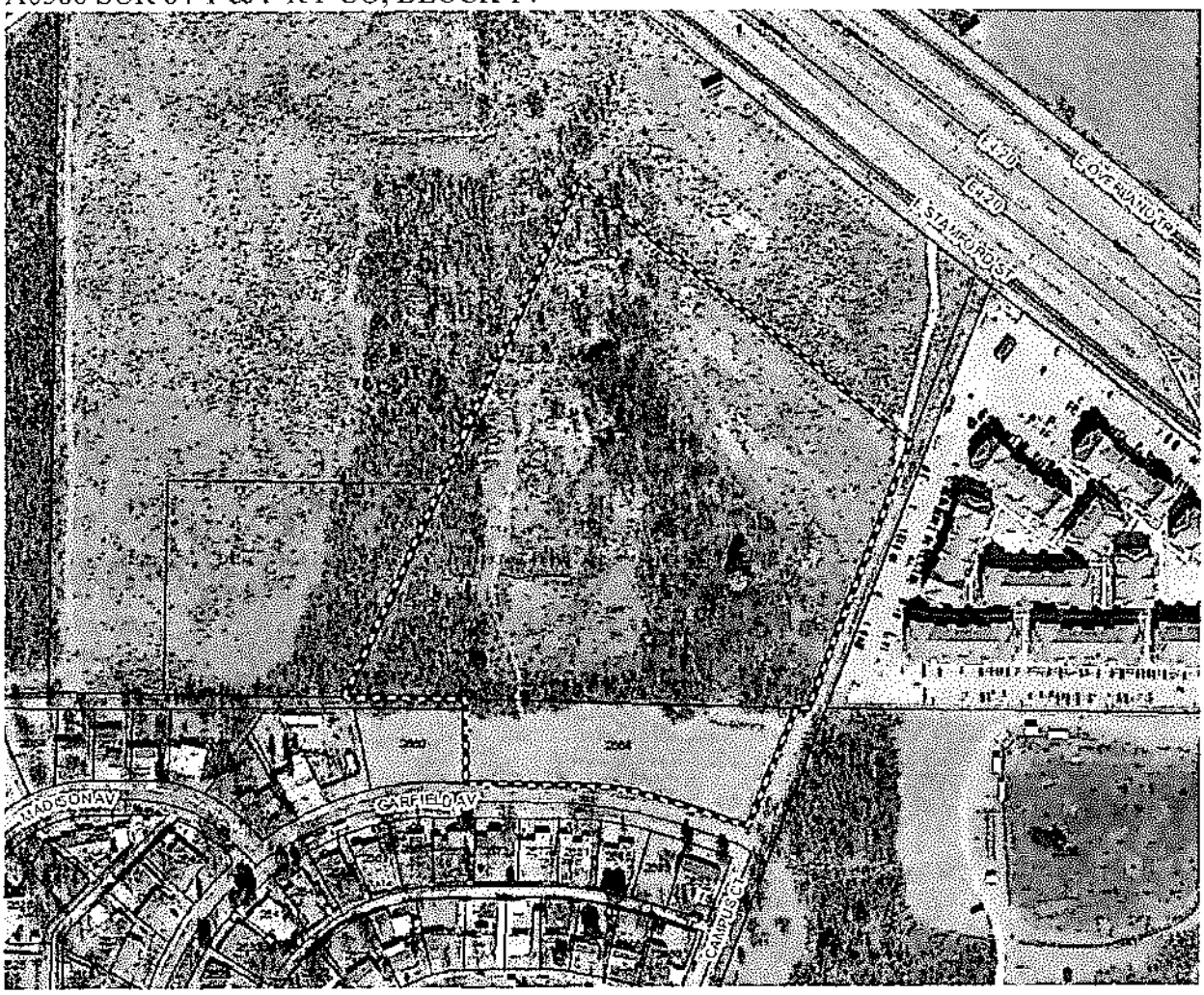
PART 4: Zoning. That Chapter 23, Abilene Municipal Code, part known as the Land Development Code of the City of Abilene, is hereby further amended by changing the zoning district boundaries, as hereinafter set forth: From AO (Agricultural Open Space) & RS-6 (Single-Family Residential) to PD (Planned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

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

ORDINANCE NO. 62-2014
EXHIBIT "A"
PAGE 2

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

HILLCREST ADDN SEC 4, BLOCK 11
A0580 SUR 84 T & P RY CO, BLOCK 14



Location:

2668 Garfield Ave and the approximately 12.04 acres to the north

PART 6: Purpose. The purpose of the Planned Development (PD) request is to allow for a multi-family residential development which generally is not allowed under present zoning and development procedures.

PART 7: Specific Modifications. This Planned Development shall be subject to the requirements of the RS-6 (Single-Family Residential) zoning district, except as modified below:

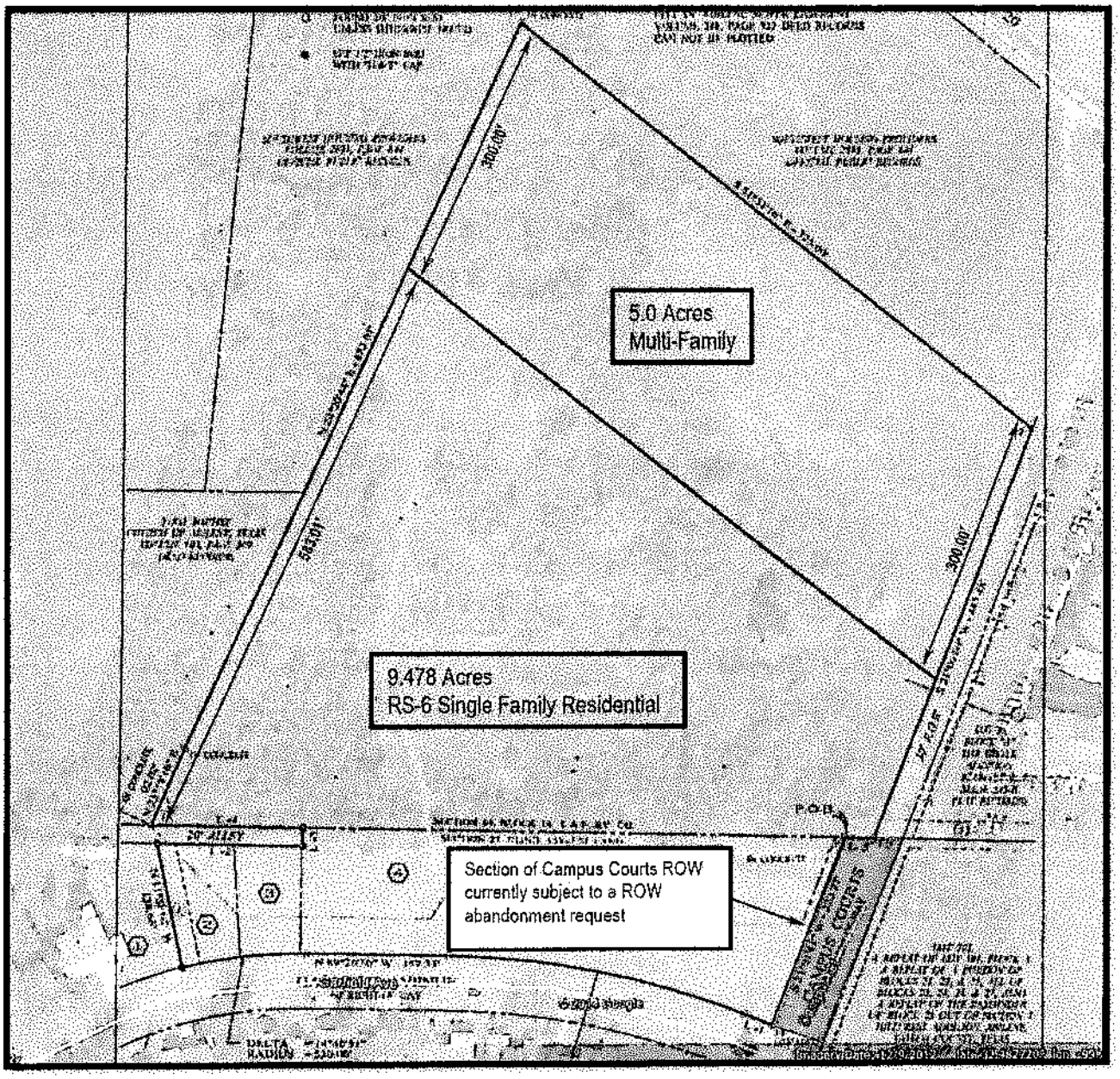
1) **ADDITIONAL PERMITTED USE:** An Independent Living Facility of 140 rooms and 12 staff members shall be permitted on the north approximately 5.0 acres.

2) **DEVELOPMENT REGULATIONS:**
   a) If developed as an Independent Living Facility, the MF (Multi-Family Residential) district standards shall apply.

   b) No street connection shall be allowed between the northern 5.0 acres and the remaining 9 acres with the exception of 1 emergency access point. Barriers shall be provided in the form of berms, landscaping, walls, or similar.

   c) No other street stubs or connections shall be allowed to the property to the west.

-END-



ZONING EXHIBIT

ORDINANCE NO. 55-2014

AN ORDINANCE PROVIDING FOR THE ABANDONMENT OF A PORTION OF PUBLIC RIGHT OF WAY; PROVIDING FOR THE 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 a Public Right of Way, as described on Exhibit "A," attached hereto and made a 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 public is concerned, subject to conditions as stated in Exhibit A.

PART 2: That said portion of a Public Right of Way is not needed for public purposes and it is in the public interest of the City of Abilene to abandon said described portion of a 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 tracts of land 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 this 24th day of July, A.D. 2014.

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 20th day of June, 2014, the same being more than twenty-four (24) hours prior to the time designated for said hearing. After such opportunity for the public to be heard, said ordinance was passed on second and final reading.

PASSED ON FINAL READING THIS 14th day of August, A.D. 2014.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

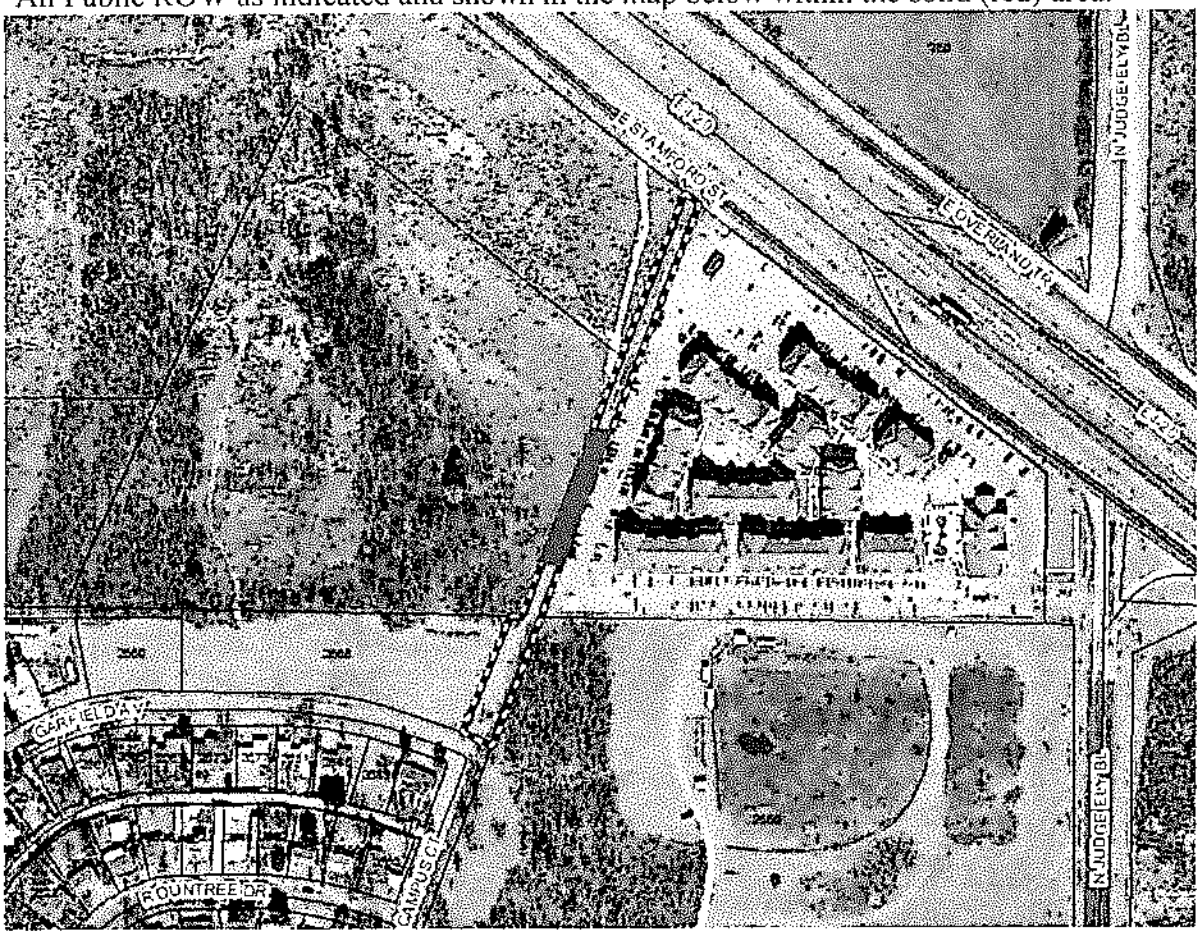
CITY ATTORNEY

ORDINANCE NO. 55-2014

EXHIBIT "A"

The City of Abilene hereby abandons: a portion of Campus Court from a line 450 feet south of the frontage road right-of-way (ROW) southward to a line 300 feet north of the ROW for Garfield Ave.

All Public ROW as indicated and shown in the map below within the solid (red) area:



With the following conditions:

1. Drainage & Utility Easements shall be required within the abandoned ROW.
2. The property must be replatted within 12 months. The replat must not create any non-conforming lots.

-END-

MEMORANDUM

TO: Brad Stone, City of Abilene Planning and Zoning

FROM: Nick Coates N.C.

DATE: 4/9/2020

SUBJECT: Appeal Request

I am officially appealing the 4/7/2020 Planning and Zoning Commission decision regarding PDD 144, Rezoning Application Number Z-2020-01 to the Abilene City Council.

Thank you.

ZONING CASE Z-2020-01
STAFF REPORT

REQUEST: Appeal the Planning and Zoning Commission denial to amend existing Planned Development District Number 144 (PD 144).

APPLICANT:
Owner: Prairie Song, LLC
Agent: Nick Coates

HEARING DATES:
P & Z Commission: April 7, 2020
City Council 1st Hearing: April 23, 2020
City Council 2nd Hearing: May 14, 2020

LOCATION:
14+ acres of vacant land bordering 2600 block (north side) of Garfield Avenue, approximately 1/2 mile north from Ambler Avenue

Legal description: Lots 4-5 in Block 10 and all of Block 11 in the Hillcrest Addition, Section 4, as well as an additional 12.04 acres out of Section 84 in Block 14 of T&P Railway Company Lands (and located at least 140 feet north from Garfield Avenue).

BACKGROUND:
According to Abilene's Land Development Code, a Planned Development (PD) District is a custom-made zoning classification tailored to meet the unique demands of a particular proposed development set within its specific environment.

Planned Development District 114 (PD 144) was approved in 2014. The terms and conditions of this Planned Development District may be summarized as follows:

- Use of the northern 5 acres of this property is presently limited to "an independent living facility with no more than 140 rooms and 12 staff members;"
- Use of the southern 9+ acres of this property (closest to Garfield Avenue) is presently limited to conventional single-family residences; and
- Any street connection between the northern 5 acres and the southern 9+ acres is presently prohibited, except for a single emergency vehicle access.

No such development has materialized since 2014, and all 14+ acres of PD 144 remain vacant.

During 2019, this property's owner proposed eliminating PD 144 altogether, replacing it with Residential Multi-Family (MF) zoning on the northern 12+ acres and RS-6 zoning on the southernmost 2+ acres. On July 2, 2019, Abilene's Planning & Zoning Commission recommended denying this requested rezoning. The proponent appealed that decision to City Council, but soon withdrew his appeal. That proposed rezoning was never introduced to City Council, during 2019.

PROPOSAL AND REQUESTED ACTION:
The owner of this property now seeks to amend PD 144, in the following ways:

- Include approximately 0.5 acre of additional land at the southwest corner of the original 14.166 acres embraced within PD 144, specifically Lots 4-5 in Block 10 of the Hillcrest Addition;

- Remove all existing land use limitations of PD 144, replacing them with a provision allowing the Residential Medium-Density (MD) zoning classification to generally govern the use and development of all 14.478 acres embraced within an expanded PD 144; and

- Require all access for such future development to be from Garfield Avenue.

From the standpoint of residential density, the MD zoning classification occupies a "middle range" between Residential Single-Family (RS) and Residential Multi-Family (MF) zoning districts. In RS6 zoning districts, overall residential density* is limited to approximately 7 dwelling units per acre. In MF zoning districts, overall residential density is limited to 24 units per acre, on any one building site. In MD zoning districts, meanwhile, overall residential density is limited to 12 units per acre, on any one building site. Housing development in MD Districts often takes the form of 2-, 3- and 4-family residential buildings.

APPLICATION REVIEW:
According to Section 1.4.1.4 (Criteria for Approval) in the City of Abilene's Land Development Code, the Planning & Zoning Commission and City Council may consider the following factors in making a determination regarding requested zone changes:

(1) Whether the proposed zoning amendment implements the policies of the adopted Comprehensive Plan, including the land use classification of the property on the Future Land Use and Development Plan map, as amended.
The Future Land Use and Development component of Abilene's Comprehensive Plan suggests low-density residential use of this subject property. As long as the proposed development does not exceed the limit of 12 dwelling units/acre required of MD zoning, then proposed use of this subject property may justifiably be considered "low-density" and not "high-density" residential.

(2) Whether the proposed zoning amendment will be appropriate in the immediate area of this subject property.
The subject property is situated in a "transitional" area separating intensive commercial and high-density residential development on Interstate Highway 20, from single-family residences characteristic of Hillcrest neighborhood. Applying medium densities of residential development (on this subject property) can provide an effective transition in the overall intensity of use, between these two dramatically different environments. And by limiting traffic access to Garfield Avenue only, the opportunity exists to prevent the existing street network (in Hillcrest neighborhood) from being used as a shortcut between Interstate 20 and Ambler Avenue.

	Zoning	Existing Land Use
North	GC	vacant land
South	RS-6	single-family residences
East	MF	multi-family residential (apartment) bldgs.
West	PD 148	recreational vehicle park

* exclusive of streets and alleys

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

This subject property is bordered on the east by an 8-inch-wide water main and, on the west, by a 36-inch-wide sewer main. Extensions of both these mains may be made into this subject property, at private expense, to serve new residences built there.

The vacant subject property has broad exposure (650 feet) to Garfield Avenue, a fully improved subcollector street with a 36-foot width of pavement already bordered by curb-and-gutter. Traffic access to future development (of this subject property) is proposed to be from Garfield Avenue only. As a result, additional traffic flow may be expected on Garfield Avenue as well as on Campus Court, another nearby subcollector street. Such additional traffic, though, is expected to split more-or-less evenly between these two streets. Neither one of them is expected to bear an extraordinary burden of additional traffic flow.

STAFF COMMENTS:

Proposed residential use of the subject property, at medium densities of development, is expected to provide a useful transition in the overall intensity of use, between dramatically different environments located north and south of this property. An existing infrastructure of streets, water and sewer utilities is already in place, sufficient to accommodate medium densities of new residential development.

STAFF RECOMMENDATION:

City staff recommends approving requested amendments to PD 144, subject to the following additional conditions:

1. **No more than two (2) dwelling units should be permitted on any one lot or tract of land.** Residential Medium-Density (MD) zoning ordinarily allows as many as four (4) dwellings on any one lot.[†] With this subject property extending all the way south to Garfield Avenue, City staff's recommended limit of two (2) units per lot will help make future development visually and functionally more consistent with existing residences in the Hillcrest neighborhood.

2. **Future (re)subdivision of this subject property should generally comply with the accompanying graphic concept plan.** This plan shows how traffic access for proposed new residences will be to and from a U-shaped street opening solely onto Garfield Avenue.

3. **Future subdivision or resubdivision of all or any part of this subject property should be preceded by City Council's approval of an ordinance authorizing abandonment of all right-of-way dedicated for Campus Court north from Garfield Avenue, with such abandonment to be made materially complete by approval and recording of a subdivision plat or replat integrating such right-of-way (authorized to be abandoned) into property located adjacent directly east and/or west of such abandoned right-of-way.** Compliance with this condition will ensure that no inadvertent extension of Campus Court occurs. That would be contrary to City Council's express intent in their 2013 action amending Abilene's Thoroughfare Plan, specifically to remove "collector street" status from Campus Court and any future extension north to Interstate Highway 20.[‡]

These recommended conditions are expressed in an accompanying draft ordinance enacting terms and conditions of proposed amendments to PD 144.

[†] so long as the overall density of development does not exceed 12 units/acre on any one lot

[‡] See Ordinance Number 45-2013 approved on September 12 of 2013.

PLANNING AND ZONING COMMISSION RECOMMENDATION:

The Planning & Zoning Commission recommended approval but failed by a vote of four (4) to (2), resulting in a denial, during a meeting on Tuesday, April 7, 2020.

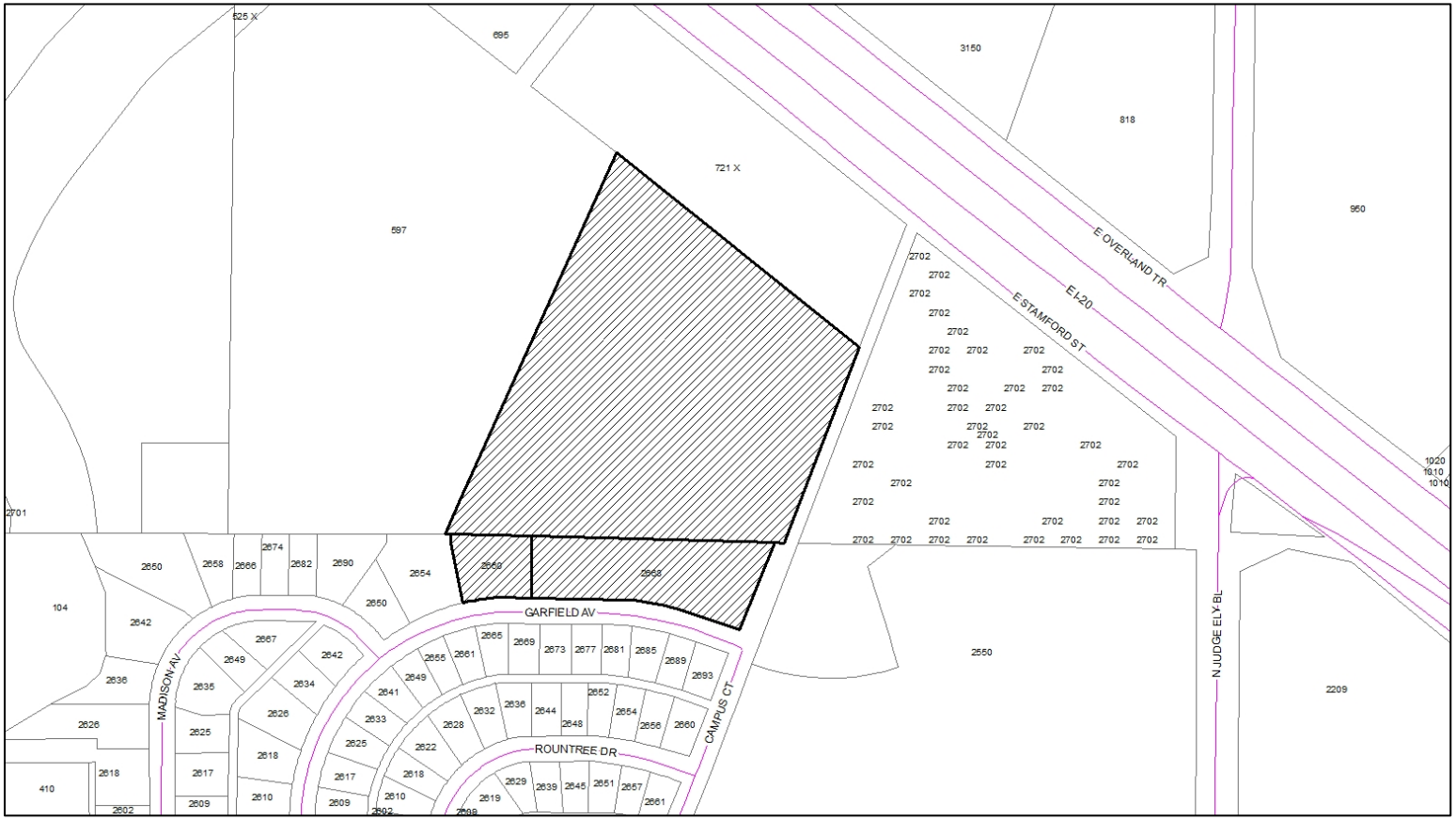
NOTIFICATION:

The Planning Services Division sent, with certificate of mailing, public notices to the applicant and to all owners of property within a 200-foot radius of the subject property.

Owner	Situs	Response
ABILENE CHRISTIAN SCHOOLS	2550 N JUDGE ELY BL	Opposed
ABILENE CHRISTIAN UNIV		
ALLISON REBECCA ANN	2632 ROUNTREE DR	
BD INVESTMENTS LLC SERIES 2	2689 GARFIELD AV	
BD INVESTMENTS LLC SERIES 1	2693 GARFIELD AV	
BROOKS KEVIN C & SAMANTHA R	2649 GARFIELD AV	
CAMPUS CREST AT ABILENE LP (384 Properties)	2702 N JUDGE ELY BL	
CARTER TIMOTHY	2652 ROUNTREE DR	
CARTER TIMOTHY G	2660 ROUNTREE DR	
CLARK DONALD W	2644 ROUNTREE DR	
COCO MALCOLM P & JUDY	2655 GARFIELD AV	
JACKSON DELTON J & JOYCE	2648 ROUNTREE DR	
JOY HUT LLC	2636 ROUNTREE DR	Opposed
JOY HUT LLC	2681 GARFIELD AV	Opposed
KISER DAVID F	2661 GARFIELD AV	
LITTLE BETTY ANN	2690 MADISON AV	
NGOTT LLC	2650 GARFIELD AV	
PLOCHECK RUSSELL E & SHIRLENE J	2654 GARFIELD AV	
PRAIRIE SONG LLC	2668 GARFIELD AV	
PRAIRIE SONG LLC	2660 GARFIELD AV	
PRAIRIE SONG LLC		
RICHARDSON NANCY	2656 ROUNTREE DR	
SOUTHWEST HOUSING PROVIDERS LLC	721 X E STAMFORD ST	
TAYLORS REAL ESTATE	2685 GARFIELD AV	
THOMAS TOMMY FAY	2654 ROUNTREE DR	
VILLAFRANCA RODOLFO M &	2673 GARFIELD AV	
WALKER EDWARD & TAMMY	2665 GARFIELD AV	
WEBB DAVID	2677 GARFIELD AV	
WHISTLE STOP RV RESORT LLC	597 E STAMFORD ST	
YOUNG AARON & ELIZABETH	2669 GARFIELD AV	Opposed

ATTACHMENTS:

- location map
- graphic concept plan
- draft ordinance
- application
- PowerPoint


E OVERLAND TR
E I-20
E STAMFORD ST
N JUDGE ELY BL
GARFIELD AV
MADISON AV
CAMPUS CT
ROUNTREE DR
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950
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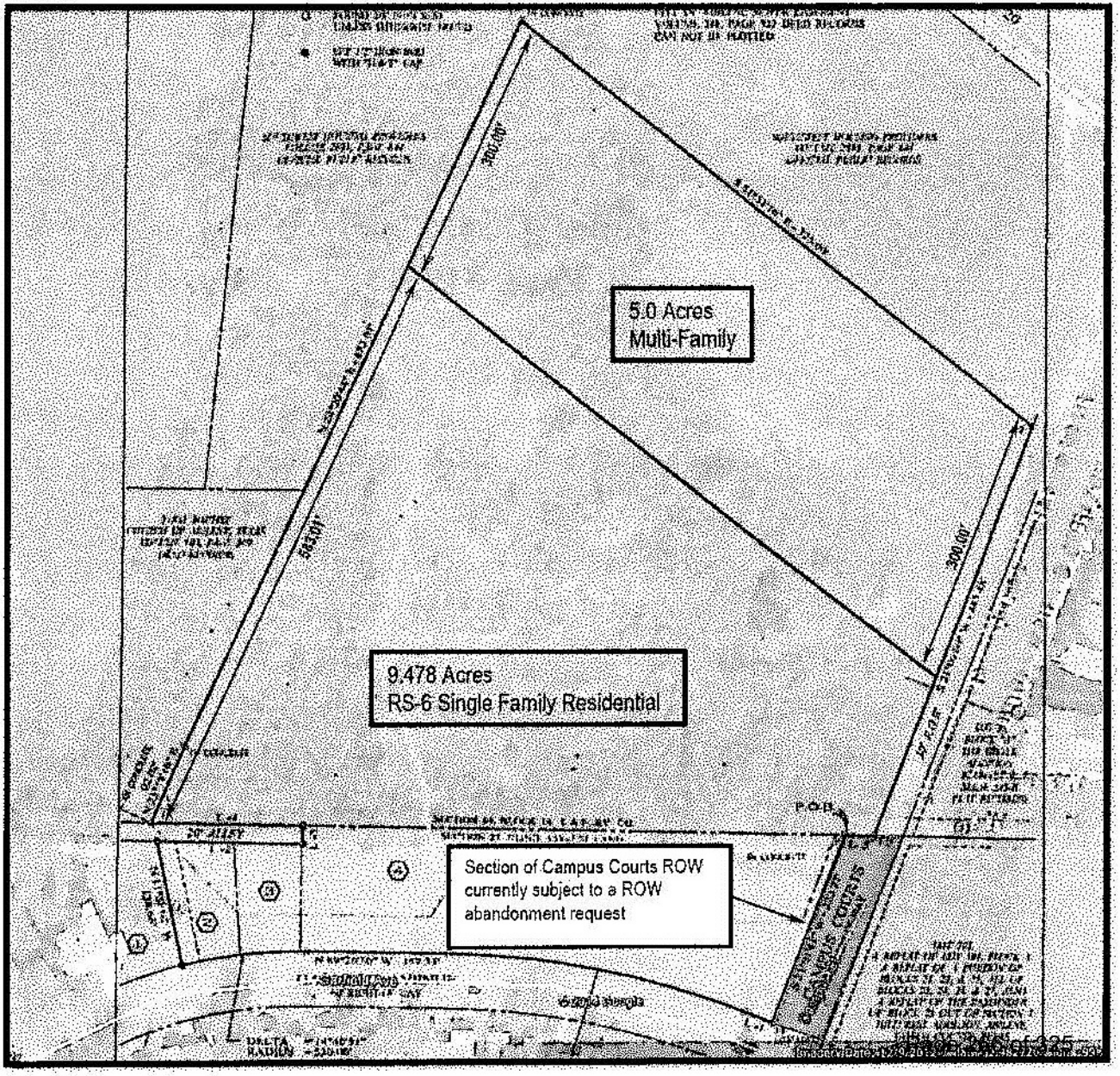
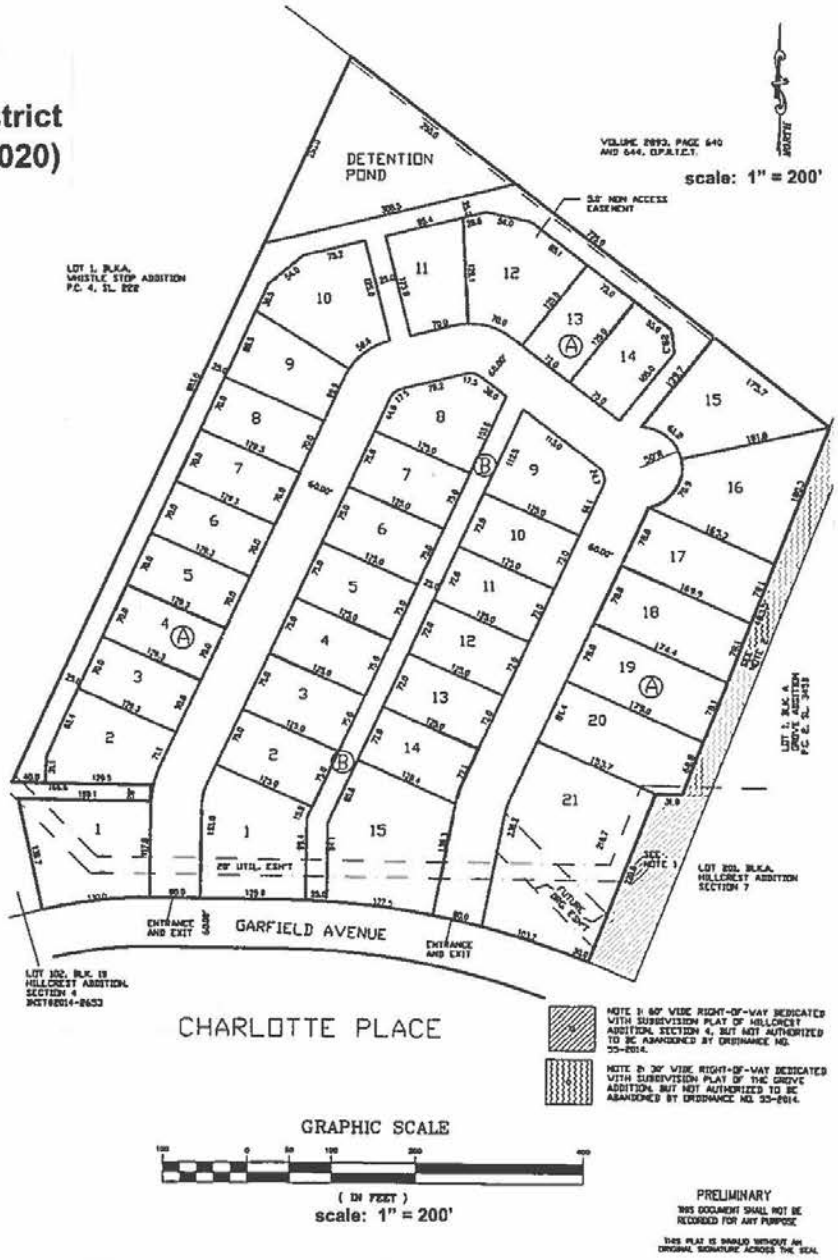
104
410
2702
1020
1010


5.0 Acres
Multi-Family
9.478 Acres
RS-6 Single Family Residential
Section of Campus Courts ROW currently subject to a ROW abandonment request
300.00'
P.O.B.

graphic concept plan for Planned Development District Number 144 (amended 2020)



Development Application

CITY OF ABILENE

Planning

☐ Conditional Use ☐ Easement Release ☐ Rezoning ☐ Other
☐ PDD ☐ Street Name Change ☐ Thoroughfare Abandonment ☑ PDD Amendment
Other: _____

Project Name: 14.478 ACRES AT GARFIELD AND CAMPUS COURT

Address: GARFIELD AND CAMPUS COURT No. of lots: _____ Acreage: 14.478

Legal Description: HILLCREST ADDITION SEC 4, BLOCK 11 A0580 SUR 84 T&P RY Co, BLOCK 14

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

Current Zoning: PD Proposed Zoning (if applicable): _____

OWNER AND AUTHORIZATION

Owner Name: NICK COATES / PRAIRIE SONG, LLC

Address: P.O. BOX 3098

City, State, Zip: ABILENE, TEXAS 79604 Fax: _____

Phone: 669-7131 Email: TXNCOATES@GMAIL.COM

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: _____

Address: _____

City, State, Zip: _____ Fax: _____

Phone: _____ 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: Nick Coates Date: 11/18/2019

FOR OFFICE USE ONLY

Received: 11/18/2019 **Fee: $** 1000 **Receipt No.:** 0002089024

Case No.: _____ **Reviewed By:** _____

Development Application

CITY OF ABILENE

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.

RE: ORDINANCE NO. 62-2014 PDD-144

1) REMOVE INDEPENDENT LIVING FACILITY ON NORTH 5 ACRES, AS A PERMITTED USE.

2) REMOVE DEVELOPMENT REGULATIONS a) and b) and c)

3) ALL ACCESS AND EGRESS TO THE PROPERTY WILL BE FROM GARFIELD.

4) ENTIRE 14.478 ACRE TRACT TO BE ZONED RS-6 WITH A CONDITIONAL USE FOR DUPLEXES (MD).

CITY OF ABILENE TEXAS

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

[Planning] Position on Case # Z-2020-01 - OPPOSED

1 message

Kirk Wade <kirk.wade@abilenechristian.com> Wed, Apr 1, 2020 at 11:29 AM
To: planning@abilenetx.gov

To whom it may concern,

On behalf of Abilene Christian School, I would like to submit that we are OPPOSED to Mr. Coates rezoning request via Case # Z-2020-01.

Kirk Wade, President
Abilene Chrsitian School
2550 N. Judge Ely Blvd
Abilene, TX 79601-2111

Kirk Wade
President | Abilene Christian School
p:325.672.9200 | w:abilenechristian.com

Grace 1 Peter 4:8-11
Abilene Christian School

--
You received this message because you are subscribed to the Google Groups "Planning Services" group.
To unsubscribe from this group and stop receiving emails from it, send an email to planning+unsubscribe@abilenetx.gov.
To view this discussion on the web visit https://groups.google.com/a/abilenetx.gov/d/msgid/planning/CAPg6wGj2gW9THLFg-L%2Bv2x8EfgbH%2BA6nu9iEWuQ%3DJO4AJ0USWw%40mail.gmail.com.

CITY OF ABILENE

PLANNING & DEVELOPMENT SERVICES

YOUNG AARON & ELIZABETH
2669 GARFIELD AVE
ABILENE, TX 79601-2016

NOTICE OF PUBLIC HEARING

RE: Rezoning Application Number Z-2020-01 **03/30/2020**

The Planning & Zoning Commission will hold a public hearing on **Tuesday, April 7, 2020** at **1:30 PM** in Council Chambers on the 2nd floor of Abilene's City Hall, N. 5th and Walnut Streets, to recommend approval or denial to City Council on a request from Prairie Song LLC, agent Nick Coates, to amend existing Planned Development (PD) District Number 144, by expanding its area to encompass an additional ½-acre at 2660 Garfield Avenue, by changing allowed uses to include all those permitted in Residential Medium-Density zoning districts, any by requiring all access to this property be from Garfield Avenue only. Legal description being Lots 4-5 in Block 10 and all of Block 11 in the Hillcrest Addition Section 4 s well as (to the north) an adjoining 12.04 acres of vacant land out of T&P Railroad Company Section 84, all in the City of Abilene, Taylor County, Texas and located north from the 2600 block of Garfield Avenue.

This hearing is open to any interested person. Opinions, objections and/or comments relative to this matter may be expressed in writing during 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.

In an effort to reduce the spread of Corona virus, the April 7 meeting of the Planning & Zoning Commission will be closed to in-person attendance by the public. Individuals will be able to address the Commission via telephone conference call. To participate in a telephone conference call, please call +1 (833) 773-2663 and use access code 5918781 to speak on an agenda item. This will also allow you to listen to the meeting.

The attached map shows the area of this request. Only that area which is bounded by the cross-hatched line on the map is being considered for rezoning. The solid boundary line around the subject area is 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 **May 14, 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 Brad Stone, Planner III at (325) 676-6382 or by email at brad.stone@abilenetx.gov.

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

CASE #: Z-2020-01
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: YOUNG AARON & ELIZABETH
Address: 2669 GARFIELD AV

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

Email: planning@abilenetx.gov

I am in favor ☐ I am opposed ☑

Additional Comments:

Signature:

CITY OF ABILENE

PLANNING & DEVELOPMENT SERVICES

JOY HUT LLC
107 UHL RD
RED OAK, TX 75154-3985

NOTICE OF PUBLIC HEARING

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Name: JOY HUT LLC
Address: 2681 GARFIELD AV

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

Email: planning@abilenetx.gov

I am in favor ☐ I am opposed ☒

Additional Comments:

Signature: Brent Yeldell

CITY OF ABILENE

PLANNING & DEVELOPMENT SERVICES

JOY HUT LLC
107 UHL RD
RED OAK, TX 75154-3985

NOTICE OF PUBLIC HEARING

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

CASE #: Z-2020-01
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: JOY HUT LLC
Address: 2636 ROUNTREE DR

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

Email: planning@abilenetx.gov

I am in favor ☐ I am opposed ☒

Additional Comments:

Signature: Brent Jones

Date: April 1,2020

City of Abilene

Planning and Development Services

RE: I am Opposed to the Rezoning Application Number Z-2020-01

As the property Owner of 2636 Rountree Dr and 2681 Garfield AV, I respectfully request that the rezoning of the property along the north side of the 2600 block of Garfield remain RS-6 and that no Planned Development have all of its access from Garfield Avenue. This Rezoning Application Z-2020-01 is an inappropriate encroachment into the RS-6 zoning and an extreme burden of traffic onto Garfield Avenue.

JOY HUTT LLC

Brent E. Yeldell

Brent Yeldell

REZONING APPEAL

Case: Z-2020-01

Owner: Nick Coates

Request: Appeal the decision made by the Planning and Zoning Commission to amend existing Planned Development District 144 (PD144)

Legal Description: Lots 4-5 in Block 10 and all of Block 11 in the Hillcrest Addition, Section 4, as well as an additional 12.04 acres out of Section 84 in Block 14 of T&P Railway Company Lands (and located at least 140 feet north from Garfield Avenue).

Notification: 0 in Favor, 4 Opposed

Planning & Zoning Recommendation: Motion to approve failed by a vote of four (4) to two (2) resulting in denial

Z-2020-01 AERIAL LOCATION MAP

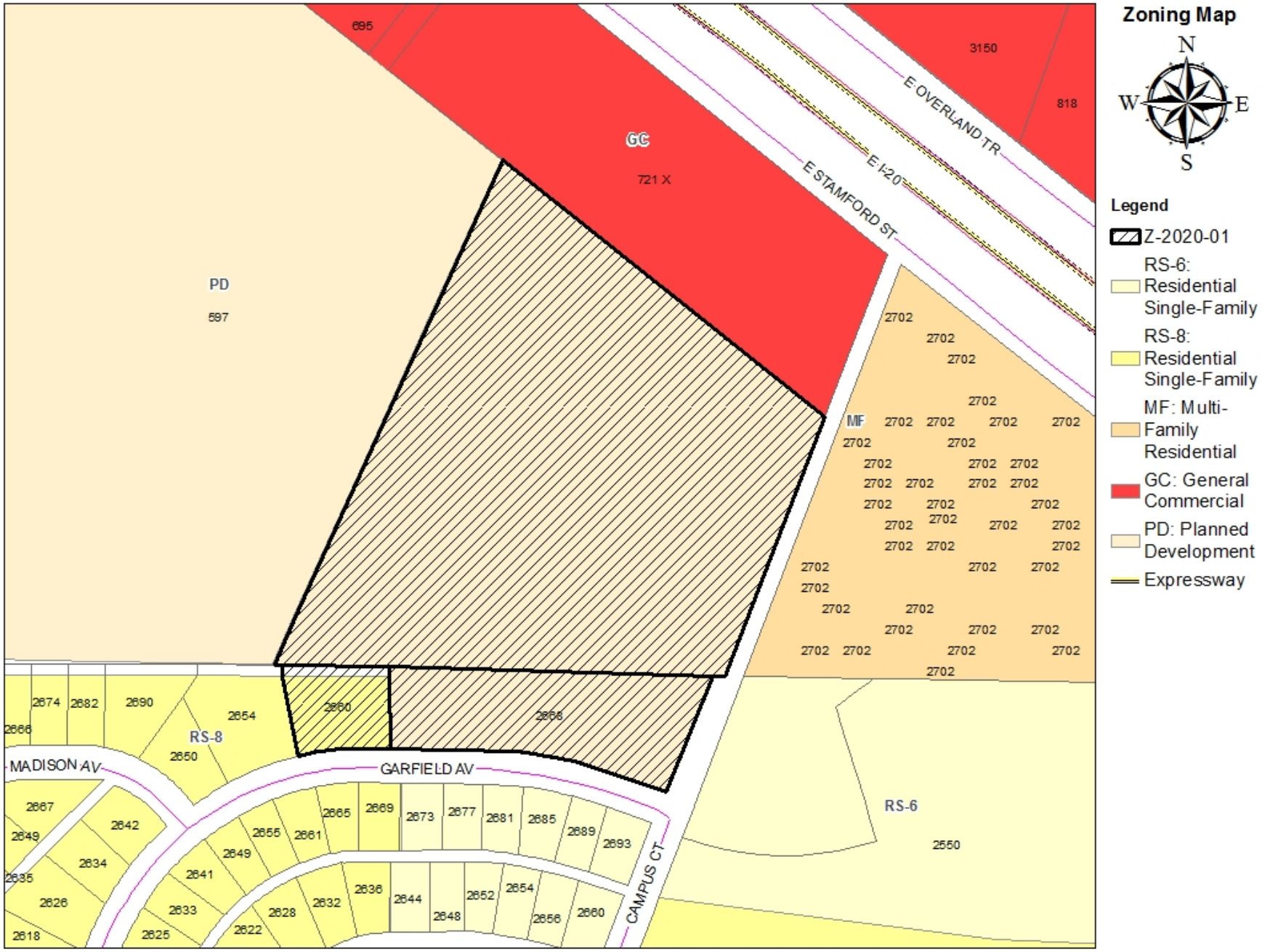
Location Map

N
W E
S

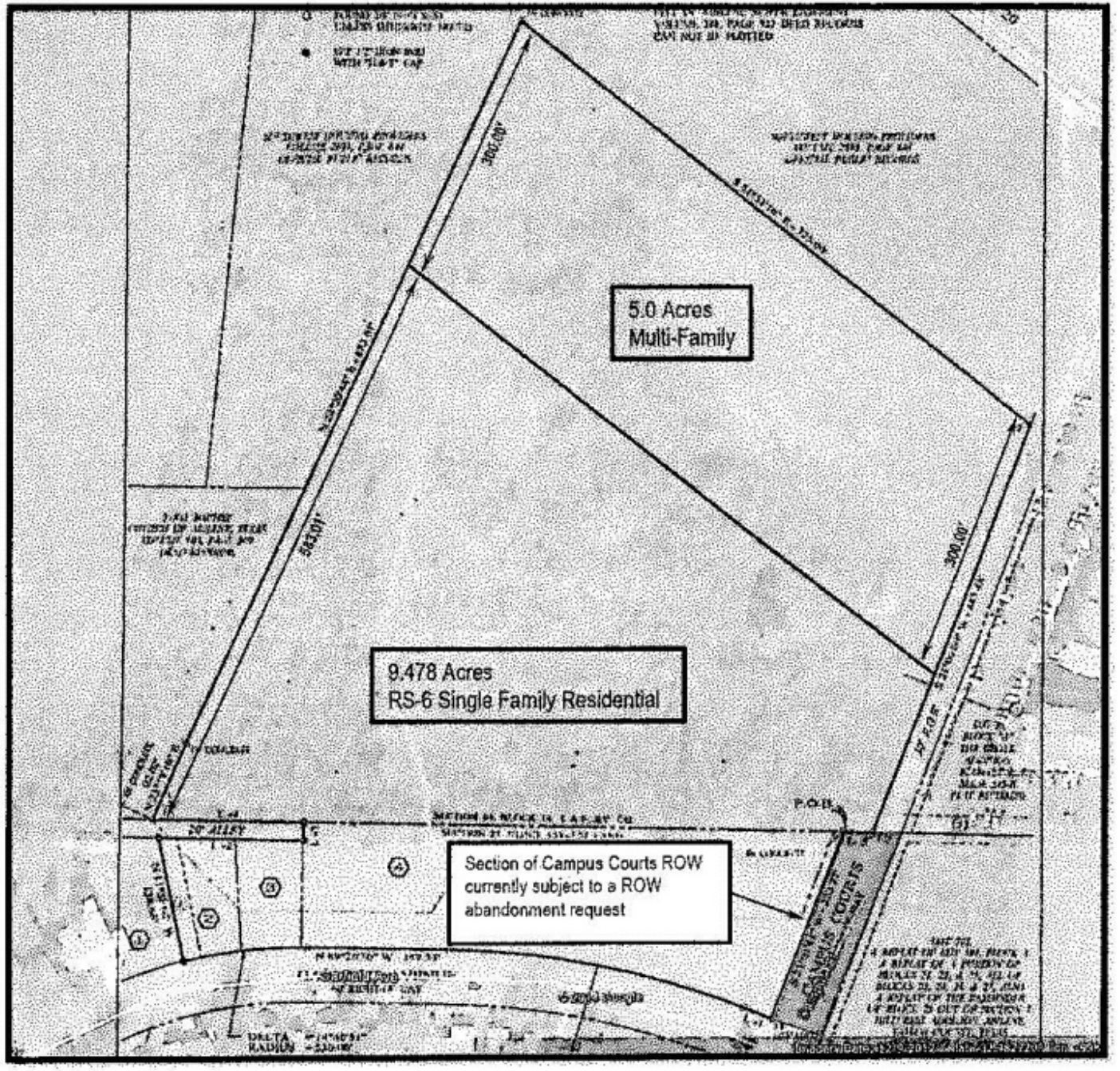
Legend

Z-2020-01

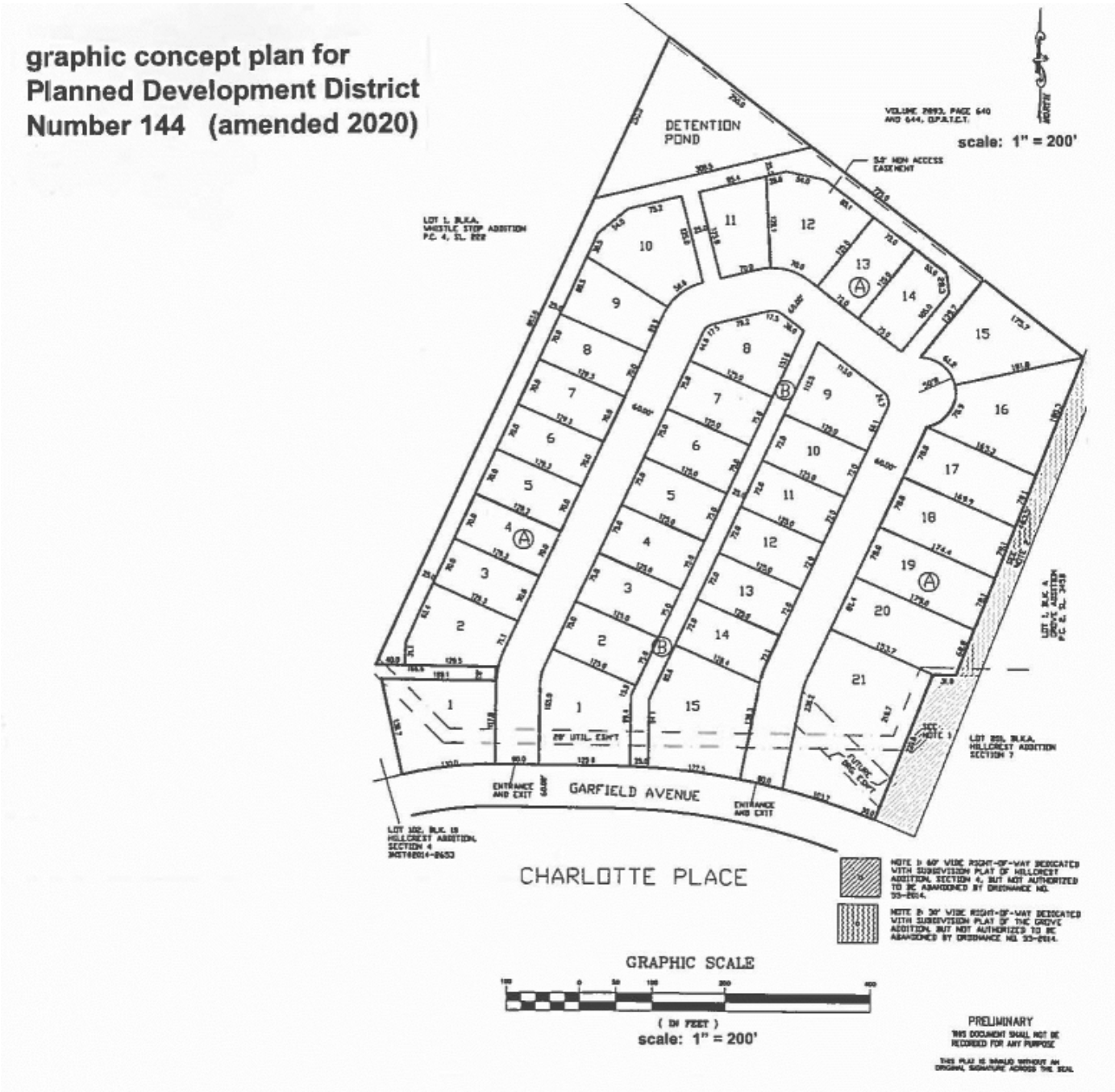
Z-2020-01 ZONING MAP



CURRENT GRAPHIC CONCEPT PLAN PD 144



NEW GRAPHIC CONCEPT PLAN PD 144



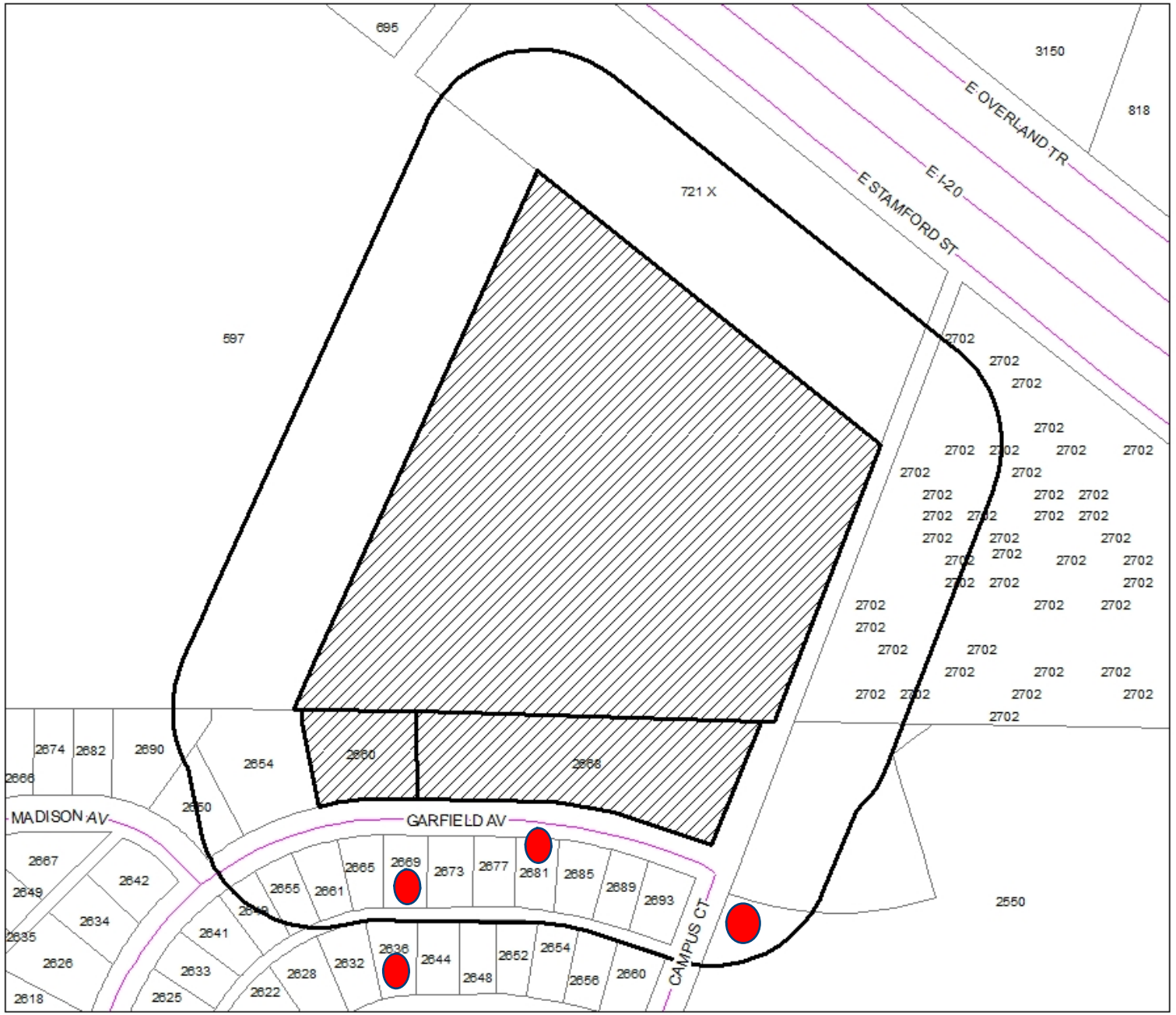
EXAMPLE OF HOMES FOR PD 144

Z-2020-01 VIEWS OF SUBJECT PROPERTY

Subject property west view

Subject property east view

Z-2020-01 NOTIFICATION AREA MAP



Notification Map

N
W E
S

Legend

200' Notification Area

Z-2020-01

0- In Favor-

4- Opposed-

3.75% In opposition

FINDINGS AND RECOMMENDATIONS

- Consistent with *Comprehensive Plan* and *Future Land Use* and *Development Plan Map*
- Reviewed Pursuant to Section 1.4.1.4 of Land Development Code (Criteria for Approval)
- Planning & Zoning Recommendation: Motion to approve failed by a vote of four (4) to two (2) resulting in denial
- City staff recommends approving requested amendments to PD 144, subject to the following additional conditions:
    1. No more than two (2) dwelling units should be permitted on any one lot or tract of land.
    2. Future (re)subdivision of the subject property should comply with accompanying graphic concept plan.
    3. Future subdivision or re-subdivision of all or any part of the subject property should be preceded by City Council's approval of an ordinance authorizing abandonment of all right-of-way dedicated for Campus Court north from Garfield Ave., with abandonment made materially complete by approval and recording of a subdivision plat or replat integrating the right-of-way into property located adjacent directly east and/or west of the abandoned right-of-way.

Questions?

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Honorable Mayor and City Council Members**

FROM: **Stanley Smith, City Attorney**

SUBJECT: **14. 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. **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**
2. **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**
3. **Officer Patrick Sumrall and City of Abilene, Case No. 01-18-000-8653; Appeal of Indefinite Suspension to Arbitration, filed February 6, 2018**
4. **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.**
5. **City of Abilene v. Patrick Sumrall; Cause No. 27,733-B, In the 104th Judicial District Court, Taylor County, Texas, filed May 28, 2019**
6. **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**
7. **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**

8. **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**
9. **Chandler Brooks v. Taylor County, et al.; Civil Action No. 1:20-cv-00049, In the United States District Court, Northern District of Texas, Abilene Division; filed March 5, 2020**
10. **Claim of Discrimination - Rita Monterrosa**
11. **Governor's Executive Orders COVID-19**

B. 551.072 (Deliberations about Real Property)

1. **Clyde Water**
2. **T&P Freight Warehouse, 901 North 1st Street, Abilene**
3. **West Texas Water Partnership**

C. 551.073 (Deliberations about Gifts and Donations)

D. 551.074 (Personnel Matters)

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

E. 551.076 (Deliberations about Security Devices)
F.551.087 (Business Prospect/Economic Development)

1. **Abilene Convention Center Hotel Project**
2. **Request from Abilene Hotel Owners Group**
3. **Public Improvement District for property adjacent to Boys Ranch Road**
4. **5KLM Properties - The Harvest Subdivision**

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

None

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Honorable Mayor and City Council Members**

FROM: **Shawna Atkinson, City Secretary**

SUBJECT: **15.**

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)*

- **Library Advisory 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 11th day of June, 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

RESOLUTION NO. _____
EXHIBIT "A"

Board	Term End Date
Library Advisory Board	
Trent Dietz [New]	November 2020 [Unexpired Term]

Resolution:

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

- Library Advisory Board

CITY OF ABILENE TEXAS

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **City Council**

FROM: **Misty Mayo**

SUBJECT: **16. Resolution: Receive a Report, Hold a discussion and Public Hearing, and Take Action on approval of DCOA's Chief Executive Officer to extend and/or amend the DCOA's Agreements with Prairie Dog Pet Products *(Misty Mayo)***

GENERAL INFORMATION

Original agreement was approved by City Council on December 15, 2015. Since purchase of Prairie Dog Pet Products (PDPP) by Kinderhook Capital Fund, PDPP is asking to extend the agreement.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

None

STAFF RECOMMENDATION

Approving the Amendment to DCOA'S Agreement with PDPP.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. City Resolution - PDPP Amendment
2. DCOA.PDPP Incentive.City Council.6.11.20

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING THE DEVELOPMENT CORPORATION OF ABILENE, INC.'S ("DCOA") AMENDED ASSISTANCE FOR PRAIRIE DOG PET PRODUCTS AND PDPP ABILENE (COLLECTIVELY "COMPANY").

WHEREAS, the City Council of the City of Abilene previously approved assistance for the Company in Resolution Number 54-2015 and effective December 15, 2015 the DCOA (i) made a loan to Prairie Dog Pet Products in the principal amount of $4,500,000 (the "**Note**") and (ii) leased to PDPP Abilene real property and gave it an option to purchase the real property for $5,000,000 (the "**Purchase Price**") after 8 years; and

WHEREAS, in the DCOA's agreements with the Company (i) the DCOA agreed to reduce the Note balance and Purchase Price by $1.00 (47.4% reduction of the Note and 52.6% reduction of the Purchase Price) for every $8.00 spent by Company on capital expenditures and payroll for 10 years (the "**Expenditure Ratio**") and (ii) Company is not obligated to make payments under the lease for 10 years; and

WHEREAS, Company has requested the below described amendments and the DCOA's staff continues to have the expectation that said amendments, along with additional owners being involved with the Company since 2019, will help spur the Company's growth and expansion in Abilene beyond what the initial incentive has helped to accomplish; and

WHEREAS, on June 5, 2020 the DCOA approved Resolution No. DCOA-2020.33 (the "**DCOA Resolution**") which provided authorization of amendments to the Company's existing agreements so that (i) the Expenditure Ratio will be changed from a reduction of $1.00 for every $8.00 spent by Company to a reduction of $1.00 for every $7.50 spent by Company; (ii) that the time period for receiving reductions in the Note and Purchase Price be extended from 10 years to 13 years; and (iii) that the Company's lease be amended so that the Company's obligations to pay rent under the lease will not begin until 13 years (previously 10 years) from the date the lease was executed (collectively the "**Amended Assistance**"); and

WHEREAS, the DCOA requests that the City of Abilene approve the DCOA's authorization of Amended Assistance to 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 approves the Amended Assistance for the Company, under the terms and as set forth in the DCOA Resolution.

PART 2. This Resolution takes effect immediately upon its adoption.

ADOPTED this ____ day of June, 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

INCENTIVE AGREEMENT AMENDMENT

- Manufacturer: located in Abilene—2015; new entity purchased company in 2019
- Currently 54 FTEs; contractually committed to grow to 200 FTEs by 12/2025
- Abilene is priority for company to grow

Current Incentive Agreement with DCOA

- **2015 with former owners**
- **$9.5M Total Incentives**
- **PDPP will earn credit for $9.5M over 10 years based on cumulative capital expenditures and cumulative payroll at 8:1 ($76M)**

AGREEMENT AMENDMENT

- **Part of a recapitalization**
- **8:1 to 7.5:1 and 10 years extended to 13 years**
- **Will not impact DCOA's budget**
- **DCOA is spending $9.5M in exchange for company investment of $76M = 12.5% incentive**
- **Request: DCOA spend $9.5M in exchange for company investment of $72.8M = 13% incentive**

**$76M & $72.8M are estimates based on company total projected vs. actual expenditures; contracted deliverables must be met for investments to qualify.*

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Honorable Mayor and City Council Members**

FROM: **Misty Mayo**

SUBJECT: **17. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approving an Agreement with Project ERG-2 *(Misty Mayo)***

GENERAL INFORMATION

As a result of COVID-19 and the economic recession in the City of Abilene the DCOA set aside funds for Economic Relief Incentives.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

DCOA determined that an incentive not to exceed $500,000 will support the Company's business retention efforts.

STAFF RECOMMENDATION

Approval of an agreement with ERG-2 for an Economic Relief Incentive.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution No. for ERG-2
2. DCOA.City Council.ERG Report Approval Request.June 11.2020

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING THE DEVELOPMENT CORPORATION OF ABILENE, INC.'S ("DCOA") ECONOMIC RELIEF INCENTIVE FOR PROJECT ERG-2 ("COMPANY").

WHEREAS, as a result of COVID-19 and the economic recession in the City of Abilene, the DCOA set aside funds for Economic Relief Incentives to provide qualified incentives to support business retention and business expansion through any expenditures that are consistent with the Development Corporation Act; and,

WHEREAS, the DCOA has determined that awarding an incentive for Project ERG-2 will support Company's business retention efforts; and,

WHEREAS, on June 5, 2020 the DCOA approved Resolution No. DCOA-2020.27 (the "**DCOA Resolution**") authorizing the DCOA's Chief Executive Officer to enter into an agreement and provide the Company with an incentive in an amount not to exceed $500,000 (the "**Incentive**") in exchange for the Company's retention of 130 full-time employees ("**FTEs**") for one year; and,

WHEREAS, the DCOA requests that the City of Abilene approve the DCOA's Incentive 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 130 FTEs for 1 year, the DCOA to provide the Company with an incentive in an amount not to exceed $500,000, under the terms and as set forth in the DCOA Resolution.

PART 2. This Resolution takes effect immediately upon its adoption.

ADOPTED this_____ day of June, 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

ECONOMIC RELIEF GRANT FUND

$3M GRANT FUND

INCENTIVES FOR EXISTING LOCAL COMPANIES

- DCOA Board of Directors approved funds of **up to $3M for incentives dedicated for economic relief for qualified companies.**
- Established because these times require special attention to our local, existing companies.
- Funds can be utilized for:
  equipment, expansion, expenses associated with increased material costs from suppliers, insurance, paid leave, payroll assistance, rent assistance, utilities and workforce training

ECONOMIC RELIEF GRANTS

ERG-2

- Corporate HQ in Abilene since 1994
- Engineering company that specializes in the chemicals and polymers, power, oil and gas, and refining industries. Since 1984: construction experts, engineering authorities, and fabrication specialists.
- 130 jobs in Abilene of 688 in 9 states
- **$500,000 grant request to retain 100% of 130 jobs**

ERG-3

- Manufacturer – food manufacturing; produces premium dog treats
- Located to Abilene in 2015; new entity purchased in 2019
- **$300,000 grant request to retain 100% of 54 jobs**

ECONOMIC RELIEF GRANT FUND

- 29 applied
- 15 did not qualify (misclassification of NAICS)
- 4 approved to receive funds
- 2 in approval process
- 6 grants will = $1M+
- 9 qualified applicants are in the process of completing application
- 52 qualified companies – contacted/met with to determine impacts of COVID-19 & advise on relief grant availability
- 4 companies declined applying for the grant, stating they would like to leave monies available for others in greater need (DCOA has current agreements with these four)
- Apply @ AbileneDCOA.com

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Honorable Mayor and City Council Members**

FROM: **Misty Mayo**

SUBJECT: **18. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approving an Agreement with Project ERG-3 *(Misty Mayo)***

GENERAL INFORMATION

As a result of COVID-19 and the economic recession in the City of Abilene, the DCOA set aside funds for Economic Relief Incentives.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

The DCOA has authorized an incentive in an amount not to exceed $300,000 to support the Company's business retention efforts.

STAFF RECOMMENDATION

Approval of an Agreement with Project ERG-3 for an Economic Relief Incentive

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution No. for ERG-3

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING THE DEVELOPMENT CORPORATION OF ABILENE, INC.'S ("DCOA") ECONOMIC RELIEF INCENTIVE FOR PROJECT ERG-3 ("COMPANY").

WHEREAS, as a result of COVID-19 and the economic recession in the City of Abilene, the DCOA set aside funds for Economic Relief Incentives to provide qualified incentives to support business retention and business expansion through any expenditures that are consistent with the Development Corporation Act; and,

WHEREAS, the DCOA has determined that awarding an incentive for Project ERG-3 will support Company's business retention efforts; and,

WHEREAS, on June 5, 2020 the DCOA approved Resolution No. DCOA-2020.28 (the "**DCOA Resolution**") authorizing the DCOA's Chief Executive Officer to enter into an agreement and provide the Company with an incentive in an amount not to exceed $300,000 (the "**Incentive**") in exchange for the Company's retention of 54 full-time employees ("**FTEs**") for one year; and,

WHEREAS, the DCOA requests that the City of Abilene approve the DCOA's Incentive 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 54 FTEs for 1 year, the DCOA to provide the Company with an incentive in an amount not to exceed $300,000 under the terms and as set forth in the DCOA Resolution.

PART 2. This Resolution takes effect immediately upon its adoption.

ADOPTED this _____ day of June, 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Honorable Mayor and Members of the City Council**

FROM: **Misty Mayo**

SUBJECT: **19. Oral Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approving the FY 2020 Semi-Annual Report of Activities for the Development Corporation of Abilene *(Misty Mayo)***

GENERAL INFORMATION

Semi-Annual Report of the DCOA

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Approval of the Semi-Annual Report of the DCOA

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. UPDATED.DCOA.City Council Semi Annual Report.June 2020.6.9.2020 (002)

Develop Abilene

DEVELOPMENT CORPORATION OF ABILENE

City Council Report
Semi-Annual Highlight of Activities
June 11, 2020

DCOA

- To coordinate and lead the economic development efforts of the community; including long-term visioning and the economic development strategic plan - Advancing Abilene.

- The DCOA funds partner organizations to assist with carrying out it's mission to employ the economic development sales tax for the purpose of growing a stronger, more vibrant Abilene.

The DCOA is a Type A municipal economic development corporation, led by an appointed five-member board of directors

DCOA FUNDED

OUR PARTNERS IN ECONOMIC DEVELOPMENT MAKE UP THE DEVELOPABILENE TEAM.
IN ORDER FOR THE DCOA TO MEET ITS MISSION FULLY, THE DCOA HELPS FUND ORGANIZATIONS THAT ARE ALL WORKING TOGETHER TO BUILD THE BEST ABILENE.

ABILENE INDUSTRIAL FOUNDATION
Serves as the Public/Private Partnership of the community's economic development efforts. Functions as the organization managing business retention and expansion, entrepreneurial, and workforce and talent development services provided by contract. Engages private business leaders in economic development to support the growth and prosperity of existing businesses, as well as support the federal, state and military agencies presently located in Abilene.

ACU GRIGGS CENTER
Assists with the BE in Abilene Program; promoting entrepreneurial pursuits to foster the growth of new, startup companies in Abilene.

SMALL BUSINESS DEVELOPMENT CENTER
A government agency with a mission to help small businesses succeed. Partnering with the DCOA to offer assistance to startup companies.

ABILENE REGIONAL AIRPORT MARKETING & DEVELOPMENT
Goal is to improve air service to grow customer base and an intentional effort to develop vacant and underutilized airport property for commercial/industrial uses.

MILITARY AFFAIRS COMMITTEE
Works to ensure missions at Dyess, grow current missions, secure additional missions, and enhance the quality of life for Dyess Airmen and their families.

SHARED VISION

ECONOMIC DEVELOPMENT STRATEGIC PLAN

"Abilene has a growing, dynamic economy that elevates the creativity, skills, and ambitions of its businesses and residents."

STRATEGIC PLAN

A 5-year economic development strategic plan was adopted in 2016 to outline the community's key assets to help competitively position Abilene. The top 10 economic development strategies the DevelopAbilene Team works toward are:

01. MARKET – Aggressively market Abilene as a destination for new investment and employment.

02. BUILD – Build a deep and highly skilled talent base through development, retention, and attraction.

03. DEVELOP – Develop an innovation ecosystem that spawns and supports innovative people and businesses.

04. POSITION – Position Abilene as top of mind for businesses and talent in Dallas/Fort Worth area.

05. SUPPORT – Support the growth and prosperity of existing businesses.

06. DOWNTOWN – Make downtown Abilene a center of employment and investment.

07. CONNECT – Continue redeveloping the Pine St. Corridor as a central mixed-use artery connecting downtown to the city's emerging education and healthcare district.

08. ENGAGE – Engage emerging leaders in economic development and civic affairs.

09. LEVERAGE – Leverage Dyess Air Force Base as a source of talent and as an economic driver.

10. ENCOURAGE – Launch a community-wide public awareness campaign designed to encourage residents to become ambassadors for Abilene's success.

CORE PILLARS

Coordinate, Measure & Adjust for Success

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. ENTREPRENEURIAL

Develop an ecosystem that spawns and supports innovative businesses.

+

WORKFORCE & TALENT DEVELOPMENT

Elevate initiatives and partnerships to create and retain a viable workforce that can support current and future industry.

MARKETING & BRAND AWARENESS

Activate strategies to promote Abilene as the premier location for business.

= SUCCESS

BUSINESS ATTRACTION

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

Data, Analytics & Planning with Partners:

- Worked with Partner to identify consultant for demographics and data; including primary trade area and workforce data.
- Partners working together for visioning and development plans for commercial – mixed-use plans for the SoDA District.
- Engaged consultant with Partners to analyze and report commercial and sales tax revenue impacts due to COVID-19 for future planning.

NEW PROJECTS APPROVED -

4

184 new jobs

549 retained jobs

$19,000,000 Capex

**2 of 4 contracted, closed to date: AbiMar & Hartmann's, Inc.*

Qualified Leads = 174*

Prospects = 5*

Contacts = 250

Suspects = 2

**Qualified Lead = Company has confirmed they have an active site search & will make a site selection in 36 months+/-.*
**Prospect = A qualified lead that confirms Abilene is being considered.*

BUSINESS RETENTION & EXPANSION

Spur and facilitate the growth and prosperity of existing businesses.

$3M ECONOMIC RELIEF GRANT FUND established

incentives for existing local companies

- DCOA Board of Directors approved funds of **up to $3M for incentives dedicated for economic relief for qualified companies.**
- Established because these times require special attention to our local, existing companies.
- Funds can be utilized for: equipment, expansion, expenses associated with increased material costs from suppliers, insurance, paid leave, payroll assistance, rent assistance, utilities, and workforce training

Qualified companies contacted & meetings conducted to determine impacts of COVID-19 & to advise on relief grant availability.

ENTREPRENEURIAL

Develop an ecosystem that spawns and supports innovative businesses.

$250,000 AWARDED – 3rd year for BE in Abilene

Awardees determined by an independent selection committee:

- **2 PROFS ICE CREAM**
  Produces gourmet ice cream using only the finest ingredients
- **MOOSE MOUNTAIN GOODS**
  Family owned and operated coffee roaster and distributor that provides handcrafted mountain-inspired roasted coffee beans
- **BELT BUCKLE DISTILLERY**
  Distillery that manufactures, produces, and blends fine spirits for distribution and sales to West Texas Wholesalers

BE in Abilene
Building Entrepreneurs

An innovative initiative to help fund local entrepreneurs. Incentivizing young, entrepreneurial companies who will be based in Abilene and have the potential to positively impact the local economy – growing jobs for Abilene.

3 BE in Abilene Winners

7 new jobs

8 jobs retained

MARKETING & BRAND AWARENESS

Activate strategies to promote Abilene as the premier location for business.

Contracted with GIS WebTech and Real Massive to provide real-time data such as workforce, and available commercial and industrial real estate.

Travel by DevelopAbilene Team members to market Abilene October 1, 2019 – May 31, 2020:

4 - Consultant Events

– meetings with 35 consultants

4 - Trade Shows

– over 285 companies contacted (4 target industries)

3 - Road Shows

– meetings with 31 companies

**March-May 2020 with no travel; consultant events online*

Develop Abilene

New Logo, brand guide and marketing plans created.
Includes social media, specific consultant contact strategies, and website upgrades.

WORKFORCE & TALENT DEVELOPMENT

Elevate initiatives and partnerships to create and retain a viable workforce that can support current and future industry.

NEXTU: 46 students – enrollment for 2019-2020 school year

- Expanded to 5 pathways
  Airframe Technology, Welding, Elec Power & Controls, Industrial Systems, Licensed Vocational Nursing (LVN)
- 93% student retention rate of students from 2019 Fall to 2020 Spring
- $34,771 scholarship dollars awarded to 46 students enrolled for 2019-2020 school year
- 11 students signed Letters of Commitment at CTE Signing Day - Committing to taking their next steps in post-secondary education while attending either Cisco College or TSTC West Texas

Partnered with Texas Workforce Commission to host sessions highlighting TWC grants available to utilize for current courses to upskill and train local employees:

- Technology Funds available for Education
- Workforce Training Funds available for Business

DCOA
ADDITIONAL ACTIVITIES

DCOA and the Military Affairs Committee (MAC) **partnered to leverage a $500,000 commitment from DCOA for a matching grant proposal:**

- Grant to expand and update the highly-used Dyess Security Access Control Center
- Demand for entry to the base has increased and with the upcoming basing of the B-21 bomber, it will multiply; currently, 13,774 active military, dependents, civilians, and retired personnel access the gate.

- Purchased office building at 174 Cypress and garage on N 2nd St. as a permanent home for the DCOA and to promote growth in downtown; future opportunities could include support solutions for startup companies and entrepreneurial ventures.
- Updated, new 3-year agreement with Eagle Aviation Services, Inc. for current location and projected growth at the Abilene Regional Airport

EDA GRANT

$1,837,500
GRANT AWARDED

- The DCOA, in partnership with the City of Abilene, submitted for a grant from the Economic Development Administration (EDA)
- Extremely competitive process
- City of Abilene will receive monies for the DCOA to expand, enhance and improve both Fulwiler Road and Marigold Streets at Five Points Business Park
- DCOA is committed to leveraging the sales tax dollars for maximum potential

BOARD OF DIRECTORS & STAFF TEAM

BOARD OF DIRECTORS

Jack Rich, President
Sam Vinson, Vice President
Vic Corley, Secretary/Treasurer
Shea Hall
Floyd Miller

STAFF TEAM

Misty Mayo, Chief Executive Officer
Julie Johncox, Executive Vice President/Chief Operating Officer
Akane Thaxton, Finance Manager
Rick Jones, Director of Facilities
Cynthia Nesmith, Economic Development Specialist

Development Corporation of Abilene
174 Cypress Street, Suite 301
Abilene, Texas 79601
325-676-6390
DCOA@AbileneDCOA.com

City Council
Agenda Memo

City Council Meeting Date: 6/11/2020

TO: **Honorable Mayor and Members of the City Council**

FROM: **Misty Mayo**

SUBJECT: **20. Presentation: Receive a Report and Hold a Discussion and Public Hearing on the Economic Relief Grant *(Misty Mayo)***

GENERAL INFORMATION

Give a report to update members of the City Council on the DCOA funds set aside for Economic Relief Incentives

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. DCOA.City Council.ERG Update.June 11.2020

ECONOMIC RELIEF GRANT FUND

- 29 applied
- 15 did not qualify (misclassification of NAICS)
- 4 approved to receive funds
- 2 in approval process
- 6 grants will = $1M+
- 9 qualified applicants are in the process of completing application
- 52 qualified companies – contacted/met with to determine impacts of COVID-19 & advise on relief grant availability
- 4 companies declined applying for the grant, stating they would like to leave monies available for others in greater need (DCOA has current agreements with these four)
- Apply @ AbileneDCOA.com