City of Abilene
City Council Agenda

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

Anthony Williams, Mayor

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

AMENDED

Notice is hereby given of a meeting of the City Council of City of Abilene to be held on September 10, 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 Kyle McAlister

PLEDGE TO THE UNITED STATES FLAG AND THE TEXAS FLAG

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS AND ANNOUNCEMENTS

2. **Service Awards Video Presentation:**

   - Patricia Perez - 30 Years - COACH Clinic

3. **Proclamation:** Lissencephaly Awareness Day

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.

4. **Minutes:** Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on August 27, 2020 ***(Shawna Atkinson)***

5. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing and Take Action to Award a Contract to Collier Construction to Build the New Aircraft Rescue and Fire Fighting Station at Abilene Regional Airport. ***(Don Green)***

6. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing and Take Action to Approve Change Order 1 to the Contract with Collier Construction for the Aircraft Rescue and Fire Fighting Station ***(Don Green)***

7. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Contract with Corgan Associates to Provide Construction Management Services During the Construction of the New Aircraft Rescue and Fire Fighting Station at Abilene Regional Airport ***(Don Green)***

8. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Purchase Three (3) Support Vehicles for CityLink ***(Don Green)***

9. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Approve a Purchase from On Site Marketing for Bus Lifts for CityLink ***(Don Green)***

10. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Bids for Purchase of Bulk Chemicals to be Used by Water and Wastewater Treatment Plants in Fiscal Year 2021 (***Rodney Taylor***)

11. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Authorizing Combined Purchases from the Specified Vendors in Amounts Exceeding $50,000 During Fiscal Year 2020 ***(Rodney Taylor)***

12. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Award of Bid No. CB-2072 – Sale of Land (1642 Merchant Street) ***(Travis McClure)***

13. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving a Negotiated Settlement between the Atmos Cities Steering Committee and Atmos Energy Corp., Mid-Tex Division regarding the Company's 2020 Rate Review Mechanism Filing ***(Stanley Smith)***

14. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Utilizing Cares Act Grant Funds for Wylie ISD's Operation Connectivity ***(Mike Rains)***

REGULAR AGENDA - ORDINANCES AND PUBLIC HEARINGS - RESOLUTIONS

15. **Presentation**: Receive a Report, Hold a Discussion and Public Hearing on the Texas Ave and Dub Wright Intersection Improvements ***(Greg McCaffery)***

16. **Presentation:** Receive a Report, Hold a Discussion and Public Hearing regarding the Summary of the 2015 Traffic Signal Bond Project ***(Greg McCaffery)***

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

17. **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. 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
7. 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
8. 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
9. John Doe v. Robert Hanna, Individually and as City Manager; Cause No. 28078-B; In the 104th Judicial District Court, Taylor County, Texas; filed July 7, 2020
10. Kimberly Mattson v. City of Abilene (Board of Building Standards); Cause No. 12197-D, In the 350th Judicial District Court, Taylor County, Texas, filed July 30, 2020
11. The City of Abilene, Texas v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-20-004598, In the 53rd Judicial District Court, Travis County, Texas; filed September 1, 2020
12. Governor's Executive Orders - COVID-19
13. Claim of Tommy Milliorn

B. 551.072 (Deliberations about Real Property)

1. Clyde Water

C. 551.073 (Deliberations about Gifts and Donations)

D. 551.074 (Personnel Matters)

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

E. 551.076 (Deliberations about Security Devices)

F. 551.087 (Business Prospect/Economic Development)

1. Abilene Convention Center Hotel Project
2. Economic Development Agreement with KKP Investments, LLC

RECONVENE

REGULAR AGENDA

18. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approval of a Resolution Authorizing Changes to the DCOA's Bylaws ***(Misty Mayo)***

19. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approval of a Resolution approving of (i) a Restated Certificate of Formation (formerly Articles of Incorporation) of the DCOA with amendments and (ii) an Application to present to the Abilene City Council to amend the DCOA's Certificate of Formation (formerly Articles of Incorporation) ***(Misty Mayo)***

20. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approval of a Resolution approving an Agreement with Project Grasshopper ***(Misty Mayo)***

21. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approval of a Resolution approving an Agreement with Project ERG-10 ***(Misty Mayo)***

22. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving an Economic Development Agreement with KKP Investments, LLC regarding approximately 150 acres of land out of the M. Talbot Survey No. 103, Taylor County, Texas, located on FM 707 S and west of Buffalo Gap Road ***(Robert Hanna)***

23. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Nominating Voting Individuals for the Texas Municipal League Intergovernmental Risk Pool Board of Trustees ***(Shawna Atkinson)***

24. **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)***

    - Keep Abilene Beautiful Board

25. **Oral Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Evaluation of the City Manager

26. **Oral Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Evaluation of the City Attorney

27. **Oral Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Evaluation of the City Secretary

28. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Provide Direction on Adopting a Resolution in Support of Local Businesses and Local Control of COVID-19 Response to the Governor of Texas ***(Robert Hanna)***

ADJOURNMENT

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

CERTIFICATION

I hereby certify the above AMENDED meeting notice was posted on the bulletin board at the City Hall of the City of Abilene, Texas, on the 7th day of September, 2020 at 7:20 a.m.

_____

Shawna Atkinson, City Secretary

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Honorable Mayor & Members of City Council**

FROM: **Shawna Atkinson, City Secretary**

SUBJECT: **4. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on August 27, 2020 *(Shawna Atkinson)***

GENERAL INFORMATION

Approval of the Minutes from the Regular Meeting Held on August 27, 2020

SPECIAL CONSIDERATIONS

None.

FUNDING/FISCAL IMPACT

None

STAFF RECOMMENDATION

Approval of the Minutes

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 08-27-2020 Minutes - Regular - Evening

CITY COUNCIL MEETING
August 27, 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 August 27, 2020, at 4:30 p.m. in the Council Chambers, 555 Walnut St. Mayor Anthony Williams was present and presiding with Mayor Pro-tem Weldon Hurt, Deputy Mayor Pro-tem Donna Albus and Councilmembers Shane Price, Jack Rentz, Kyle McAlister and Travis Craver. Also present were City Manager Robert Hanna, City Attorney Stanley Smith, 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:

14. D. 551.074 (Personnel Matters)
    1. City Manager
    2. City Attorney
    3. City Secretary

The Executive Session ended at 5:25 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 Travis Craver delivered the invocation.

Branson King, 8th grader at Madison Middle School, and Trinity Apple, 6th grader at Madison Middle School, led the Pledge of Allegiance to the Flag of the United States of America and State of Texas Flag.

CONSENT AGENDA

The Consent Agenda consisted of items 4-7. Item #7 was pulled for individual consideration.

Items pulled for individual consideration were as follows:

- David Swart, citizen – Item #7

Mayor Pro-tem Hurt moved to approve the Consent Agenda, now consisting of items 4-6. Deputy Mayor Pro-tem Albus seconded the motion. Motion carried.

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

4. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on August 13, 2020

5. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Bid No. 2070 to Bontke Brothers Construction, Inc. for TASA US 83/84 Bike/Ped Improvements
   [ASSIGNED RESOLUTION NO. 157-2020]

6. Resolution: Receive a Report, Hold a Discussion and Public Hearing and Take Action to accept an Airport Improvement Program Grant from the Federal Aviation Administration
[ASSIGNED RESOLUTION NO. 158-2020]

ITEMS PULLED FOR INDIVIDUAL CONSIDERATION

7. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Approve the Purchase of Airport Terminal Replacement Furniture
[ASSIGNED RESOLUTION NO. 159-2020]

The item was pulled by David Swart, citizen.

Having pulled the item, David Swart questioned if the new furniture is equipped to charge phones. He stated that everyone should bring their own charging device instead of using one provided, as it is safer and more secure that way.

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

Don Green, Director of Transportation, responded to Mr. Swart's concerns stating that they would not be monitoring cell phones or even providing cords to charge them with.

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

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

REGULAR AGENDA

8. Resolution: (remove from table) Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Award of Bid No. CB-2069 – Sale of Property, T & P Freight Warehouse (901 N. 1st)
[ASSIGNED RESOLUTION NO. 160-2020]

This item was tabled at the August 13th meeting. Mayor Williams moved to remove the item from the table. Mayor Pro-tem Hurt seconded the motion; motion carried.

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

Because the motion originally failed at the August 13th meeting, Mayor Williams moved to reconsider the item. Mayor Pro-tem Hurt seconded the motion; motion carried.

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

Robert Hanna, City Manager, presented the item. Adoption of the item would award Bid No. CB-2069 – Sale of Property, T & P Freight Warehouse. There were two bidders, Charles Wolfe (dba Abilene Majestic, LLC) at $950,000, and the Abilene Chamber of Commerce at $770,000. City Attorney Stanley Smith gave Council a brief update on the previous vote and what needs to happen for this item to go forward.

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

- David Swart – spoke in support of awarding the bid to Charlie Wolfe.
- Joe Spano – spoke in support of awarding the bid to the Chamber of Commerce.
- Marquez Angelo Hawkins – filled out a card in support of the item, but did not speak.
- Kevin Scotty – spoke in support of awarding the bid to Charlie Wolfe.
- Espy Harper – filled out a card in support of the item, but did not speak.
- Jerryon Johnson – spoke in support of awarding the bid to Charlie Wolfe.
- Tim Smith – spoke in support of awarding the bid to Charlie Wolfe.
- Justin Russell – spoke in support of awarding the bid to the Chamber of Commerce.
- Cynthia Pearson – spoke in support of awarding the bid to the Chamber of Commerce.
- Yvonne Batts – spoke in support of awarding the bid to the Chamber of Commerce.
- Darrin Black – spoke in support of awarding the bid to the Chamber of Commerce.
- David Smith – spoke in support of awarding the bid to the Chamber of Commerce.
- Chris Carnahan – spoke in support of awarding the bid to Charlie Wolfe.
- Bennie Mouser – spoke in support of awarding the bid to Charlie Wolfe.
- Norm Archibald – spoke in support of awarding the bid to the Chamber of Commerce.
- Brent Razzle – did not speak but was in support of awarding the bid to Charlie Wolfe.
- Pete Garcia – spoke in support of awarding the bid to Charlie Wolfe.
- Samuel Garcia – spoke in support of awarding the bid to Charlie Wolfe.
- Lindsey Minter – spoke in support of awarding the bid to Charlie Wolfe.
- Jerry Smith – spoke in support of awarding the bid to Charlie Wolfe.
- Josh Black – did not speak in favor of either bidder, but for the history of the building and preserving it.
- Lauren Moore – spoke in support of awarding the bid to Charlie Wolfe.
- Chloe Roberts Simmons – spoke in support of awarding the bid to the Chamber of Commerce.
- Sam Wolfe – spoke in support of awarding the bid to Charlie Wolfe.
- Cindy Wolfe – spoke in support of awarding the bid to Charlie Wolfe.
- Tim Yandell – spoke in support of awarding the bid to Charlie Wolfe.
- Graham Sapiza – spoke in support of awarding the bid to Charlie Wolfe.
- Bob Thomas – did not speak in favor of either bidder, but of his concern for those who look to the City Council for guidance.
- Cynthia Alvidrez – spoke in support of awarding the bid to Charlie Wolfe.
- Jennifer Morrison – spoke in support of awarding the bid to Charlie Wolfe.

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

Mayor Williams moved to award the sale of the property to Charlie Wolfe (dba Abilene Majestic, LLC) with the condition that the roof repairs be completed before closing. Councilmember Price seconded the motion; motion carried.

AYES (5): Mayor Williams, Mayor Pro-tem Hurt and Councilmembers Price, Rentz and Craver
NAYS (2): Mayor Pro-tem Albus and Councilmember McAlister

Council took a 5 minute recess from 7:25 to 7:30 at the conclusion of the above item.

9. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving an Economic Development Agreement with KKP Investments, LLC regarding approximately 150 acres of land out of the M. Talbot Survey No. 103, Taylor County, Texas, located on FM 707 S and west of Buffalo Gap Road
[PULLED FROM CONSIDERATION]

This item was pulled from consideration.

10. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Modifying and Extending the Declaration of Local Disaster Issued July 23, 2020
[ASSIGNED RESOLUTION NO. 162-2020]

Robert Hanna, City Manager, presented the item. Adoption of the item would modify and extend the Declaration of Local Disaster issued on July 27, 2020

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

- David Swart – stated he is still wanting the City to send a letter of support for local businesses to the Governor. Spoke about his friend being out of work due to the pandemic, and questioned why the mask order is open ended, as he does not think that is legal.

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

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

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

11. Resolution: Receive a Report, Hold a Discussion and Public Hearing and Take Action to Approve a Revenue Guarantee Agreement with SkyWest Airlines to Provide Daily Service to Houston George Bush Intercontinental Airport for United Airlines
[ASSIGNED RESOLUTION NO. 163-2020]

Don Green, Director of Transportation, presented the item. Adoption of the item would approve a revenue guarantee agreement for SkyWest Airlines to operate as a United Airlines regional carrier for daily scheduled service between Abilene Regional Airport and Houston's George Bush Intercontinental Airport, effective October 21, 2020, using a 50- passenger regional jet.

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

- David Swart – stated this is a great opportunity but our track record with airlines is not that good, especially when American is seriously considering cutting routes in light of the pandemic. Also questioned why there will only be one route going east, which is a good deal for destinations on the east coast, but not for anywhere west.

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

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

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

12. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Approve an Airport Lease and Operating Agreement with SkyWest Airlines
[ASSIGNED RESOLUTION NO. 164-2020]

Don Green, Director of Transportation, presented the item. Adoption of the item would approve an agreement for SkyWest Airlines to lease office space and common use space to operate at Abilene Regional Airport for a three-year initial term, with two one-year options.

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 Craver seconded the motion; motion carried.

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

13. Ordinance (Final Reading) Z-2020-11: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Cade and Katie Browning to rezone property from Single Family Residential 12 (RS-12) to Single Family Residential 12/Historic Overlay (RS-12/HO) zoning located at 910 Highland Avenue
[ASSIGNED ORDINANCE NO. 34-2020]

Mike Warrix, Director of Planning and Development Services, presented the item. Adoption of the item would rezone the above reference property from Residential Single-Family (RS-12) to Residential Single-Family with Historic Overlay Designation (RS-12/H).

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

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

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

15. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Evaluation of the City Manager
[NOT CONSIDERED]

This item was pulled from consideration.

16. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Evaluation of the City Attorney
[NOT CONSIDERED]

This item was pulled from consideration.

17. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Evaluation of the City Secretary
[NOT CONSIDERED]

This item was pulled from consideration.

18. 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. 165-2020]

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

Councilmember Craver moved to (re)appoint the following:

Board	Term End Date
Betty Hardwick Center Board of Trustees	
Rosendo Contreras [New]	August 2021 [Unexpired Term]
Civil Service Commission	
Regi McCabe-Gossett [New]	November 2022 [Unexpired Term]

Councilmember McAlister seconded the motion; motion carried

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

PUBLIC COMMENTS

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

- David Swart – spoke about streets and how proud he is of Butternut Street now that the repairs are complete. Stated that John Knox still needs a lot of work, and the lights at Mockingbird need to be fixed. He also asked if the City can add a street light outage reporting button to the SeeClickFix App that reports directly to AEP.

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

ADJOURNMENT

There being no further business, the meeting adjourned at 8:02 p.m.

_____
Shawna Atkinson
City Secretary

_____
Anthony Williams
Mayor

Minutes approved on: _____

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Robert Hanna, City Manager**

FROM: **Don Green, Director**

SUBJECT: **5. Resolution: Receive a Report, Hold a Discussion and Public Hearing and Take Action to Award a Contract to Collier Construction to Build the New Aircraft Rescue and Fire Fighting Station at Abilene Regional Airport. *(Don Green)***

GENERAL INFORMATION

In 2019, the airport expressed the need to design a new Aircraft Rescue and Fire Fighting (ARFF) Station to replace the one built around 1992. The Airport's architect, Corgan Associates, completed design in May. The new station will have larger truck bays to accommodate the increasing size of ARFF trucks. It will also have a larger living and training area.

The City conducted a Request for Bids (CB-2065) and received three bids:

Collier Construction - $5,300,000.00
Crowe Group - $5,416,000.00
W.B. Kibler Construction - $5,770,000.00

All three bids were significantly over the architect's estimate of $4,100,000. Collier Construction had the lowest bid of $5,300,000.

The action requested of Council is to approve the contract with Collier Construction for $5,300,000.

The station will be approximately 300 feet west of the existing ARFF Station and is expected to take 18 months to complete.

The old ARFF Station will be occupied by Airport Maintenance.

SPECIAL CONSIDERATIONS

Change Order 1 reducing the contract amount is a separate agenda item for Council's consideration and action.

FUNDING/FISCAL IMPACT

This is funded by Airport Improvement Program Grant 48 and 2015 GO Bond Proposition 9 funds.

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

The Airport Development Board voted to approve its recommendation at its August 19, 2020 meeting.

ATTACHMENTS:

1. Collier Contract Award Resolution
2. Collier Contract Award Presentation (9-10-20)
3. 00 45 20 - CONSTRUCTION CONTRACT
4. 00 72 00 - SPECIAL CONDITIONS
5. 00 73 00 - SUPPLEMENTARY CONDITIONS
6. 00 74 00 - GENERAL REQUIREMENTS AND COVENANTS
7. 00 80 10 - Definition of Terms
8. 00 80 40 - SCOPE OF WORK
9. 00 80 60 - CONTROL OF MATERIALS
10. 00 80 70 - LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC
11. 00 80 80 - EXECUTION AND PROGRESS
12. 00 80 90 - MEASUREMENT AND PAYMENT
13. 00 81 10 CONTRACTOR QUALITY CONTROL PROGRAM (CQCP)
14. 00 81 20 - MOBILIZATION
15. 00 81 30 - METHOD OF ESTIMATING PERCENTAGE OF MATERIAL WITHIN SPECIFICATION LIMITS (PWL)
16. 00 82 00 - FAA SPECIAL PROVISIONS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING A CONTRACT AWARD TO COLLIER CONSTRUCTION FOR CONSTRUCTION OF THE AIRCRAFT RESCUE AND FIRE FIGHTING STATION AT ABILENE REGIONAL AIRPORT.

WHEREAS, the City of Abilene (City) owns and operates Abilene Regional Airport; and

WHEREAS, the Airport demonstrated the need for a new Aircraft Rescue and Fire Fighting (ARFF) Station to accommodate expected increased ARFF truck sizes; and

WHEREAS, the City conducted a Request for Bids (CB-2065) and received three bids; and

WHEREAS, Collier Construction had the lowest bid of $5,300,000; and

WHEREAS, this project is funded by Airport Improvement Grant 48 and Proposition 9 funds from the 2015 General Obligation Bond; and

WHEREAS, the Airport Development Board approved its recommendation at its August 19, 2020 meeting.

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

1. That the City Manager is authorized to enter into the contract with Collier Construction for construction of the new ARFF Station for $5,300,000.00.
2. That this resolution takes effect immediately upon Council approval.

ADOPTED this 10th day of September 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

ARFF Station Construction Contract Award to Collier Construction

CITY OF ABILENE TEXAS

ARFF Station Construction Contract Award to Collier Construction

- In 2019, the Airport expressed the need to design a new Aircraft Rescue and Fire Fighting (ARFF) Station to replace the one built around 1992.
- The Airport's architect, Corgan Associates, completed design in May. The new station will have larger truck bays to accommodate the increasing size of ARFF trucks. It will also have a larger living and training area.
- The City conducted a Request for Bids (CB-2065) and received three bids. All three bids were significantly over the architect's estimate of $4,100,000. Collier Construction had the lowest bid of $5,300,000.

- The station will be approximately 300 feet west of the existing ARFF Station and is expected to take 18 months to complete.
- The old ARFF Station will be occupied by Airport Maintenance.

ABI
ABILENE REGIONAL AIRPORT
CITY OF ABILENE
CORGAN

SECTION 00 45 20
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 _____ of the City of _____, State of _____. ("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 **ABILENE REGIONAL AIRPORT AIRCRAFT RESCUE AND FIRE FIGHTING STATION**.

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 _____.

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:

_____

_____
Signature

Name – Typed or Printed

_____
Title – Typed or Printed

_____

Business Address:

_____

_____

Business Phone No.

_____

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

END OF SECTION

SECTION 00 72 00
SPECIAL CONDITIONS

SC.1 INSURANCE

A. GENERAL REQUIREMENTS

The Contractor must maintain the types and amounts of required insurance throughout the term of the agreement. Contractor is solely responsible for providing a certificate of insurance evidencing the required coverage types and amounts. The City may terminate this contractor if Contractor fails to timely comply with these requirements.

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

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

Before the Notice to Proceed is issued for this contract, the Contractor must provide the City Secretary an original certificate of insurance or a certified copy of the insurance policy evidencing the required insurance. Thereafter, the Contractor must furnish new certificates or copies of the policy before any existing certificate expires.

B. ADDITIONAL REQUIREMENTS

The required liability insurance and their certificates must:

1. Name the City as an additional insured with respect to operations for which this contract is made.

2. Provide for 30 day advance written notice of cancellation or material change.

C. STATE MANDATED WORKERS' COMPENSATION INSURANCE COVERAGE

a. Definitions

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

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

Persons providing services on the project ("subcontractors" in 406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which

furnishes persons to provide services on the project. "Services" include, without limitations, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

b. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

c. The Contractor must provide a certificate of coverage to the City of Abilene prior to being awarded the contract.

d. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City of Abilene showing that coverage has been extended.

e. The Contractor shall obtain from each person providing services on a project, and provide to the City of Abilene:

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

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

f. The Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.

g. The Contractor shall notify the City of Abilene in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

h. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

i. The Contractor shall contractually require each person with whom it contracts to provide services on a project to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing service on the project, for the duration of the project;

(3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;

(6) notify the City of Abilene in writing by certified mail or personal delivery, within ten (10) days after the person knew of should have known, of any change that materially affects the provision of coverage of any person providing service on the project; and

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

j. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the City of Abilene that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the City of Abilene to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the City of Abilene.

D. TYPES AND AMOUNTS OF INSURANCE

The following types and amounts of insurance are required in this contract.

***ANY CHANGES, ADDITIONS, OR DELETIONS TO REQUIRED INSURANCE COVERAGES WILL BE ISSUED IN AN ADDENDUM

Type	Amount
1. Workers' Compensation	Statutory
Employer's Liability	$100,000 per occurrence
2. Commercial (Public) Liability including but not limited to: . Premises/Operations	$500,000 combined single limit for bodily injury and property damage

. Independent Contractors	(per occurrence)
. Products/Completed Operations	
. Contractual Liability	
(Insuring above indemnity)	
And where the exposures exist:	
. Explosion, Collapse and Underground	
3. Business Automobile Liability	$500,000 combined single
to include coverage for:	limit for bodily injury
. Owned/Leased Autos	and property damage
. Non-Owned Autos	(per occurrence)
Hired Cars	

END OF SECTION

SECTION 00 73 00
SUPPLEMENTARY CONDITIONS

1. CONTRACT SET UP

The bid schedule, included in the bid package, has a base bid. A bid will be considered incomplete and invalid if it does not include all completed bid schedules and certification forms.

2. TIME OF COMMENCEMENT AND FINAL COMPLETION

The work to be performed shall be commenced on/or before the date stipulated in the Notice to Proceed and final completion shall be achieved not later than Four Hundred and Fifty (450) calendar days thereafter.

3. LIQUIDATED DAMAGES FOR DELAYS

It is understood and agreed between the parties hereto that time is of the essence on this Contract, and that for each day of delay beyond the stated number of days for final completion of this Contract, the CONTRACTOR shall pay to the OWNER (City of Abilene) as liquidated damages for each day of such delay, the amount enumerated in Section 16, "Time for Completion and Liquidated Damages", of General Conditions. It is understood between the parties hereto that such sum shall be treated as liquidated damages and not as a penalty, and the OWNER will withhold from CONTRACTOR'S final payment such sums as liquidated damages.

4. WORK HOURS

Any time the CONTRACTOR intends to work on Saturdays or after 5 P.M. on weekdays, he shall receive prior approval in writing from the ENGINEER for such work on those specific days. **No work will be allowed on legal holidays or Sundays except as listed below.**

When work on Saturday or overtime work is permitted, and if the nature of work is such that inspection would be required, the CONTRACTOR shall pay the OWNER the composite salary, overtime pay and other overhead expenses relative to the employee designated to perform the construction inspection for a minimum of eight (8) hours even if the construction inspection lasts for a period less than eight (8) hours. For the work permitted after 5 P.M. on weekdays, the CONTRACTOR shall pay the OWNER the composite salary, overtime pay, and other overhead expenses for the actual time spent by the employee designated to perform the construction inspection.

The OWNER will bill the CONTRACTOR for the expenses relative to that employee's overtime work. The CONTRACTOR will be required to pay the OWNER within thirty (30) calendar days from the date of billing. CONTRACTOR'S failure to pay on time will result in withholding the sum from payments that become due to the CONTRACTOR.

In the sole opinion of the ENGINEER, if the nature of work is such that it does not require inspection, the ENGINEER may allow the CONTRACTOR to work on Sundays or legal holidays without inspection personnel present on the work site provided the CONTRACTOR had received prior approval to work on such days.

If work is performed on Saturdays or Sundays and/or legal holidays, whether the OWNER'S representative is present or not, those days will be considered as working days and would be counted towards the contract time.

5. EXISTING UTILITY LINES

It shall be the responsibility of the Contractor to contact the various utility companies to have their respective lines located on the ground. When the Contractor is working close to existing utility lines, it will be prudent to have the representative of the utilities present at the work site. It shall be the responsibility of the Contractor to arrange for the respective utility representatives present at the work site when needed. Any damages occurring to the existing utilities as a result of Contractor's work shall be repaired and restored by the Contractor to the complete satisfaction of the respective utility companies.

END OF SECTION

SECTION 00 74 00
GENERAL REQUIREMENTS AND COVENANTS

1. DEFINITIONS.

1.1 Wherever used in the Contract Documents, these terms have the meanings indicated. The singular includes the plural.

1.2 Addendum - Written or graphic instruments issued before the Contract is executed to modify, interpret, clarify or correct the Contract Documents.

1.3 Bid - Bidder's written offer on City's form stating prices for Work to be performed.

1.4 Bidder - Any person, firm or corporation submitting a Bid for the Work.

1.5 Bond - Security instruments, including Bid, Performance and Payment, that Contractor and Contractor's surety must furnish to the City.

1.6 Change Order - City's written authorization to the Contractor to add, delete or revise Contract work, or adjusting the contract price or contract time.

1.7 City or Owner - Abilene, Texas.

1.8 Contract Documents - Collectively, the Invitation for Bids, Instructions to Bidders, Bid, Bid Bond, Contract, Performance Bond, Payment Bond, General Conditions, Supplementary Conditions, Special Conditions, Notice of Award, Notice to Proceed, Change Orders, Plans, Drawings, Specifications, and all Addenda.

1.9 Contract Price - The total amount the City will pay the Contractor for the Work.

1.10 Contract Time - The number of calendar days in which the Contractor must complete the Work.

1.11 Contractor - The person, firm or corporation with whom the City executes a Contract.

1.12 Drawings - Contract Documents, prepared or approved by the Engineer, showing characteristics and scope of the work.

1.13 Extra Work - The term "Extra Work" as used in this Contract shall be understood to mean and include all work that may be required by the OWNER to be done by the Contractor to accomplish any change, alteration or addition to the work shown on the plans, or reasonably implied by the specifications, and not covered by the Contractor's Proposal, except as provided under "Change and Alterations" herein.

1.14 Field Order - A written directive from the Engineer to the Contractor to change the Work without adjusting Contract Price or extending Contract Time.

1.15 Holidays - During the performance of this Contract, holidays are defined to be the following:

- January 1st - New Year's Day
- Third Monday in January - Martin Luther King Day
- Last Monday in May - Memorial Day
- July 4th - Independence Day
- First Monday in September - Labor Day
- Fourth Thursday & Friday of November - Thanksgiving
- December 25th - Christmas

1.16 Notice of Award - Written notice from City to the successful Bidder accepting the Bid.

1.17 Notice to Proceed - The written notice from City to the Contractor authorizing the Contractor to begin work and identifying the first day of the Work calendar.

1.18 Engineer - The person, firm or corporation acting as Architect or Engineer for the Work.

1.19 Project - The undertaking to be performed by the Work.

1.20 Resident Project Representative - The City's agent assigned to monitor any of the project site.

1.21 Shop Drawings - All drawings, diagrams, illustrations, brochures, schedules or data prepared by the Contractor, subcontractor, manufacturer, supplier, or distributor, to illustrate how to fabricate or install specific portions of the Work.

1.22 Special Conditions - Insurance requirements and prevailing wage rates which apply to the Project.

1.23 Specifications - Written technical descriptions of materials, equipment, construction systems, standards and workmanship.

1.24 Subcontractor - An individual, firm, or corporation directly contracting with the Contractor or any other Subcontractor to perform part of the Work at the site.

1.25 Substantial Completion - The date the Engineer certifies the project construction, or a specified part of it, is sufficiently finished so that the City can use the project, or specified part, for its intended purpose.

1.26 Supplementary Conditions - Modifications, additions or deletions to the General Conditions to meet specific project conditions.

1.27 Supplier - Any person or organization supplying materials or equipment for the Work, including that fabricated to a special design, but not performing labor at the Work site.

1.28 TxDOT - Texas Department of Transportation

1.39 Work - All labor, and incorporated materials and equipment necessary to produce the construction required by the Contract Documents.

1.30 Written Notice - Information relating to the Project which is served on another party when posted by certified or registered mail to the party at the last given address, or delivered in person to the party or authorized representative on the Work.

ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

The Engineer may furnish the Contractor additional instructions and detail drawings as necessary to carry out the Work. These are part of the Contract Documents. The Contractor must complete the Work accordingly.

SCHEDULES, REPORTS, AND RECORDS

3.1 The Contractor must submit to the City schedules of quantities and costs, progress schedules, payrolls, reports, estimates, records, and other data as required by the Contract Documents.

3.2 Before the first partial payment estimate, the Contractor must submit construction progress schedules showing the order in which he proposes to carry on the Work, including dates at which he will start the various parts of the Work, estimated date of completion of each part and, as applicable:

3.2.1 The dates special detail drawings are required; and,

3.2.2 Respective dates for submission of Shop Drawings, the beginning of manufacture, the testing, and the installation of materials, supplies, and equipment.

3.3 The Contractor must submit a proposed schedule of payments for Work accomplished.

4. MATERIALS, SERVICES, AND FACILITIES

4.1 The Contractor must provide and pay for all materials, services and facilities of any nature—including labor, tools, equipment, water, light, power, transportation, supervision, insurance, temporary construction of any nature—necessary to execute, complete, and deliver the Work within the specified time, unless otherwise specifically stated in the Contract Documents.

4.2 Contractor must store materials and equipment to preserve their quality and fitness for the Work and to allow prompt inspection by City or Engineer.

4.3 Contractor must apply, install, connect, erect, use, clean and condition all manufactured articles, materials, and equipment as directed by the manufacturer.

4.4 Contractor must use materials, supplies, and equipment which match samples submitted by the Contractor and approved by the Engineer.

4.5 Contractor and Subcontractor must not purchase materials, supplies, and equipment to be incorporated into the Work subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

4.6 The Contractor must arrange for construction water. For information regarding the use of City water for construction purposes, contact the City's Water Department, 676-6406. If a City meter is used, the Contractor is solely responsible for maintenance for all water use and for prompt payment of the account. Construction meters are not allowed if the City is in Stages 3-5 of the Drought Contingency Plan.

4.7 If, due to the Work, dust becomes a nuisance, the Contractor is solely responsible for controlling it by spraying the area with water or dilute solution of calcium chloride on a regular basis. The Engineer may notify the Contractor that the dust is a nuisance. If the Contractor then fails to control it, the City may pay for additional dust control and bill those expenses to the Contractor. The Contractor must then pay the City within 30 days following receipt of bill.

4.8 The Contractor must comply with OSHA regulations in providing and maintaining adequate toilet facilities for the workers during construction.

9. PATENTS

9.1 The Contractor must pay all applicable royalties and license fees. The Contractor must defend all suits or claims for infringement of any patent rights and save the City harmless from loss on that account, except that the City is responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified; however, if the Contractor has reason to believe that the design, process or product specified may be a patent infringement, the Contractor is responsible for such loss unless written notice is promptly given to the Engineer.

10. SURVEYS, PERMITS, AND REGULATIONS

10.1 The City must furnish all boundary surveys and establish all base lines for locating the principal component parts of the Work, together with a suitable number of bench marks adjacent to the Work. From this information, unless otherwise specified, the Contractor must develop and make all detailed surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets. The Contractor must have a person that is trained to perform this type of surveying and he must be equipped with modern surveying instruments. The surveyor and equipment will be approved be the Engineer.

10.2 The Contractor must carefully preserve bench marks, reference points and stakes. The Contractor is responsible for mistakes caused by Contractor's willful or careless destruction, loss, or disturbance of the bench marks, reference points, and stakes and must pay for all resulting expenses.

10.3 The Contractor must secure and pay for any permits and licenses of a temporary nature necessary for the Work, unless otherwise specified. The City must secure and pay for any permits, licenses and easements for permanent structures or permanent changes in existing facilities, unless otherwise specified. The Contractor must give all notices and comply with all laws, ordinances, rules and regulations relating to the Work. The Contractor must promptly notify the Engineer in writing of any variances between these and the Contract Documents. The City will issue any necessary Change Orders.

If the Work involves right-of-way belonging to TxDOT, the Contractor must verify TxDOT's requirements before bidding. No separate pay item will be included for the Contractor's conforming with TxDOT's requirements, and no adjustments in the Contract Price will be made if TxDOT requires work which differs from the Contract Documents.

11. PROTECTION OF WORK, PROPERTY, AND PERSONS

11.1 The Contractor is responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor must take all necessary precautions for the safety of, and provide the necessary protection to prevent damage, injury or loss to, all employees on the Work and other persons who may be affected; all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the construction.

11.2 The Contractor must comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The Contractor must notify owners of adjacent utilities when the Work may affect them. The Contractor must expeditiously remedy to the City's satisfaction all damage, injury, or loss to any property caused directly or indirectly, in whole or in part, by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them is liable, except damage or loss

solely attributable to the fault of the Contract Documents or to the acts or omissions of the City, the Engineer or anyone for whose acts either of them is liable.

11.3 The Contractor must comply with all pertinent provisions of the "Manual of Accident Prevention in Construction", issued by the Associated General Contractors of America, Inc., and must maintain an accurate record of all cases of death, occupational disease and injury requiring medical attention or causing loss of time from Work arising out of and in the course of employment or Work under this Contract. The Contractor is solely responsible for the safety, efficiency, and adequacy of plans, equipment, and methods and for any damage which may result from their failure or from improper construction, maintenance or operation.

11.4 The City has the right to enter the premises for the purpose of doing Work not covered by the Contract Documents. This provision does not relieve the Contractor of the sole responsibility for the care and protection of the Work, or the restoration of any damaged Work except as may be caused by agents or employees of the City.

11.5 In emergencies affecting the safety of persons, or the Work, or property at or adjacent to the site, the Contractor, without special instruction or authorization from the Engineer or City, must act to prevent threatened damage, injury, or loss. He must give the Engineer prompt Written Notice of any significant changes in the Work or deviations from the Contract Documents caused by the emergency and action. The City will issue a Change Order, if necessary, covering the changes and deviations.

12. PUBLIC SAFETY AND CONVENIENCE

12.1 The Contractor must conform to the Contract standards and, if on State roads, to all requirements of the Standard Specifications for Construction of Highways, Streets and Bridges published by the TxDOT. The Contractor must keep all equipment and materials used to comply with this section clean and in good repair. The Contractor retains possession of all devices furnished by Contractor solely to comply with this section, unless otherwise noted. The Contractor must remove these devices from the site when no longer required.

12.2 The Contractor must allow all public vehicular and pedestrian traffic to pass through or around the Contractor's Work sites with a minimum of delay.

The Contractor must not store materials or equipment in locations that interfere with vehicular or pedestrian traffic safety. At the end of each calendar day, and at other times when Work is suspended for any reason, the Contractor must remove all debris, equipment, materials and other obstructions from all roadways and pedestrian ways which are open to traffic.

The Contractor must furnish, install and maintain flagmen, barricades, lights, signs, flashers, signals, fences, and other devices to control vehicular and pedestrian traffic in the Work site as are necessary to ensure the safety and facilitate the convenience of the public. This requirement may not be specifically enumerated in the Contract Documents. All traffic control devices must meet the requirements of the Texas Manual on Uniform Traffic Control Devices for Streets and Highways published by the TxDOT.

When the Contractor assigns flagmen, their sole responsibility is to direct public traffic through and around the Work. The flagmen must have no other duties.

The Contractor must provide written notice to the Engineer whenever operations will cause any traffic signal to be inoperative. The Engineer must receive this notice at least 48 hours before the time when the signal will become inoperative. The Contractor must hire off-duty Abilene policemen to control traffic at the affected intersections in all cases.

12.3 The Contractor must furnish, install and maintain such barricades, fences, railings, signs, warning lights, safety helmets, and other devices necessary for the general safety of both the public and workmen on and around the Work sites.

The Contractor must immediately remove any spillage caused by the operations on any street, sidewalk or pedestrian way.

12.4 The Contractor must minimize inconvenience to, and obstruction of, the public. The Contractor must not have under construction more Work than can reasonably and effectively be done at one time.

The Contractor must minimize adverse effects of the Work on adjoining property owners. The Contractor must keep each intersection roadway and driveway open to traffic, unless the Engineer specifically approves otherwise.

12.5 Contractor must maintain all existing traffic signals, traffic signal systems, school speed limit beacons, hazard identification beacons, flashing beacons, sign beacons and street and highway lighting systems in effective operation, to the extent possible, for the duration of the Work. The City will maintain these facilities until the Contractor modifies them; at that time, the Contractor is responsible for maintaining them. However, the City will replace signal lamps as needed, unless the Contractor's operations damage the lamps.

The City will initially respond to reported problems and failures and replace apparently malfunctioning or questionable equipment at the complete unit level (not at the module or more discrete levels), if the Contractor furnishes the City with sufficient spare equipment for this purpose. When the City does not receive sufficient spare equipment, when replacement at the unit level does not correct the problem, or when the cause of the trouble or failure is not immediately apparent to City

personnel, the Contractor must respond to the site with a qualified technician immediately upon request of the City.

12.6 If the Contractor appears neglectful in carrying out these safety requirements, the Engineer may notify the Contractor verbally or in writing. The Contractor must immediately correct the situation. If the Contractor fails or neglects to install and maintain any device required to fulfill the requirements of this section, the City may have the devices installed or maintained and then charge the cost of this work to the Contractor.

The Engineer has authority to stop the Contractor from proceeding with the Work at any location where, in the Engineer's judgment, the Contractor has not adequately provided for safety or for the convenience of the public. Such action by the Engineer does not entitle the Contractor to any additional compensation or justify any claim for additional Contract Time or waive of any liquidated damages.

12.7 The Contractor is solely responsible for conducting operations in a safe manner and with a minimum of inconvenience to the public. Action, or inaction, by the City or Engineer does not relieve the Contractor of any responsibility or liability incurred under this Contract.

12.8 Unless otherwise specifically noted, the requirements of this section are incidental to the Work and no direct payment will be made for them.

13. SUPERVISION BY CONTRACTOR

13.1 The Contractor must supervise and direct the Work. The Contractor is solely responsible for the means, methods, techniques, sequences and procedures of construction.

13.2 The Contractor must employ and maintain on the Work a qualified supervisor or superintendent, designated in writing by the Contractor as the Contractor's representative at the site. The supervisor must have full authority to act on behalf of the Contractor. All communications given to the supervisor are as binding as if given to the Contractor. The supervisor must be present on the site at all times as required to adequately supervise and coordinate the Work.

14. CHANGES IN THE WORK

14.1 The City may at any time, as the need arises, order changes within the scope of the Work without invalidating the Contract. If such changes increase or decrease the amount due under the Contract Documents, or in the time required for performance of the Work, the City will issue a Change Order authorizing an equitable adjustment.

14.2 The Engineer may at any time change the details of the Work by issuing a Field Order.

The Contractor must give the Engineer Written Notice within seven days of receiving the Field Order if the Contractor intends to request a Change Order. The Contractor has 30 days to submit documentation for the requested change. The Contractor must not execute the questioned Field Order change until receiving a Change Order or other instruction.

If the Field Order change does not require a Change Order, the Contractor must proceed with the changes in the Work as instructed by the Engineer.

15. CHANGES IN CONTRACT PRICE

15.1 The Contract Price may be changed only by a Change Order. The value of any Work covered by a Change Order or of any claim for increase or decrease in the Contract price is determined by one or more of the following methods in the order of precedence listed below:

(a) Unit prices previously approved

(b) An agreed lump sum

16. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

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

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

16.3 Because time is of the essence of this contract, liquidated damages apply to its performance. For each calendar day that any Work remains uncompleted after the final completion time as stated in the Notice to Proceed, the City will deduct the amount stated below from money due or to be due to the Contractor:

Amount of Liquidated Damages

Contract Amount	$ Per Day
Under $5,000.00	50.00
$5,000.00 to $14,999.99	75.00
$15,000.00 to $24,999.99	100.00
$25,000.00 to $49,999.99	125.00
$50,000.00 to $99,999.99	150.00
$100,000.00 to $1,000,000.00	250.00
Over $1,000,000.00	500.00

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

16.4 The City will not charge the Contractor with liquidated damages or any excess cost when the Contractor has given prompt Written Notice to the City or Engineer, and the City confirms, that the delay in completion of the Work is due:

16.4.1 To any preference, priority or allocation order issued by the City.

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

16.4.3 To any delays of Subcontractors caused by the same occurrences listed above.

17. CORRECTION OF WORK

17.1 The Contractor must promptly remove from the premises all Work rejected by the Engineer for failure to comply with the Contract Documents, whether incorporated in the construction or not. The Contractor must promptly replace and re-execute the Work without expense to the City. The Contractor must pay for making good all Work of other Contractors destroyed or damaged by such removal or replacement.

17.2 If the Contractor does not take action to remove rejected Work within ten days after receipt of Written Notice, the City may remove such Work and store the materials at Contractor's expense.

18. SUBSURFACE CONDITIONS

18.1 The Contractor must promptly, and before disturbing conditions, except in the event of an emergency, give Written Notice to the City of:

18.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or

18.1.2 Unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in similar work.

18.2 The City will promptly investigate the conditions. If the City determines the conditions do materially differ and cause an increase or decrease in the cost of, or in the time required for, the Work, the City will make an equitable adjustment to the Contract Documents by Change Order.

18.3 Although the City is not obligated to make any adjustment if the Contractor fails to give the required Written Notice, the City may make an adjustment it considers justified if the Contractor requests one before the date of final payment.

19. SUSPENSION OF WORK, DEFAULT, TERMINATION, AND DELAY

19.1 The City may suspend any of the Work no more than 90 days, or longer with Contractor agreement, by Written Notice to the Contractor and the Engineer. This notice, or a subsequent one, will notify them of the mandatory date to resume Work. The City will allow the Contractor an extension of the Contract Time directly attributable to the City's suspension.

19.2 CONTRACTOR DEFAULT. The City may declare the Contractor to be in default if the Contractor violates any provision of the Contract Documents. The City will give the Contractor and its Surety 10 days Written Notice to cure any contract violation. After such 10 day notice, the City may declare the Contractor in default and/or terminate the Contract and finish the Work as expediently as possible.

Any of the following Contractor actions will subject the Contractor to default and/or termination:

If the Contractor**:**

(a) Repeatedly fails to supply sufficient skilled workmen, suitable materials or equipment to the site;

(b) Repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment;

(c) Disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the Work;

(d) Disregards the authority of the Professional Consultant;

(e) Fails to complete the job on time;

(f) Fails or refuses to remove rejected materials, equipment or supplies;

(g) Fails or refuses to remedy any defective or unacceptable work;

(h) Fails or refuses to provide proper materials, equipment or supplies;

(i) Is adjudged as bankrupt or insolvent;

(j) Makes a general assignment for the benefit of Contractor's creditors;

(k) Has a trustee or receiver appointed for the Contractor or for any of Contractor's property;

(l) Files a petition to take advantage of any debtor's act, or to be reorganized under the bankruptcy or applicable laws; or

(m) Otherwise violates any provision of the Contract Documents.

19.2.1 This remedy is in addition to any other rights or remedies the law allows the City.

19.2.2 In any action under this provision, the City will not pay the Contractor any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, the City will pay the excess to the Contractor. If the costs exceed the unpaid balance, the Contractor must pay the difference to the City. The Engineer will determine the amount of the costs and include them in a Change Order.

19.3 The City may, without cause and without prejudice to any other right or remedy, abandon the Project and terminate the Contract ten days after sending Written Notice to the Contractor and the Engineer. The City may negotiate with the Contractor to complete a set amount of the Project before stopping work. In either case, the City will pay the Contractor for all Work executed and any expenses sustained plus reasonable profit.

19.4 Termination by the City does not affect any right of the City against the Contractor then existing or which may thereafter accrue. The City's decision to retain or pay money due the Contractor does not release the Contractor from complying with the Contract Documents.

19.5 The Contractor may terminate the Contract and recover payment from the City for all work executed and related expenses if, through no act or fault of the Contractor:

(a) the Work is suspended for more than 90 days by the City, by court order, or by order of other public authority;

(b) the Engineer fails to act on any request for payment within 30 days after submission;

(c) the City, within 30 days of presentation by the Engineer, fails to pay the Contractor a substantial amount of the approved sum.

The Contractor must give the City and Engineer Written Notice of the intent and reason(s) to terminate. The City and Engineer have ten days from receiving the Written Notice to correct the stated problem.

19.6 The Contractor and the City may mutually agree to complete certain work under this Contract even after notice of termination has been received. In that event, City will reasonably compensate Contractor for the completed work.

19.7 The Contractor may temporarily stop Work, after giving ten days Written Notice to the City and Engineer, if:

(a) the Engineer has failed to act on a request for payment; or

(b) the City has failed to pay substantially the amount approved by the Engineer.

The Contractor must resume Work promptly upon correction of the problem. The City will issue Change Orders, if necessary, to adjust the Contract Price or extend the Contract Time to compensate for the Work stoppage.

19.8 The City must issue Change Orders to adjust the Contract Price or extend the Contract time to compensate for any costs or delays caused by the City's or the Engineer's failing to act within a time specified in the Contract Documents, or if no time is specified, within a reasonable time.

21. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

The Contractor's acceptance of final payment is, and operates as, a full and final release to the City of all claims by the Contractor unless otherwise agreed to and stated in writing. Any payment, final or otherwise, does not release the Contractor or its sureties from any obligations under the Contract Documents or the Performance and Payment Bonds.

22. CONTRACT SECURITY

The Contractor must, within 15 days after receiving the Notice of Award, furnish the City with a Performance Bond and a Payment Bond in penal sums equal to the amount of the Contract price, conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions and agreements of the Contract Documents, and upon the prompt payment by the Contractor to all persons supplying labor and materials in the prosecution of the Work. The Bonds must be executed by the Contractor and a corporate bond company licensed to transact business in the State of Texas and acceptable to the City. Bonds for projects using federal dollars must be underwritten by a surety named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department. The Contractor bears the expense of these Bonds.

If a surety on any Bond is declared bankrupt or loses its right to do business in Texas or is removed from the list of Surety Companies accepted on Federal Bonds, the Contractor must, ten days after notice from the City to do so, substitute an acceptable Bond (or Bonds) in form and sum and signed by such other surety or sureties as may be satisfactory to the City. The City will not make any further payments to the Contractor for Work until the substitution is made.

23. ASSIGNMENTS

Neither the Contractor nor the City shall sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of any right, title, interest, or obligation, without written consent of the other party.

24. SEPARATE CONTRACTS

24.1 The City reserves the right to let other contracts, or to perform additional work itself, in connection with this Project. The Contractor must give others reasonable opportunity to introduce and store their materials and to execute their work, and must properly connect and coordinate Work with theirs. If the proper execution or results of any part of the Contractor's Work depends upon the work of any other Contractor or the City, the Contractor must inspect that work and promptly report to the Engineer any defects rendering it unsuitable.

24.2 If the performance of additional work by other Contractors or the City is not noted in the Contract Documents before the Contract is executed, the City must give written notice to the Contractor before starting any additional work. The Contractor may request a Change Order if the Contractor believes the additional work justifies it.

25. SUBCONTRACTING

25.1 The Contractor may utilize the services of specialty Subcontractors as is standard in the industry.

25.2 The Contractor must not award Work representing more than 50% of the Contract Price to Subcontractor(s) without prior written approval of the City.

25.3 The Contractor is as fully responsible to the City for the acts and omissions of the Subcontractors, and of persons directly or indirectly employed by them, as the Contractor is for the acts and omissions of the Contractor's direct employees.

25.4 The Contractor's agreement with the Subcontractors must incorporate these Contract Documents, as applicable to the Subcontractor's Work, including the rights of termination.

25.5 Nothing contained in this Contract creates any contractual relation between any Subcontractor and the City.

26. ENGINEER'S AUTHORITY

26.1 The Engineer acts as the City's representative during construction. The Engineer decides questions which may arise as to quality and acceptability of materials furnished and Work performed, promptly interprets the intent of the Contract Documents in a fair and unbiased manner, and visits the site to evaluate the Work.

26.2 The Engineer is not responsible for the construction means, controls, techniques, sequences, procedures, or construction safety, all such responsibility being the Contractor's.

28. GUARANTY

28.1 The Contractor guarantees all materials and equipment furnished and all Work performed for a period of one year from the date of Substantial Completion. The City must notify the Contractor of observed defects with reasonable promptness. The Contractor must promptly correct and remedy all defects due to materials or workmanship, including repairing any damage resulting from the defect. The Contractor is never liable for less than the legal limit of liability under the laws of the State of Texas.

28.2 If the Contractor fails to make repairs, adjustments, or other Work caused by the defect, the City may do so and charge the Contractor or the surety the cost incurred.

30. PRIORITY OF INTERPRETATION

The Contract Documents are complementary, and what is called for by one document shall be binding as if called for by all. In case of conflict between any of the Contract Documents, priority of interpretation shall be in the following order:

Change Orders issued after the date of the Contract
Contract
Addenda or Amendments issued before or at the time of Contract award
Performance and Payment Bonds, if any
Notice of Award and Notice to Proceed
Bid Schedule
Plans and Drawings
Technical Specifications
Supplementary Conditions
Special Conditions
General Conditions
Instructions to Bidders
Invitation to Bid

31. WEEKEND AND HOLIDAY WORK

The City does not permit Work on Sundays and holidays except in an emergency with immediate notice to the Engineer, or by written agreement with the City and Engineer.

32. SEVERABILITY

If any provisions of this Contract are determined to be void or unenforceable by a court of competent jurisdiction, that determination does not affect any other provisions of the Contract. If any provision is susceptible to more than one construction, a construction which renders the provision valid must be used.

33. VERIFICATION OF EMPLOYMENT ELIGIBILITY

The Contractor must comply with the Immigration Reform and Control Act (IRCA) by not knowingly obtaining labor or services of an unauthorized alien. The Contractor is solely responsible for verifying employment eligibility as required by IRCA.

34. EQUAL EMPLOYMENT OPPORTUNITY

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

35. MINORITY AND WOMEN BUSINESS ENTERPRISES

The City of Abilene hereby notifies all bidders that, in regard to any contract entered into pursuant to this advertisement, Minority and Women Business Enterprises (M/HUB) will be afforded equal opportunities to submit bids in response to this invitation and will not be discriminated against on the grounds of race, ethnicity, color, sex, religion or national origin in consideration for an award.

Technical assistance will be available to M/HUB through the Community & Economic Development Department.

36. SALES TAX

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

37. EXTRA WORK

It is agreed that the Contractor shall perform all Extra Work under the direction of the Engineer when presented with a Written Work Order signed by the Engineer, subject, however, to the right of the Contractor to require a written confirmation of such Extra Work by the OWNER. It is also agreed that the compensation paid to the Contractor for performing said Extra Work shall be determined by one or more of the following methods:

Method A	**By agreed unit prices; or**
Method B	**By agreed lump sum; or**
Method C	**If neither Method (A) nor Method (B) be agreed upon before the Extra Work is commenced, then the Contractor shall be paid for the "actual field cost" of the work, plus fifteen (15) percent.**

In the event said Extra Work be performed and paid for under Method C, then the provisions of this paragraph shall apply and the "actual field cost" is hereby defined to include the cost of all workmen, such as foreman, timekeepers, mechanics and laborers, and materials, supplies, used on such Extra Work, plus actual transportation charges necessarily incurred, together with all power, fuel, lubricants, water and similar operating expense, also all necessary incidental expenses incurred directly on account of such Extra Work, including Social Security, Old Age Benefits and other payroll taxes and, a ratable proportion of premiums of Performance and Payment Bonds and Maintenance Bonds, Public Liability and Property Damage and Workmen's Compensation, and all other insurance as may be required by any law or ordinance, or directed by the OWNER, or by them agreed to.

The Engineer may direct the form in which accounts of the "actual field cost" shall be kept and the records of these accounts shall be made available to the Engineer. The Engineer may also specify in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise, these matters shall be determined by the Contractor. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using 100 percent, unless otherwise specified, of the latest schedule of Equipment Ownership Expense adopted by the Associated General Contractors of America. Where practicable the terms and prices for the use of machinery and equipment shall be incorporated in the written Extra Work Order. The fifteen percent (15%) of the "actual field cost" to be paid the Contractor shall cover and compensate him/her for his/her profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined, save that where the Contractor's Camp or Field Office must be maintained primarily on account of such Extra Work; then the cost to maintain and operate the same shall be included in the "actual field cost".

No claim for Extra Work of any kind will be allowed unless ordered in writing by the Engineer. In case any orders or instructions, either oral or written appear to the Contractor to involve Extra work for which he/she should receive compensation or an adjustment in the construction time he/she shall make written request to the Engineer for written order authorizing such Extra Work. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and the

Engineer insists upon its performance, the Contractor shall proceed with the work after making written request for written order and shall keep accurate account of the “actual field cost” thereof, as provided under Method C.

END OF SECTION

SECTION 00 80 10

SECTION 10 - DEFINITION OF TERMS

When the following terms are used in these specifications, in the contract, or in any documents or other instruments pertaining to construction where these specifications govern, the intent and meaning shall be defined as follows:

10-1. AASHTO - The American Association of State Highway and Transportation Officials.

10-2. Access Road - The right-of-way, the roadway and all improvements constructed thereon connecting the airport to a public roadway.

10-3. Advertisement - A public announcement, as required by local law, inviting bids for work to be performed and materials to be furnished.

10-4. Airport - Airport means an area of land or water which is used or intended to be used for the landing and takeoff of aircraft; an appurtenant area used or intended to be used for airport buildings or other airport facilities or rights of way; airport buildings and facilities located in any of these areas, and a heliport.

10-5. Airport Improvement Program (AIP) - A grant-in-aid program, administered by the Federal Aviation Administration (FAA).

10-6. Air Operations Area (AOA) - The term air operations area (AOA) shall mean any area of the airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft. An air operation area shall include such paved or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runway, taxiway, or apron.

10-7. Apron - Area where aircraft are parked, unloaded or loaded, fueled and/or serviced.

10-8. ASTM International (ASTM) - Formerly known as the American Society for Testing and Materials (ASTM).

10-9. Award - The Owner's notice to the successful bidder of the acceptance of the submitted bid.

10-10. Bidder - Any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative, who submits a proposal for the work contemplated.

10-11. Building Area - An area on the airport to be used, considered, or intended to be used for airport buildings or other airport facilities or rights-of-way together with all airport buildings and facilities located thereon.

10-12. Calendar Day - Every day shown on the calendar.

10-13. Certificate of Analysis (COA) - The COA is the manufacturer's Certificate of Compliance (COC) including all applicable test results required by the specifications.

10-14. Certificate of Compliance (COC) - The manufacturer's certification stating that materials or assemblies furnished fully comply with the requirements of the contract. The certificate shall be signed by the manufacturer's authorized representative.

10-15. Change Order - A written order to the Contractor covering changes in the plans, specifications, or proposal quantities and establishing the basis of payment and contract time adjustment, if any, for work within the scope of the contract and necessary to complete the project.

10-16. Contract - A written agreement between the Owner and the Contractor that establishes the obligations of the parties including but not limited to performance of work, furnishing of labor, equipment and materials and the basis of payment.

The awarded contract includes but may not be limited to: Advertisement, Contract form, Proposal, Performance bond, payment bond, General provisions, certifications and representations, Technical Specifications, Plans, Supplemental Provisions, standards incorporated by reference and issued addenda.

10-17. Contract Item (Pay Item) - A specific unit of work for which a price is provided in the contract.

10-18. Contract Time - The number of calendar days or working days, stated in the proposal, allowed for completion of the contract, including authorized time extensions. If a calendar date of completion is stated in the proposal, in lieu of a number of calendar or working days, the contract shall be completed by that date.

10-19. Contractor - The individual, partnership, firm, or corporation primarily liable for the acceptable performance of the work contracted and for the payment of all legal debts pertaining to the work who acts directly or through lawful agents or employees to complete the contract work.

10-20. Contractors Quality Control (QC) Facilities - The Contractor's QC facilities in accordance with the Contractor Quality Control Program (CQCP).

10-21. Contractor Quality Control Program (CQCP) - Details the methods and procedures that will be taken to assure that all materials and completed construction required by the contract conform to contract plans, technical specifications and other requirements, whether manufactured by the Contractor, or procured from subcontractors or vendors.

10-22. Control Strip - A demonstration by the Contractor that the materials, equipment, and construction processes results in a product meeting the requirements of the specification.

10-23. Construction Safety and Phasing Plan (CSPP) - The overall plan for safety and phasing of a construction project developed by the airport operator, or developed by the airport operator's consultant and approved by the airport operator. It is included in the invitation for bids and becomes part of the project specifications.

10-24. Drainage System - The system of pipes, ditches, and structures by which surface or subsurface waters are collected and conducted from the airport area.

10-25. Engineer - The individual, partnership, firm, or corporation duly authorized by the Owner to be responsible for engineering, inspection, and/or observation of the contract work and acting directly or through an authorized representative.

10-26. Equipment - All machinery, together with the necessary supplies for upkeep and maintenance; and all tools and apparatus necessary for the proper construction and acceptable completion of the work.

10-27. Extra Work - An item of work not provided for in the awarded contract as previously modified by change order or supplemental agreement, but which is found by the Owner's Engineer or Resident Project Representative (RPR) to be necessary to complete the work within the intended scope of the contract as previously modified.

10-28. FAA - The Federal Aviation Administration. When used to designate a person, FAA shall mean the Administrator or their duly authorized representative.

10-29. Federal Specifications - The federal specifications and standards, commercial item descriptions, and supplements, amendments, and indices prepared and issued by the General Services Administration.

10-30. Force Account

a. Contract Force Account - A method of payment that addresses extra work performed by the Contractor on a time and material basis.

b. Owner Force Account - Work performed for the project by the Owner's employees.

10-31. Intention of Terms - Whenever, in these specifications or on the plans, the words "directed," "required," "permitted," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of the Engineer and/or Resident Project Representative (RPR) is intended; and similarly, the words "approved," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Engineer and/or RPR, subject in each case to the final determination of the Owner.

Any reference to a specific requirement of a numbered paragraph of the contract specifications or a cited standard shall be interpreted to include all general requirements of the entire section, specification item, or cited standard that may be pertinent to such specific reference.

10-32. Lighting - A system of fixtures providing or controlling the light sources used on or near the airport or within the airport buildings. The field lighting includes all luminous signals, markers, floodlights, and illuminating devices used on or near the airport or to aid in the operation of aircraft landing at, taking off from, or taxiing on the airport surface.

10-33. Major and Minor Contract Items - A major contract item shall be any item that is listed in the proposal, the total cost of which is equal to or greater than 20% of the total amount of the award contract. All other items shall be considered minor contract items.

10-34. Materials - Any substance specified for use in the construction of the contract work.

10-35. Modification of Standards (MOS) - Any deviation from standard specifications applicable to material and construction methods in accordance with FAA Order 5300.1.

10-36. Notice to Proceed (NTP) - A written notice to the Contractor to begin the actual contract work on a previously agreed to date. If applicable, the Notice to Proceed shall state the date on which the contract time begins.

10-37. Owner - The term “Owner” shall mean the party of the first part or the contracting agency signatory to the contract. Where the term “Owner” is capitalized in this document, it shall mean airport Sponsor only. The Owner(s) for this project is Abilene Regional Airport and The City of Abilene.

10-38. Passenger Facility Charge (PFC) - Per 14 Code of Federal Regulations (CFR) Part 158 and 49 United States Code (USC) § 40117, a PFC is a charge imposed by a public agency on passengers enplaned at a commercial service airport it controls.

10-39. Pavement Structure - The combined surface course, base course(s), and subbase course(s), if any, considered as a single unit.

10-40. Payment bond - The approved form of security furnished by the Contractor and their own surety as a guaranty that the Contractor will pay in full all bills and accounts for materials and labor used in the construction of the work.

10-41. Performance bond - The approved form of security furnished by the Contractor and their own surety as a guaranty that the Contractor will complete the work in accordance with the terms of the contract.

10-42. Plans - The official drawings or exact reproductions which show the location, character, dimensions and details of the airport and the work to be done and which are to be considered as a part of the contract, supplementary to the specifications. Plans may also be referred to as 'contract drawings.’

10-43. Project - The agreed scope of work for accomplishing specific airport development with respect to a particular airport.

10-44. Proposal - The written offer of the bidder (when submitted on the approved proposal form) to perform the contemplated work and furnish the necessary materials in accordance with the provisions of the plans and specifications.

10-45. Proposal guaranty - The security furnished with a proposal to guarantee that the bidder will enter into a contract if their own proposal is accepted by the Owner.

10-46. Quality Assurance (QA) - Owner’s responsibility to assure that construction work completed complies with specifications for payment.

10-47. Quality Control (QC) - Contractor’s responsibility to control material(s) and construction processes to complete construction in accordance with project specifications.

10-48. Quality Assurance (QA) Inspector - An authorized representative of the Engineer and/or Resident Project Representative (RPR) assigned to make all necessary inspections, observations, tests, and/or observation of tests of the work performed or being performed, or of the materials furnished or being furnished by the Contractor.

10-49. Quality Assurance (QA) Laboratory - The official quality assurance testing laboratories of the Owner or such other laboratories as may be designated by the Engineer or RPR. May also be referred to as Engineer's, Owner's, or QA Laboratory.

10-50. Resident Project Representative (RPR) - The individual, partnership, firm, or corporation duly authorized by the Owner to be responsible for all necessary inspections, observations, tests, and/or observations of tests of the contract work performed or being performed, or of the materials furnished or being furnished by the Contractor, and acting directly or through an authorized representative.

10-51. Runway - The area on the airport prepared for the landing and takeoff of aircraft.

10-52. Runway Safety Area (RSA) - A defined surface surrounding the runway prepared or suitable for reducing the risk of damage to aircraft. See the construction safety and phasing plan (CSPP) for limits of the RSA.

10-53. Safety Plan Compliance Document (SPCD) - Details how the Contractor will comply with the CSPP.

10-54. Specifications - A part of the contract containing the written directions and requirements for completing the contract work. Standards for specifying materials or testing which are cited in the contract specifications by reference shall have the same force and effect as if included in the contract physically.

10-55. Sponsor - A Sponsor is defined in 49 USC § 47102(24) as a public agency that submits to the FAA for an AIP grant; or a private Owner of a public-use airport that submits to the FAA an application for an AIP grant for the airport.

10-56. Structures - Airport facilities such as bridges; culverts; catch basins, inlets, retaining walls, cribbing; storm and sanitary sewer lines; water lines; underdrains; electrical ducts, manholes, handholes, lighting fixtures and bases; transformers; navigational aids; buildings; vaults; and, other manmade features of the airport that may be encountered in the work and not otherwise classified herein.

10-57. Subgrade - The soil that forms the pavement foundation.

10-58. Superintendent - The Contractor's executive representative who is present on the work during progress, authorized to receive and fulfill instructions from the RPR, and who shall supervise and direct the construction.

10-59. Supplemental Agreement - A written agreement between the Contractor and the Owner that establishes the basis of payment and contract time adjustment, if any, for the work affected by the supplemental agreement. A supplemental agreement is required if: (1) in scope work would increase or decrease the total amount of the awarded contract by more than 25%: (2) in scope work would increase or decrease

the total of any major contract item by more than 25%; (3) work that is not within the scope of the originally awarded contract; or (4) adding or deleting of a major contract item.

10-60. Surety - The corporation, partnership, or individual, other than the Contractor, executing payment or performance bonds that are furnished to the Owner by the Contractor.

10-61. Taxilane - A taxiway designed for low speed movement of aircraft between aircraft parking areas and terminal areas.

10-62. Taxiway - The portion of the air operations area of an airport that has been designated by competent airport authority for movement of aircraft to and from the airport's runways, aircraft parking areas, and terminal areas.

10-63. Taxiway/Taxilane Safety Area (TSA) - A defined surface alongside the taxiway prepared or suitable for reducing the risk of damage to an aircraft. See the construction safety and phasing plan (CSPP) for limits of the TSA.

10-64. Work - The furnishing of all labor, materials, tools, equipment, and incidentals necessary or convenient to the Contractor's performance of all duties and obligations imposed by the contract, plans, and specifications.

10-65. Working day - A working day shall be any day other than a legal holiday, Saturday, or Sunday on which the normal working forces of the Contractor may proceed with regular work for at least six (6) hours toward completion of the contract. When work is suspended for causes beyond the Contractor's control, it will not be counted as a working day. Saturdays, Sundays and holidays on which the Contractor's forces engage in regular work will be considered as working days.

END OF SECTION

SECTION 00 80 40

SECTION 40 - SCOPE OF WORK

40-1. Intent of contract. The intent of the contract is to provide for construction and completion, in every detail, of the work described. It is further intended that the Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the plans, specifications, and terms of the contract.

40-2. Alteration of work and quantities. The Owner reserves the right to make such changes in quantities and work as may be necessary or desirable to complete, in a satisfactory manner, the original intended work. Unless otherwise specified in the Contract, the Owner's Engineer or RPR shall be and is hereby authorized to make, in writing, such in-scope alterations in the work and variation of quantities as may be necessary to complete the work, provided such action does not represent a significant change in the character of the work.

For purpose of this section, a significant change in character of work means: any change that is outside the current contract scope of work; any change (increase or decrease) in the total contract cost by more than 25%; or any change in the total cost of a major contract item by more than 25%.

Work alterations and quantity variances that do not meet the definition of significant change in character of work shall not invalidate the contract nor release the surety. Contractor agrees to accept payment for such work alterations and quantity variances in accordance with Section 90, paragraph 90-3, Compensation for Altered Quantities.

Should the value of altered work or quantity variance meet the criteria for significant change in character of work, such altered work and quantity variance shall be covered by a supplemental agreement. Supplemental agreements shall be approved by the FAA and shall include all applicable Federal contract provisions for procurement and contracting required under AIP. Supplemental agreements shall also require consent of the Contractor's surety and separate performance and payment bonds. If the Owner and the Contractor are unable to agree on a unit adjustment for any contract item that requires a supplemental agreement, the Owner reserves the right to terminate the contract with respect to the item and make other arrangements for its completion.

40-3. Omitted items. The Owner, the Owner's Engineer or the RPR may provide written notice to the Contractor to omit from the work any contract item that does not meet the definition of major contract item. Major contract items may be omitted by a supplemental agreement. Such omission of contract items shall not invalidate any other contract provision or requirement.

Should a contract item be omitted or otherwise ordered to be non-performed, the Contractor shall be paid for all work performed toward completion of such item prior

to the date of the order to omit such item. Payment for work performed shall be in accordance with Section 90, paragraph 90-4, Payment for Omitted Items.

40-4. Extra work. Should acceptable completion of the contract require the Contractor to perform an item of work not provided for in the awarded contract as previously modified by change order or supplemental agreement, Owner may issue a Change Order to cover the necessary extra work. Change orders for extra work shall contain agreed unit prices for performing the change order work in accordance with the requirements specified in the order, and shall contain any adjustment to the contract time that, in the RPR's opinion, is necessary for completion of the extra work.

When determined by the RPR to be in the Owner's best interest, the RPR may order the Contractor to proceed with extra work as provided in Section 90, paragraph 90-5, Payment for Extra Work. Extra work that is necessary for acceptable completion of the project, but is not within the general scope of the work covered by the original contract shall be covered by a supplemental agreement as defined in Section 10, paragraph 10-59, Supplemental Agreement.

If extra work is essential to maintaining the project critical path, RPR may order the Contractor to commence the extra work under a Time and Material contract method. Once sufficient detail is available to establish the level of effort necessary for the extra work, the Owner shall initiate a change order or supplemental agreement to cover the extra work.

Any claim for payment of extra work that is not covered by written agreement (change order or supplemental agreement) shall be rejected by the Owner.

40-5. Maintenance of traffic. It is the explicit intention of the contract that the safety of aircraft, as well as the Contractor's equipment and personnel, is the most important consideration. The Contractor shall maintain traffic in the manner detailed in the Construction Safety and Phasing Plan (CSPP).

a. It is understood and agreed that the Contractor shall provide for the free and unobstructed movement of aircraft in the air operations areas (AOAs) of the airport with respect to their own operations and the operations of all subcontractors as specified in Section 80, paragraph 80-4, Limitation of Operations. It is further understood and agreed that the Contractor shall provide for the uninterrupted operation of visual and electronic signals (including power supplies thereto) used in the guidance of aircraft while operating to, from, and upon the airport as specified in Section 70, paragraph 70-15, Contractor's Responsibility for Utility Service and Facilities of Others.
b. With respect to their own operations and the operations of all subcontractors, the Contractor shall provide marking, lighting, and other acceptable means of identifying personnel, equipment, vehicles, storage areas, and any work area or condition that may be hazardous to the operation of aircraft, firerescue equipment, or maintenance vehicles at the airport in accordance with the construction safety and phasing plan (CSPP) and the safety plan compliance document (SPCD).

c. When the contract requires the maintenance of an existing road, street, or highway during the Contractor's performance of work that is otherwise provided for in the contract, plans, and specifications, the Contractor shall keep the road, street, or

highway open to all traffic and shall provide maintenance as may be required to accommodate traffic. The Contractor, at their expense, shall be responsible for the repair to equal or better than preconstruction conditions of any damage caused by the Contractor's equipment and personnel. The Contractor shall furnish, erect, and maintain barricades, warning signs, flag person, and other traffic control devices in reasonable conformity with the Manual on Uniform Traffic Control Devices (MUTCD) (http://mutcd.fhwa.dot.gov/), unless otherwise specified. The Contractor shall also construct and maintain in a safe condition any temporary connections necessary for ingress to and egress from abutting property or intersecting roads, streets or highways.

40-6. Removal of existing structures. All existing structures encountered within the established lines, grades, or grading sections shall be removed by the Contractor, unless such existing structures are otherwise specified to be relocated, adjusted up or down, salvaged, abandoned in place, reused in the work or to remain in place. The cost of removing such existing structures shall not be measured or paid for directly, but shall be included in the various contract items.

Should the Contractor encounter an existing structure (above or below ground) in the work for which the disposition is not indicated on the plans, the Resident Project Representative (RPR) shall be notified prior to disturbing such structure. The disposition of existing structures so encountered shall be immediately determined by the RPR in accordance with the provisions of the contract.

Except as provided in Section 40, paragraph 40-7, Rights in and Use of Materials Found in the Work, it is intended that all existing materials or structures that may be encountered (within the lines, grades, or grading sections established for completion of the work) shall be used in the work as otherwise provided for in the contract and shall remain the property of the Owner when so used in the work.

40-7. Rights in and use of materials found in the work. Should the Contractor encounter any material such as (but not restricted to) sand, stone, gravel, slag, or concrete slabs within the established lines, grades, or grading sections, the use of which is intended by the terms of the contract to be embankment, the Contractor may at their own option either:

a. Use such material in another contract item, providing such use is approved by the RPR and is in conformance with the contract specifications applicable to such use; or,

b. Remove such material from the site, upon written approval of the RPR; or

c. Use such material for the Contractor's own temporary construction on site; or,

d. Use such material as intended by the terms of the contract.

Should the Contractor wish to exercise option a., b., or c., the Contractor shall request the RPR's approval in advance of such use. Should the RPR approve the Contractor's request to exercise option a., b., or c., the Contractor shall be paid for the excavation or removal of such material at the applicable contract price. The Contractor shall replace, at their expense, such removed or excavated material with an agreed equal

volume of material that is acceptable for use in constructing embankment, backfills, or otherwise to the extent that such replacement material is needed to complete the contract work. The Contractor shall not be charged for use of such material used in the work or removed from the site.

Should the RPR approve the Contractor's exercise of option a., the Contractor shall be paid, at the applicable contract price, for furnishing and installing such material in accordance with requirements of the contract item in which the material is used.

It is understood and agreed that the Contractor shall make no claim for delays by reason of their own exercise of option a., b., or c.

The Contractor shall not excavate, remove, or otherwise disturb any material, structure, or part of a structure which is located outside the lines, grades, or grading sections established for the work, except where such excavation or removal is provided for in the contract, plans, or specifications.

40-8. Final cleanup. Upon completion of the work and before acceptance and final payment will be made, the Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, temporary structures, and stumps or portions of trees. The Contractor shall cut all brush and woods within the limits indicated and shall leave the site in a neat and presentable condition. Material cleared from the site and deposited on adjacent property will not be considered as having been disposed of satisfactorily, unless the Contractor has obtained the written permission of the property Owner.

END OF SECTION

SECTION 00 80 60

SECTION 60 - CONTROL OF MATERIALS

60-1. Source of supply and quality requirements. The materials used in the work shall conform to the requirements of the contract, plans, and specifications. Unless otherwise specified, such materials that are manufactured or processed shall be new (as compared to used or reprocessed).

In order to expedite the inspection and testing of materials, the Contractor shall furnish documentation to the RPR as to the origin, composition, and manufacture of all materials to be used in the work. Documentation shall be furnished promptly after execution of the contract but, in all cases, prior to delivery of such materials.

At the RPR's option, materials may be approved at the source of supply before delivery. If it is found after trial that sources of supply for previously approved materials do not produce specified products, the Contractor shall furnish materials from other sources.

The Contractor shall furnish airport lighting equipment that meets the requirements of the specifications; and is listed in AC 150/5345-53, Airport Lighting Equipment Certification Program and Addendum, that is in effect on the date of advertisement.

60-2. Samples, tests, and cited specifications. All materials used in the work shall be inspected, tested, and approved by the RPR before incorporation in the work unless otherwise designated. Any work in which untested materials are used without approval or written permission of the RPR shall be performed at the Contractor's risk. Materials found to be unacceptable and unauthorized will not be paid for and, if directed by the RPR, shall be removed at the Contractor's expense.

Unless otherwise designated, quality assurance tests will be made by and at the expense of the Owner in accordance with the cited standard methods of ASTM, American Association of State Highway and Transportation Officials (AASHTO), federal specifications, Commercial Item Descriptions, and all other cited methods, which are current on the date of advertisement for bids.

The testing organizations performing on-site quality assurance field tests shall have copies of all referenced standards on the construction site for use by all technicians and other personnel. Unless otherwise designated, samples for quality assurance will be taken by a qualified representative of the RPR. All materials being used are subject to inspection, test, or rejection at any time prior to or during incorporation into the work. Copies of all tests will be furnished to the Contractor's representative at their request after review and approval of the RPR.

A copy of all Contractor QC test data shall be provided to the RPR daily, along with printed reports, in an approved format, on a weekly basis. After completion of the project, and prior to final payment, the Contractor shall submit a final report to the RPR showing all test data reports, plus an analysis of all results showing ranges, averages,

and corrective action taken on all failing tests. Furnish all test data from the Contractor in electronic format to the Engineer in email form.

60-3. Certification of compliance/analysis (COC/COA). The RPR may permit the use, prior to sampling and testing, of certain materials or assemblies when accompanied by manufacturer's COC stating that such materials or assemblies fully comply with the requirements of the contract. The certificate shall be signed by the manufacturer. Each lot of such materials or assemblies delivered to the work must be accompanied by a certificate of compliance in which the lot is clearly identified. The COA is the manufacturer's COC and includes all applicable test results.

Materials or assemblies used on the basis of certificates of compliance may be sampled and tested at any time and if found not to be in conformity with contract requirements will be subject to rejection whether in place or not.

The form and distribution of certificates of compliance shall be as approved by the RPR.

When a material or assembly is specified by "brand name or equal" and the Contractor elects to furnish the specified "or equal," the Contractor shall be required to furnish the manufacturer's certificate of compliance for each lot of such material or assembly delivered to the work. Such certificate of compliance shall clearly identify each lot delivered and shall certify as to:

a. Conformance to the specified performance, testing, quality or dimensional requirements; and,
b. Suitability of the material or assembly for the use intended in the contract work.

The RPR shall be the sole judge as to whether the proposed "or equal" is suitable for use in the work.

The RPR reserves the right to refuse permission for use of materials or assemblies on the basis of certificates of compliance.

60-4. Plant inspection. The RPR or their authorized representative may inspect, at its source, any specified material or assembly to be used in the work. Manufacturing plants may be inspected from time to time for the purpose of determining compliance with specified manufacturing methods or materials to be used in the work and to obtain samples required for acceptance of the material or assembly. Should the RPR conduct plant inspections, the following conditions shall exist:

a. The RPR shall have the cooperation and assistance of the Contractor and the producer with whom the Contractor has contracted for materials.
b. The RPR shall have full entry at all reasonable times to such parts of the plant that concern the manufacture or production of the materials being furnished.
c. If required by the RPR, the Contractor shall arrange for adequate office or working space that may be reasonably needed for conducting plant inspections. Place office or working space in a convenient location with respect to the plant.

It is understood and agreed that the Owner shall have the right to retest any material that has been tested and approved at the source of supply after it has been delivered to the site. The RPR shall have the right to reject only material which, when retested, does not meet the requirements of the contract, plans, or specifications.

60-5. Engineer/ Resident Project Representative (RPR) field office. The Contractor shall provide dedicated space for the use of the engineer, RPR, and inspectors, as a field office for the duration of the project. This space shall be located conveniently near the construction and shall be separate from any space used by the Contractor. The Contractor shall furnish water, sanitary facilities, heat, air conditioning, and electricity.

60-6. Storage of materials. Materials shall be stored to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located to facilitate their prompt inspection. The Contractor shall coordinate the storage of all materials with the RPR. Materials to be stored on airport property shall not create an obstruction to air navigation nor shall they interfere with the free and unobstructed movement of aircraft. Unless otherwise shown on the plans and/or CSPP, the storage of materials and the location of the Contractor's plant and parked equipment or vehicles shall be as directed by the RPR. Private property shall not be used for storage purposes without written permission of the Owner or lessee of such property. The Contractor shall make all arrangements and bear all expenses for the storage of materials on private property. Upon request, the Contractor shall furnish the RPR a copy of the property Owner's permission.

All storage sites on private or airport property shall be restored to their original condition by the Contractor at their expense, except as otherwise agreed to (in writing) by the Owner or lessee of the property.

60-7. Unacceptable materials. Any material or assembly that does not conform to the requirements of the contract, plans, or specifications shall be considered unacceptable and shall be rejected. The Contractor shall remove any rejected material or assembly from the site of the work, unless otherwise instructed by the RPR.

Rejected material or assembly, the defects of which have been corrected by the Contractor, shall not be returned to the site of the work until such time as the RPR has approved its use in the work.

60-8. Owner furnished materials. The Contractor shall furnish all materials required to complete the work, except those specified, if any, to be furnished by the Owner. Owner-furnished materials shall be made available to the Contractor at the location specified.

All costs of handling, transportation from the specified location to the site of work, storage, and installing Owner-furnished materials shall be included in the unit price bid for the contract item in which such Owner-furnished material is used.

After any Owner-furnished material has been delivered to the location specified, the Contractor shall be responsible for any demurrage, damage, loss, or other deficiencies that may occur during the Contractor's handling, storage, or use of such Owner-furnished material. The Owner will deduct from any monies due or to become due the Contractor any cost incurred by the Owner in making good such loss due to the Contractor's handling, storage, or use of Owner-furnished materials.

END OF SECTION

SECTION 00 80 70

SECTION 70 - LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC

70-1. Laws to be observed. The Contractor shall keep fully informed of all federal and state laws, all local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the Owner and all their officers, agents, or servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or the Contractor's employees.

70-2. Permits, licenses, and taxes. The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful execution of the work.

70-3. Patented devices, materials, and processes. If the Contractor is required or desires to use any design, device, material, or process covered by letters of patent or copyright, the Contractor shall provide for such use by suitable legal agreement with the Patentee or Owner. The Contractor and the surety shall indemnify and hold harmless the Owner, any third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Owner for any costs, expenses, and damages which it may be obliged to pay by reason of an infringement, at any time during the execution or after the completion of the work.

70-4. Restoration of surfaces disturbed by others. The Owner reserves the right to authorize the construction, reconstruction, or maintenance of any public or private utility service, FAA or National Oceanic and Atmospheric Administration (NOAA) facility, or a utility service of another government agency at any time during the progress of the work. To the extent that such construction, reconstruction, or maintenance has been coordinated with the Owner, such authorized work (by others) is indicated as follows:

Owner	Person to Contact (Phone Number)
Water and Sewer: City of Abilene	325-676-6405
Electrical: Priority Power	325-670-9020
Natural Gas: Atmos Energy	1-888-286-6700
Security and Fire Alarm: Inca Fire Alarms	325-677-7001

Except as listed above, the Contractor shall not permit any individual, firm, or corporation to excavate or otherwise disturb such utility services or facilities located within the limits of the work without the written permission of the RPR.

Should the Owner of public or private utility service, FAA, or NOAA facility, or a utility service of another government agency be authorized to construct, reconstruct, or maintain such utility service or facility during the progress of the work, the Contractor shall cooperate with such Owners by arranging and performing the work in this contract to facilitate such construction, reconstruction or maintenance by others whether or not such work by others is listed above. When ordered as extra work by the RPR, the Contractor shall make all necessary repairs to the work which are due to such authorized work by others, unless otherwise provided for in the contract, plans, or specifications. It is understood and agreed that the Contractor shall not be entitled to make any claim for damages due to such authorized work by others or for any delay to the work resulting from such authorized work.

70-5. Federal Participation. The United States Government has agreed to reimburse the Owner for some portion of the contract costs. The contract work is subject to the inspection and approval of duly authorized representatives of the FAA Administrator. No requirement of this contract shall be construed as making the United States a party to the contract nor will any such requirement interfere, in any way, with the rights of either party to the contract.

70-6. Sanitary, health, and safety provisions. The Contractor's worksite and facilities shall comply with applicable federal, state, and local requirements for health, safety and sanitary provisions.

70-7. Public convenience and safety. The Contractor shall control their operations and those of their subcontractors and all suppliers, to assure the least inconvenience to the traveling public. Under all circumstances, safety shall be the most important consideration.

The Contractor shall maintain the free and unobstructed movement of aircraft and vehicular traffic with respect to their own operations and those of their own subcontractors and all suppliers in accordance with Section 40, paragraph 40-5, Maintenance of Traffic, and shall limit such operations for the convenience and safety of the traveling public as specified in Section 80, paragraph 80-4, Limitation of Operations.

The Contractor shall remove or control debris and rubbish resulting from its work operations at frequent intervals, and upon the order of the RPR. If the RPR determines the existence of Contractor debris in the work site represents a hazard to airport operations and the Contractor is unable to respond in a prompt and reasonable manner, the RPR reserves the right to assign the task of debris removal to a third party and recover the resulting costs as a liquidated damage against the Contractor.

70-8. Construction Safety and Phasing Plan (CSPP). The Contractor shall complete the work in accordance with the approved Construction Safety and Phasing Plan (CSPP) developed in accordance with AC 150/5370-2, Operational Safety on Airports During Construction. The CSPP is on sheet(s) GP0-001 and GP0-002 of the project plans.

70-9. Use of explosives. The use of explosives is not permitted on this project.

70-10. Protection and restoration of property and landscape. The Contractor shall be responsible for the preservation of all public and private property, and shall protect

carefully from disturbance or damage all land monuments and property markers until the Engineer/RPR has witnessed or otherwise referenced their location and shall not move them until directed.

The Contractor shall be responsible for all damage or injury to property of any character, during the execution of the work, resulting from any act, omission, neglect, or misconduct in manner or method of executing the work, or at any time due to defective work or materials, and said responsibility shall not be released until the project has been completed and accepted.

When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or in consequence of the non-execution thereof by the Contractor, the Contractor shall restore, at their expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, or otherwise restoring as may be directed, or the Contractor shall make good such damage or injury in an acceptable manner.

70-11. Responsibility for damage claims. The Contractor shall indemnify and hold harmless the Engineer/RPR and the Owner and their officers, agents, and employees from all suits, actions, or claims, of any character, brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of the Contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of said Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright; or from any claims or amounts arising or recovered under the “Workmen’s Compensation Act,” or any other law, ordinance, order, or decree. Money due the Contractor under and by virtue of their own contract considered necessary by the Owner for such purpose may be retained for the use of the Owner or, in case no money is due, their own surety may be held until such suits, actions, or claims for injuries or damages shall have been settled and suitable evidence to that effect furnished to the Owner, except that money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that he or she is adequately protected by public liability and property damage insurance.

70-12. Third party beneficiary clause. It is specifically agreed between the parties executing the contract that it is not intended by any of the provisions of any part of the contract to create for the public or any member thereof, a third-party beneficiary or to authorize anyone not a party to the contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the contract.

70-13. Opening sections of the work to traffic. If it is necessary for the Contractor to complete portions of the contract work for the beneficial occupancy of the Owner prior to completion of the entire contract, such “phasing” of the work must be specified below and indicated on the approved Construction Safety and Phasing Plan (CSPP) and the project plans. When so specified, the Contractor shall complete such portions of the work on or before the date specified or as otherwise specified.

Upon completion of any portion of work listed above, such portion shall be accepted by the Owner in accordance with Section 50, paragraph 50-14, Partial Acceptance.

No portion of the work may be opened by the Contractor until directed by the Owner in writing. Should it become necessary to open a portion of the work to traffic on a temporary or intermittent basis, such openings shall be made when, in the opinion of the RPR, such portion of the work is in an acceptable condition to support the intended traffic. Temporary or intermittent openings are considered to be inherent in the work and shall not constitute either acceptance of the portion of the work so opened or a waiver of any provision of the contract. Any damage to the portion of the work so opened that is not attributable to traffic which is permitted by the Owner shall be repaired by the Contractor at their expense.

The Contractor shall make their own estimate of the inherent difficulties involved in completing the work under the conditions herein described and shall not claim any added compensation by reason of delay or increased cost due to opening a portion of the contract work.

The Contractor must conform to safety standards contained AC 150/5370-2 and the approved CSPP.

Contractor shall refer to the plans, specifications, and the approved CSPP to identify barricade requirements, temporary and/or permanent markings, airfield lighting, guidance signs and other safety requirements prior to opening up sections of work to traffic.

70-14. Contractor's responsibility for work. Until the RPR's final written acceptance of the entire completed work, excepting only those portions of the work accepted in accordance with Section 50, paragraph 50-14, Partial Acceptance, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part due to the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof except damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God such as earthquake, tidal wave, tornado, hurricane or other cataclysmic phenomenon of nature, or acts of the public enemy or of government authorities.

If the work is suspended for any cause whatever, the Contractor shall be responsible for the work and shall take such precautions necessary to prevent damage to the work. The Contractor shall provide for normal drainage and shall erect necessary temporary structures, signs, or other facilities at their own expense. During such period of suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established planting, seeding, and sodding furnished under the contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against injury.

70-15. Contractor's responsibility for utility service and facilities of others. As provided in paragraph 70-4, Restoration of Surfaces Disturbed by Others, the Contractor shall cooperate with the owner of any public or private utility service, FAA or NOAA, or a utility service of another government agency that may be authorized by the Owner to

construct, reconstruct or maintain such utility services or facilities during the progress of the work. In addition, the Contractor shall control their operations to prevent the unscheduled interruption of such utility services and facilities.

To the extent that such public or private utility services, FAA, or NOAA facilities, or utility services of another governmental agency are known to exist within the limits of the contract work, the approximate locations have been indicated on the plans and/or in the contract documents.

Utility owners and contact information are listed under Section 70-04

It is understood and agreed that the Owner does not guarantee the accuracy or the completeness of the location information relating to existing utility services, facilities, or structures that may be shown on the plans or encountered in the work. Any inaccuracy or omission in such information shall not relieve the Contractor of the responsibility to protect such existing features from damage or unscheduled interruption of service.

It is further understood and agreed that the Contractor shall, upon execution of the contract, notify the Owners of all utility services or other facilities of their plan of operations. Such notification shall be in writing addressed to “The Person to Contact” as provided in this paragraph and paragraph 70-4, Restoration of Surfaces Disturbed By Others. A copy of each notification shall be given to the RPR.

In addition to the general written notification provided, it shall be the responsibility of the Contractor to keep such individual Owners advised of changes in their plan of operations that would affect such Owners.

Prior to beginning the work in the general vicinity of an existing utility service or facility, the Contractor shall again notify each such Owner of their plan of operation. If, in the Contractor’s opinion, the Owner’s assistance is needed to locate the utility service or facility or the presence of a representative of the Owner is desirable to observe the work, such advice should be included in the notification. Such notification shall be given by the most expeditious means to reach the utility owner’s “Person to Contact” no later than two normal business days prior to the Contractor’s commencement of operations in such general vicinity. The Contractor shall furnish a written summary of the notification to the RPR.

The Contractor’s failure to give the two days’ notice shall be cause for the Owner to suspend the Contractor’s operations in the general vicinity of a utility service or facility.

Where the outside limits of an underground utility service have been located and staked on the ground, the Contractor shall be required to use hand excavation methods within 3 feet (1 m) of such outside limits at such points as may be required to ensure protection from damage due to the Contractor’s operations.

Should the Contractor damage or interrupt the operation of a utility service or facility by accident or otherwise, the Contractor shall immediately notify the proper authority and the RPR and shall take all reasonable measures to prevent further damage or interruption of service. The Contractor, in such events, shall cooperate with the utility

service or facility owner and the RPR continuously until such damage has been repaired and service restored to the satisfaction of the utility or facility owner.

The Contractor shall bear all costs of damage and restoration of service to any utility service or facility due to their operations whether due to negligence or accident. The Owner reserves the right to deduct such costs from any monies due or which may become due the Contractor, or their own surety.

FAA facilities and cable runs. The Contractor is hereby advised that the construction limits of the project include existing facilities and buried cable runs that are owned, operated and maintained by the FAA. The Contractor, during the execution of the project work, shall comply with the following:

1. The Contractor shall permit FAA maintenance personnel the right of access to the project work site for purposes of inspecting and maintaining all existing FAA owned facilities.
2. The Contractor shall provide notice to the FAA Air Traffic Organization (ATO)/Technical Operations/System Support Center (SSC) Point-of-Contact through the airport Director a minimum of seven (7) calendar days prior to commencement of construction activities in order to permit sufficient time to locate and mark existing buried cables and to schedule any required facility outages.

3. If execution of the project work requires a facility outage, the Contractor shall contact the FAA Point-of-Contact a minimum of 72 hours prior to the time of the required outage.
4. Any damage to FAA cables, access roads, or FAA facilities during construction caused by the Contractor's equipment or personnel whether by negligence or accident will require the Contractor to repair or replace the damaged cables, access road, or FAA facilities to FAA requirements. The Contractor shall not bear the cost to repair damage to underground facilities or utilities improperly located by the FAA.

5. If the project work requires the cutting or splicing of FAA owned cables, the FAA Point-of-Contact shall be contacted a minimum of 72 hours prior to the time the cable work commences. The FAA reserves the right to have a FAA representative on site to observe the splicing of the cables as a condition of acceptance. All cable splices are to be accomplished in accordance with FAA specifications and require approval by the FAA Point-of-Contact as a condition of acceptance by the Owner. The Contractor is hereby advised that FAA restricts the location of where splices may be installed. If a cable splice is required in a location that is not permitted by FAA, the Contractor shall furnish and install a sufficient length of new cable that eliminates the need for any splice.

70-16. Furnishing rights-of-way. The Owner will be responsible for furnishing all rights-of-way upon which the work is to be constructed in advance of the Contractor's operations.

70-17. Personal liability of public officials. In carrying out any of the contract provisions or in exercising any power or authority granted by this contract, there shall be no liability upon the Engineer, RPR, their authorized representatives, or any officials of the Owner either personally or as an official of the Owner. It is understood that in such matters they act solely as agents and representatives of the Owner.

70-18. No waiver of legal rights. Upon completion of the work, the Owner will expeditiously make final inspection and notify the Contractor of final acceptance. Such final acceptance, however, shall not preclude or stop the Owner from correcting any measurement, estimate, or certificate made before or after completion of the work, nor shall the Owner be precluded or stopped from recovering from the Contractor or their surety, or both, such overpayment as may be sustained, or by failure on the part of the Contractor to fulfill their obligations under the contract. A waiver on the part of the Owner of any breach of any part of the contract shall not be held to be a waiver of any other or subsequent breach.

The Contractor, without prejudice to the terms of the contract, shall be liable to the Owner for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Owner's rights under any warranty or guaranty.

70-19. Environmental protection. The Contractor shall comply with all federal, state, and local laws and regulations controlling pollution of the environment. The Contractor shall take necessary precautions to prevent pollution of streams, lakes, ponds, and reservoirs with fuels, oils, asphalts, chemicals, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter.

70-20. Archaeological and historical findings. Unless otherwise specified in this subsection, the Contractor is advised that the site of the work is not within any property, district, or site, and does not contain any building, structure, or object listed in the current National Register of Historic Places published by the United States Department of Interior.

Should the Contractor encounter, during their operations, any building, part of a building, structure, or object that is incongruous with its surroundings, the Contractor shall immediately cease operations in that location and notify the RPR. The RPR will immediately investigate the Contractor's finding and the Owner will direct the Contractor to either resume operations or to suspend operations as directed.

Should the Owner order suspension of the Contractor's operations in order to protect an archaeological or historical finding, or order the Contractor to perform extra work, such shall be covered by an appropriate contract change order or supplemental agreement as provided in Section 40, paragraph 40-4, Extra Work, and Section 90, paragraph 90-5, Payment for Extra Work. If appropriate, the contract change order or supplemental agreement shall include an extension of contract time in accordance with Section 80, paragraph 80-7, Determination and Extension of Contract Time.

70-21. Insurance Requirements. Refer Section 00 72 00 Special Conditions for local insurance requirements for the project.

END OF SECTION

SECTION 00 80 80

SECTION 80 - EXECUTION AND PROGRESS

80-1. Subletting of contract. The Owner will not recognize any subcontractor on the work. The Contractor shall at all times when work is in progress be represented either in person, by a qualified superintendent, or by other designated, qualified representative who is duly authorized to receive and execute orders of the Resident Project Representative (RPR).

The Contractor shall perform, with his organization, an amount of work equal to at least **25%** percent of the total contract cost.

Should the Contractor elect to assign their contract, said assignment shall be concurred in by the surety, shall be presented for the consideration and approval of the Owner, and shall be consummated only on the written approval of the Owner.

The Contractor shall provide copies of all subcontracts to the RPR 14 days prior to being utilized on the project. As a minimum, the information shall include the following:

- Subcontractor's legal company name.
- Subcontractor's legal company address, including County name.
- Principal contact person's name, telephone and fax number.
- Complete narrative description, and dollar value of the work to be performed by the subcontractor.
- Copies of required insurance certificates in accordance with the specifications.
- Minority/ non-minority status.

80-2. Notice to proceed (NTP). The Owners notice to proceed will state the date on which contract time commences. The Contractor is expected to commence project operations within 14 days of the NTP date. The Contractor shall notify the RPR at least 24 hours in advance of the time contract operations begins. The Contractor shall not commence any actual operations prior to the date on which the notice to proceed is issued by the Owner.

80-3. Execution and progress. Unless otherwise specified, the Contractor shall submit their coordinated construction schedule showing all work activities for the RPR's review and acceptance at least 10 days prior to the start of work. The Contractor's progress schedule, once accepted by the RPR, will represent the Contractor's baseline plan to accomplish the project in accordance with the terms and conditions of the Contract. The RPR will compare actual Contractor progress against the baseline schedule to determine that status of the Contractor's performance. The Contractor shall provide sufficient materials, equipment, and labor to guarantee the completion of the project in accordance with the plans and specifications within the time set forth in the proposal.

If the Contractor falls significantly behind the submitted schedule, the Contractor shall, upon the RPR's request, submit a revised schedule for completion of the work within the contract time and modify their operations to provide such additional materials,

equipment, and labor necessary to meet the revised schedule. Should the execution of the work be discontinued for any reason, the Contractor shall notify the RPR at least 24 hours in advance of resuming operations.

The Contractor shall not commence any actual construction prior to the date on which the NTP is issued by the Owner. The project schedule shall be prepared as a network diagram in Critical Path Method (CPM), Program Evaluation and Review Technique (PERT), or other format, or as otherwise specified. It shall include information on the sequence of work activities, milestone dates, and activity duration. The schedule shall show all work items identified in the project proposal for each work area and shall include the project start date and end date.

The Contractor shall maintain the work schedule and provide an update and analysis of the progress schedule on a twice monthly basis, or as otherwise specified in the contract. Submission of the work schedule shall not relieve the Contractor of overall responsibility for scheduling, sequencing, and coordinating all work to comply with the requirements of the contract.

80-4. Limitation of operations. The Contractor shall control their operations and the operations of their subcontractors and all suppliers to provide for the free and unobstructed movement of aircraft in the air operations areas (AOA) of the airport.

When the work requires the Contractor to conduct their operations within an AOA of the airport, the work shall be coordinated with airport operations (through the RPR) at least 48 hours prior to commencement of such work. The Contractor shall not close an AOA until so authorized by the RPR and until the necessary temporary marking, signage and associated lighting is in place as provided in Section 70, paragraph 70-8, Construction Safety and Phasing Plan (CSPP). When the contract work requires the Contractor to work within an AOA of the airport on an intermittent basis (intermittent opening and closing of the AOA), the Contractor shall maintain constant communications as specified; immediately obey all instructions to vacate the AOA; and immediately obey all instructions to resume work in such AOA. Failure to maintain the specified communications or to obey instructions shall be cause for suspension of the Contractor's operations in the AOA until satisfactory conditions are provided. The areas of the AOA identified in the Construction Safety Phasing Plan (CSPP) and as listed below, cannot be closed to operating aircraft to permit the Contractor's operations on a continuous basis and will therefore be closed to aircraft operations intermittently as follows:

The Contractor shall be required to conform to safety standards contained in AC 150/5370-2, Operational Safety on Airports During Construction and the approved CSPP.

1. Operational safety on airport during construction. All Contractors' operations shall be conducted in accordance with the approved project Construction Safety and Phasing Plan (CSPP) and the Safety Plan Compliance Document (SPCD) and the provisions set forth within the current version of AC 150/5370-2, Operational Safety on Airports During Construction. The CSPP included within the contract documents conveys minimum requirements for operational safety on the airport during construction activities. The Contractor shall prepare and submit a SPCD that details how it proposes to comply with the requirements presented within the CSPP.

The Contractor shall implement all necessary safety plan measures prior to commencement of any work activity. The Contractor shall conduct routine checks to assure compliance with the safety plan measures.

The Contractor is responsible to the Owner for the conduct of all subcontractors it employs on the project. The Contractor shall assure that all subcontractors are made aware of the requirements of the CSPP and SPCD and that they implement and maintain all necessary measures.

No deviation or modifications may be made to the approved CSPP and SPCD unless approved in writing by the Owner. The necessary coordination actions to review Contractor proposed modifications to an approved CSPP or approved SPCD can require a significant amount of time.

80-5. Character of workers, methods, and equipment. The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by the contract, plans, and specifications.

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily.

Any person employed by the Contractor or by any subcontractor who violates any operational regulations or operational safety requirements and, in the opinion of the RPR, does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the RPR, be removed immediately by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the work without approval of the RPR.

Should the Contractor fail to remove such person or persons, or fail to furnish suitable and sufficient personnel for the proper execution of the work, the RPR may suspend the work by written notice until compliance with such orders.

All equipment that is proposed to be used on the work shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work. Equipment used on any portion of the work shall not cause injury to previously completed work, adjacent property, or existing airport facilities due to its use.

When the methods and equipment to be used by the Contractor in accomplishing the work are not prescribed in the contract, the Contractor is free to use any methods or equipment that will accomplish the work in conformity with the requirements of the contract, plans, and specifications.

When the contract specifies the use of certain methods and equipment, such methods and equipment shall be used unless otherwise authorized by the RPR. If the Contractor desires to use a method or type of equipment other than specified in the contract, the Contractor may request authority from the RPR to do so. The request shall be in

writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing work in conformity with contract requirements. If, after trial use of the substituted methods or equipment, the RPR determines that the work produced does not meet contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove any deficient work and replace it with work of specified quality, or take such other corrective action as the RPR may direct. No change will be made in basis of payment for the contract items involved nor in contract time as a result of authorizing a change in methods or equipment under this paragraph.

80-6. Temporary suspension of the work. The Owner shall have the authority to suspend the work wholly, or in part, for such period or periods the Owner may deem necessary, due to unsuitable weather, or other conditions considered unfavorable for the execution of the work, or for such time necessary due to the failure on the part of the Contractor to carry out orders given or perform any or all provisions of the contract.

In the event that the Contractor is ordered by the Owner, in writing, to suspend work for some unforeseen cause not otherwise provided for in the contract and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the work during the period of shutdown. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the effective date of the written order to suspend work to the effective date of the written order to resume the work. Claims for such compensation shall be filed with the RPR within the time period stated in the RPR's order to resume work. The Contractor shall submit with their own claim information substantiating the amount shown on the claim. The RPR will forward the Contractor's claim to the Owner for consideration in accordance with local laws or ordinances. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather or for any other delay provided for in the contract, plans, or specifications.

If it becomes necessary to suspend work for an indefinite period, the Contractor shall store all materials in such manner that they will not become an obstruction nor become damaged in any way. The Contractor shall take every precaution to prevent damage or deterioration of the work performed and provide for normal drainage of the work. The Contractor shall erect temporary structures where necessary to provide for traffic on, to, or from the airport.

80-7. Determination and extension of contract time. The number of calendar shall be stated in the proposal and contract and shall be known as the Contract Time. If the contract time requires extension for reasons beyond the Contractor's control, it shall be adjusted as follows:

1. Contract Time based on calendar days shall consist of the number of calendar days stated in the contract counting from the effective date of the Notice to Proceed and including all Saturdays, Sundays, holidays, and non-work days. All calendar days elapsing between the effective dates of the Owner's orders to suspend and resume all work, due to causes not the fault of the Contractor, shall be excluded.

At the time of final payment, the contract time shall be increased in the same proportion as the cost of the actually completed quantities bears to the cost of the originally estimated quantities in the proposal. Such increase in the contract time shall not consider either cost of work or the extension of contract time that has been covered by a change order or supplemental agreement. Charges against the contract time will cease as of the date of final acceptance.

80-8. Failure to complete on time. For each calendar day, as specified in the contract, that any work remains uncompleted after the contract time (including all extensions and adjustments as provided in paragraph 80-7, Determination and Extension of Contract Time) the sum specified in the contract and proposal as liquidated damages (LD) will be deducted from any money due or to become due the Contractor or their own surety. Such deducted sums shall not be deducted as a penalty but shall be considered as liquidation of a reasonable portion of damages including but not limited to additional engineering services that will be incurred by the Owner should the Contractor fail to complete the work in the time provided in their contract.

Schedule	Liquidated Damages	Cost Allowed Construction Time

Refer to section 00 72 00 Special Conditions and 00 73 00 Supplementary Conditions for more information regarding liquidated damages.

80-9. Default and termination of contract. The Contractor shall be considered in default of their contract and such default will be considered as cause for the Owner to terminate the contract for any of the following reasons, if the Contractor:

1. Fails to begin the work under the contract within the time specified in the Notice to Proceed, or

2. Fails to perform the work or fails to provide sufficient workers, equipment and/or materials to assure completion of work in accordance with the terms of the contract, or

3. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or

4. Discontinues the execution of the work, or

5. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or

6. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or

7. Allows any final judgment to stand against the Contractor unsatisfied for a period of 10 days, or

8. Makes an assignment for the benefit of creditors, or

9. For any other cause whatsoever, fails to carry on the work in an acceptable manner.

Should the Owner consider the Contractor in default of the contract for any reason above, the Owner shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the Owner's intentions to terminate the contract.

If the Contractor or surety, within a period of 10 days after such notice, does not proceed in accordance therewith, then the Owner will, upon written notification from the RPR of the facts of such delay, neglect, or default and the Contractor's failure to comply with such notice, have full power and authority without violating the contract, to take the execution of the work out of the hands of the Contractor. The Owner may appropriate or use any or all materials and equipment that have been mobilized for use in the work and are acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in the opinion of the RPR will be required for the completion of said contract in an acceptable manner.

All costs and charges incurred by the Owner, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the Owner the amount of such excess.

80-10. Termination for national emergencies. The Owner shall terminate the contract or portion thereof by written notice when the Contractor is prevented from proceeding with the construction contract as a direct result of an Executive Order of the President with respect to the execution of war or in the interest of national defense.

When the contract, or any portion thereof, is terminated before completion of all items of work in the contract, payment will be made for the actual number of units or items of work completed at the contract price or as mutually agreed for items of work partially completed or not started. No claims or loss of anticipated profits shall be considered.

Reimbursement for organization of the work, and other overhead expenses, (when not otherwise included in the contract) and moving equipment and materials to and from the job will be considered, the intent being that an equitable settlement will be made with the Contractor.

Acceptable materials, obtained or ordered by the Contractor for the work and that are not incorporated in the work shall, at the option of the Contractor, be purchased from the Contractor at actual cost as shown by receipted bills and actual cost records at such points of delivery as may be designated by the RPR.

Termination of the contract or a portion thereof shall neither relieve the Contractor of their responsibilities for the completed work nor shall it relieve their surety of its obligation for and concerning any just claim arising out of the work performed.

80-11. Work area, storage area and sequence of operations. The Contractor shall obtain approval from the RPR prior to beginning any work in all areas of the airport. No operating runway, taxiway, or air operations area (AOA) shall be crossed, entered, or obstructed while it is operational. The Contractor shall plan and coordinate work in accordance with the approved CSPP and SPCD.

END OF SECTION

SECTION 00 80 90

SECTION 90 - MEASUREMENT AND PAYMENT

90-1. Measurement of quantities. All work completed under the contract will be measured by the RPR, or their authorized representatives, using United States Customary Units of Measurement.

The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and no deductions will be made for individual fixtures (or leave-outs) having an area of 9 square feet (0.8 square meters) or less.

Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the plans or ordered in writing by the RPR. Unless otherwise specified, all contract items which are measured by the linear foot such as electrical ducts, conduits, pipe culverts, underdrains, and similar items shall be measured parallel to the base or foundation upon which such items are placed.

The term “lump sum” when used as an item of payment will mean complete payment for the work described in the contract. When a complete structure or structural unit (in effect, “lump sum” work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.

When requested by the Contractor and approved by the RPR in writing, material specified to be measured by the cubic yard (cubic meter) may be weighed, and such weights will be converted to cubic yards (cubic meters) for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the RPR and shall be agreed to by the Contractor before such method of measurement of pay quantities is used.

Measurement and Payment Terms

Term	Description
Excavation and Embankment Volume	In computing volumes of excavation, the average end area method will be used unless otherwise specified.
Measurement and Proportion by Weight	The term “ton” will mean the short ton consisting of 2,000 pounds (907 km) avoirdupois. All materials that are measured or proportioned by weights shall be weighed on accurate, independently certified scales by competent, qualified personnel at locations designated by the RPR. If material is shipped by rail, the car weight may be accepted provided that only the actual weight of material is paid for. However, car weights will not be acceptable for material to be passed

	through mixing plants. Trucks used to haul material being paid for by weight shall be weighed empty daily at such times as the RPR directs, and each truck shall bear a plainly legible identification mark. Term Description
Measurement by Volume	Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable for the materials hauled, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery.
Asphalt Material	Asphalt materials will be measured by the gallon (liter) or ton (kg). When measured by volume, such volumes will be measured at 60°F (16°C) or will be corrected to the volume at 60°F (16°C) using ASTM D1250 for asphalts. Net certified scale weights or weights based on certified volumes in the case of rail shipments will be used as a basis of measurement, subject to correction when asphalt material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work. When asphalt materials are shipped by truck or transport, net certified weights by volume, subject to correction for loss or foaming, will be used for computing quantities.
Cement	Cement will be measured by the ton (kg) or hundredweight (km).
Structure	Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions.
Timber	Timber will be measured by the thousand feet board measure (MFBM) actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.
Plates and Sheets	The thickness of plates and galvanized sheet used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fraction of inch.
Miscellaneous Items	When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gauge, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

Scales	Scales must be tested for accuracy and serviced before use. Scales for weighing materials which are required to be proportioned or measured and paid for by weight shall be furnished, erected, and maintained by the Contractor, or be certified permanently installed commercial scales. Platform scales shall be installed and maintained with the platform level and rigid bulkheads at each end. Scales shall be accurate within 0.5% of the correct weight throughout the range of use. The Contractor shall have the scales checked under the observation of the RPR before beginning work and at such other times as requested. The intervals shall be uniform in spacing throughout the graduated or marked length of the beam or dial and shall not exceed 0.1% of the nominal rated capacity of the Term Description scale, but not less than one pound (454 grams). The use of spring balances will not be permitted. In the event inspection reveals the scales have been “overweighing” (indicating more than correct weight) they will be immediately adjusted. All materials received subsequent to the last previous correct weighting-accuracy test will be reduced by the percentage of error in excess of 0.5%. In the event inspection reveals the scales have been under-weighing (indicating less than correct weight), they shall be immediately adjusted. No additional payment to the Contractor will be allowed for materials previously weighed and recorded. Beams, dials, platforms, and other scale equipment shall be so arranged that the operator and the RPR can safely and conveniently view them. Scale installations shall have available ten standard 50-pound (2.3 km) weights for testing the weighing equipment or suitable weights and devices for other approved equipment. All costs in connection with furnishing, installing, certifying, testing, and maintaining scales; for furnishing check weights and scale house; and for all other items specified in this subsection, for the weighing of materials for proportioning or payment, shall be included in the unit contract prices for the various items of the project.
Rental Equipment	Rental of equipment will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the work. Special equipment ordered in connection with extra work will be measured as agreed in the change order or supplemental agreement

	authorizing such work as provided in paragraph 90-05 Payment for Extra Work.
Pay Quantities	When the estimated quantities for a specific portion of the work are designated as the pay quantities in the contract, they shall be the final quantities for which payment for such specific portion of the work will be made, unless the dimensions of said portions of the work shown on the plans are revised by the RPR. If revised dimensions result in an increase or decrease in the quantities of such work, the final quantities for payment will be revised in the amount represented by the authorized changes in the dimensions.

90-2. Scope of payment. The Contractor shall receive and accept compensation provided for in the contract as full payment for furnishing all materials, for performing all work under the contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the execution thereof, subject to the provisions of Section 70, paragraph 70-18, No Waiver of Legal Rights.

When the “basis of payment” subsection of a technical specification requires that the contract price (price bid) include compensation for certain work or material essential to the item, this same work or material will not also be measured for payment under any other contract item which may appear elsewhere in the contract, plans, or specifications.

90-3. Compensation for altered quantities. When the accepted quantities of work vary from the quantities in the proposal, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract price for the accepted quantities of work actually completed and accepted. No allowance, except as provided for in Section 40, paragraph 40-2, Alteration of Work and Quantities, will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor which results directly from such alterations or indirectly from their own unbalanced allocation of overhead and profit among the contract items, or from any other cause.

90-4. Payment for omitted items. As specified in Section 40, paragraph 40-3, Omitted Items, the RPR shall have the right to omit from the work (order nonperformance) any contract item, except major contract items, in the best interest of the Owner.

Should the RPR omit or order nonperformance of a contract item or portion of such item from the work, the Contractor shall accept payment in full at the contract prices for any work actually completed and acceptable prior to the RPR’s order to omit or non-perform such contract item.

Acceptable materials ordered by the Contractor or delivered on the work prior to the date of the RPR’s order will be paid for at the actual cost to the Contractor and shall thereupon become the property of the Owner.

In addition to the reimbursement hereinbefore provided, the Contractor shall be reimbursed for all actual costs incurred for the purpose of performing the omitted contract item prior to the date of the RPR's order. Such additional costs incurred by the Contractor must be directly related to the deleted contract item and shall be supported by certified statements by the Contractor as to the nature the amount of such costs.

90-5. Payment for extra work. Extra work, performed in accordance with Section 40, paragraph 40-4, Extra Work, will be paid for at the contract prices or agreed prices specified in the change order or supplemental agreement authorizing the extra work.

90-6. Partial payments. Partial payments will be made to the Contractor at least once each month as the work progresses. Said payments will be based upon estimates, prepared by the RPR, of the value of the work performed and materials complete and in place, in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with paragraph 90-7 Payment for Materials on Hand**.** No partial payment will be made when the amount due to the Contractor since the last estimate amounts to less than five hundred dollars.

a. No retainage will be held by the Owner from progress payments due the prime.

b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

c. When at least 95% of the project work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done.

It is understood and agreed that the Contractor shall not be entitled to demand or receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders or supplemental agreements, except when such excess quantities have been determined by the RPR to be a part of the final quantity for the item of work in question.

No partial payment shall bind the Owner to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in paragraph 90-9, Acceptance and Final Payment.

The Contractor shall deliver to the Owner a complete release of all claims for labor and material arising out of this contract before the final payment is made. If any subcontractor or supplier fails to furnish such a release in full, the Contractor may

furnish a bond or other collateral satisfactory to the Owner to indemnify the Owner against any potential lien or other such claim. The bond or collateral shall include all costs, expenses, and attorney fees the Owner may be compelled to pay in discharging any such lien or claim.

90-7. Payment for materials on hand. Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the work, provided that such materials meet the requirements of the contract, plans, and specifications and are delivered to acceptable sites on the airport property or at other sites in the vicinity that are acceptable to the Owner. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

a. The material has been stored or stockpiled in a manner acceptable to the RPR at or on an approved site.

b. The Contractor has furnished the RPR with acceptable evidence of the quantity and quality of such stored or stockpiled materials.

c. The Contractor has furnished the RPR with satisfactory evidence that the material and transportation costs have been paid.

d. The Contractor has furnished the Owner legal title (free of liens or encumbrances of any kind) to the material stored or stockpiled.

e. The Contractor has furnished the Owner evidence that the material stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work.

It is understood and agreed that the transfer of title and the Owner's payment for such stored or stockpiled materials shall in no way relieve the Contractor of their responsibility for furnishing and placing such materials in accordance with the requirements of the contract, plans, and specifications.

In no case will the amount of partial payments for materials on hand exceed the contract price for such materials or the contract price for the contract item in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this paragraph.

90-8. Payment of withheld funds. At the Contractor's option, if an Owner withholds retainage in accordance with the methods described in paragraph 90-6 Partial Payments, the Contractor may request that the Owner deposit the retainage into an escrow account. The Owner's deposit of retainage into an escrow account is subject to the following conditions:

a. The Contractor shall bear all expenses of establishing and maintaining an escrow account and escrow agreement acceptable to the Owner.

b. The Contractor shall deposit to and maintain in such escrow only those securities or bank certificates of deposit as are acceptable to the Owner and having a value not less than the retainage that would otherwise be withheld from partial payment.

c. The Contractor shall enter into an escrow agreement satisfactory to the Owner.

d. The Contractor shall obtain the written consent of the surety to such agreement.

90-9. Acceptance and final payment. When the contract work has been accepted in accordance with the requirements of Section 50, paragraph 50-15, Final Acceptance, the RPR will prepare the final estimate of the items of work actually performed. The Contractor shall approve the RPR's final estimate or advise the RPR of the Contractor's objections to the final estimate which are based on disputes in measurements or computations of the final quantities to be paid under the contract as amended by change order or supplemental agreement. The Contractor and the RPR shall resolve all disputes (if any) in the measurement and computation of final quantities to be paid within 30 calendar days of the Contractor's receipt of the RPR's final estimate. If, after such 30-day period, a dispute still exists, the Contractor may approve the RPR's estimate under protest of the quantities in dispute, and such disputed quantities shall be considered by the Owner as a claim in accordance with Section 50, paragraph 50-16, Claims for Adjustment and Disputes.

After the Contractor has approved, or approved under protest, the RPR's final estimate, and after the RPR's receipt of the project closeout documentation required in paragraph 90-11, Contractor Final Project Documentation, final payment will be processed based on the entire sum, or the undisputed sum in case of approval under protest, determined to be due the Contractor less all previous payments and all amounts to be deducted under the provisions of the contract. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

If the Contractor has filed a claim for additional compensation under the provisions of Section 50, paragraph 50-16, Claims for Adjustments and Disputes, or under the provisions of this paragraph, such claims will be considered by the Owner in accordance with local laws or ordinances. Upon final adjudication of such claims, any additional payment determined to be due the Contractor will be paid pursuant to a supplemental final estimate.

90-10. Construction warranty.

a. In addition to any other warranties in this contract, the Contractor warrants that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, workmanship, or design furnished, or performed by the Contractor or any subcontractor or supplier at any tier.

b. This warranty shall continue for a period of one year from the date of final acceptance of the work, except as noted. If the Owner takes possession of any

part of the work before final acceptance, this warranty shall continue for a period of one year from the date the Owner takes possession. However, this will not relieve the Contractor from corrective items required by the final acceptance of the project work. Light Emitting Diode emitting diode (LED) light fixtures with the exception of obstruction lighting, must be warranted by the manufacturer for a minimum of four (4) years after date of installation inclusive of all electronics.

c. The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Owner real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements; or any defect of equipment, material, workmanship, or design furnished by the Contractor.

d. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.

e. The Owner will notify the Contractor, in writing, within seven (7) days after the discovery of any failure, defect, or damage.

f. If the Contractor fails to remedy any failure, defect, or damage within 14 days after receipt of notice, the Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

g. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall: (1) Obtain all warranties that would be given in normal commercial practice; (2) Require all warranties to be executed, in writing, for the benefit of the Owner, as directed by the Owner, and (3) Enforce all warranties for the benefit of the Owner.

h. This warranty shall not limit the Owner's rights with respect to latent defects, gross mistakes, or fraud.

90-11. Contractor Final Project Documentation. Approval of final payment to the Contractor is contingent upon completion and submittal of the items listed below. The final payment will not be approved until the RPR approves the Contractor's final submittal. The Contractor shall:

a. Provide two (2) copies of all manufacturers warranties specified for materials, equipment, and installations.

b. Provide weekly payroll records (not previously received) from the general Contractor and all subcontractors.

c. Complete final cleanup in accordance with Section 40, paragraph 40-08, Final Cleanup.

d. Complete all punch list items identified during the Final Inspection.

e. Provide complete release of all claims for labor and material arising out of the Contract.

f. Provide a certified statement signed by the subcontractors, indicating actual amounts paid to the Disadvantaged Business Enterprise (DBE) subcontractors and/or suppliers associated with the project.

g. When applicable per state requirements, return copies of sales tax completion forms.

h. Manufacturer's certifications for all items incorporated in the work.

i. All required record drawings, as-built drawings or as-constructed drawings.

j. Project Operation and Maintenance (O&M) Manual(s).

k. Security for Construction Warranty. l. Equipment commissioning documentation submitted, if required.

END OF SECTION

SECTION 00 81 10

CONTRACTOR QUALITY CONTROL PROGRAM (CQCP)

1 General. Quality is more than test results. Quality is the combination of proper materials, testing, workmanship, equipment, inspection, and documentation of the project. Establishing and maintaining a culture of quality is key to achieving a quality project. The Contractor shall establish, provide, and maintain an effective Contractor Quality Control Program (CQCP) that details the methods and procedures that will be taken to assure that all materials and completed construction required by this contract conform to contract plans, technical specifications and other requirements, whether manufactured by the Contractor, or procured from subcontractors or vendors. Although guidelines are established and certain minimum requirements are specified here and elsewhere in the contract technical specifications, the Contractor shall assume full responsibility for accomplishing the stated purpose.

The Contractor shall establish a CQCP that will:

- **a.** Provide qualified personnel to develop and implement the CQCP.
- **b.** Provide for the production of acceptable quality materials.
- **c.** Provide sufficient information to assure that the specification requirements can be met.
- **d.** Document the CQCP process.

The Contractor shall not begin any construction or production of materials to be incorporated into the completed work until the CQCP has been reviewed and approved by the Resident Project Representative (RPR). No partial payment will be made for materials subject to specific quality control (QC) requirements until the CQCP has been reviewed and approved.

The QC requirements contained in this section and elsewhere in the contract technical specifications are in addition to and separate from the quality assurance (QA) testing requirements. QA testing requirements are the responsibility of the RPR or Contractor as specified in the specifications.

A Quality Control (QC)/Quality Assurance (QA) workshop with the Engineer, Resident Project Representative (RPR), Contractor, subcontractors, testing laboratories, and Owner's representative must be held prior to start of construction. The QC/QA workshop will be facilitated by the Contractor. The Contractor shall coordinate with the Airport and the RPR on time and location of the QC/QA workshop. Items to be addressed, at a minimum, will include:

- **a.** Review of the CQCP including submittals, QC Testing, Action & Suspension Limits for Production, Corrective Action Plans, Distribution of QC reports, and Control Charts.
- **b.** Discussion of the QA program.
- **c.** Discussion of the QC and QA Organization and authority including coordination and information exchange between QC and QA.
- **d.** Establish regular meetings to discuss control of materials, methods and testing.
- **e.** Establishment of the overall QC culture.

2 Description of program.

a. General description. The Contractor shall establish a CQCP to perform QC inspection and testing of all items of work required by the technical specifications, including those performed by subcontractors. The CQCP shall ensure conformance to applicable specifications and plans with respect to materials, off- site fabrication, workmanship, construction, finish, and functional performance. The CQCP shall be effective for control of all construction work performed under this Contract and shall specifically include surveillance and tests required by the technical specifications, in addition to other requirements of this section and any other activities deemed necessary by the Contractor to establish an effective level of QC.

b. Contractor Quality Control Program (CQCP). The Contractor shall describe the CQCP in a written document that shall be reviewed and approved by the RPR prior to the start of any production, construction, or off-site fabrication. The written CQCP shall be submitted to the RPR for review and approval at least **[** 10 **]** calendar days before the CQCP Workshop. The Contractor's CQCP and QC testing laboratory must be approved in writing by the RPR prior to the Notice to Proceed (NTP).

The CQCP shall be organized to address, as a minimum, the following:

1. QC organization and resumes of key staff
2. Project progress schedule
3. Submittals schedule
4. Inspection requirements
5. QC testing plan
6. Documentation of QC activities and distribution of QC reports
7. Requirements for corrective action when QC and/or QA acceptance criteria are not met
8. Material quality and construction means and methods. Address all elements applicable to the project that affect the quality of the pavement structure including subgrade, subbase, base, and surface course. Some elements that must be addressed include, but is not limited to mix design, aggregate grading, stockpile management, mixing and transporting, placing and finishing, quality control testing and inspection, smoothness, laydown plan, equipment, and temperature management plan.

The Contractor must add any additional elements to the CQCP that is necessary to adequately control all production and/or construction processes required by this contract.

a. Staffing levels. The Contractor shall provide sufficient qualified QC personnel to monitor each work activity at all times. Where material is being produced in a plant for incorporation into the work, separate plant and field technicians shall be provided at each plant and field placement location. The scheduling and coordinating of all inspection and testing must match the type and pace of work activity. The CQCP shall state where different technicians will be required for different work elements.

3 Project progress schedule. Critical QC activities must be shown on the project schedule as required by Section 80, paragraph 80-03, *Execution and Progress*.

4 Submittals schedule. The Contractor shall submit a detailed listing of all submittals (for example, mix designs, material certifications) and shop drawings required by the technical specifications. The listing can be developed in a spreadsheet format and shall include as a

minimum:

a. Specification item number

b. Item description

c. Description of submittal

d. Specification paragraph requiring submittal

e. Scheduled date of submittal

5 Inspection requirements. QC inspection functions shall be organized to provide inspections for all definable features of work, as detailed below. All inspections shall be documented by the Contractor as specified by paragraph 100-9.

Inspections shall be performed as needed to ensure continuing compliance with contract requirements until completion of the particular feature of work. Inspections shall include the following minimum requirements:

a. During field operations, QC test results and periodic inspections shall be used to ensure the quality of all materials and workmanship. All equipment used in placing, finishing, and compacting shall be inspected to ensure its proper operating condition and to ensure that all such operations are in conformance to the technical specifications and are within the plan dimensions, lines, grades, and tolerances specified. The CQCP shall document how these and other QC functions will be accomplished and used.

6 Contractor QC testing facility.

a. For projects that include Item P-401, Item P-403, and Item P-404, the Contractor shall ensure facilities, including all necessary equipment, materials, and current reference standards, are provided that meet requirements in the following paragraphs of ASTM D3666, *Standard Specification for Minimum Requirements for Agencies Testing and Inspecting Road and Paving Materials*:

- 8.1.3 Equipment Calibration and Checks;
- 8.1.9 Equipment Calibration, Standardization, and Check Records;
- 8.1.12 Test Methods and Procedures

b. For projects that include P-501, the Contractor shall ensure facilities, including all necessary equipment, materials, and current reference standards, are provided that meet requirements in the following paragraphs of ASTM C1077, Standard Practice for Agencies Testing Concrete and Concrete Aggregates for Use in Construction and Criteria for Testing Agency Evaluation:

- 7 Test Methods and Procedures
- 8 Facilities, Equipment, and Supplemental Procedures

7 QC testing plan. As a part of the overall CQCP, the Contractor shall implement a QC testing plan, as required by the technical specifications. The testing plan shall include the minimum tests and test frequencies required by each technical specification Item, as well as any additional QC tests that the Contractor deems necessary to adequately control production and/or construction processes.

The QC testing plan can be developed in a spreadsheet fashion and shall, as a minimum, include the following:

a. Specification item number (e.g., P-401)

b. Item description (e.g., Hot Mix Asphalt Pavements)

c. Test type (e.g., gradation, grade, asphalt content)

d. Test standard (e.g., ASTM or American Association of State Highway and Transportation Officials (AASHTO) test number, as applicable)

e. Test frequency (e.g., as required by technical specifications or minimum frequency when requirements are not stated)

f. Responsibility (e.g., plant technician)

g. Control requirements (e.g., target, permissible deviations)

The QC testing plan shall contain a statistically-based procedure of random sampling for acquiring test samples in accordance with ASTM D3665. The RPR shall be provided the opportunity to witness QC sampling and testing.

All QC test results shall be documented by the Contractor as required by paragraph 100-9.

8 Documentation. The Contractor shall maintain current QC records of all inspections and tests performed. These records shall include factual evidence that the required QC inspections or tests have been performed, including type and number of inspections or tests involved; results of inspections or tests; nature of defects, deviations, causes for rejection, etc.; proposed remedial action; and corrective actions taken.

These records must cover both conforming and defective or deficient features, and must include a statement that all supplies and materials incorporated in the work are in full compliance with the terms of the contract. Legible copies of these records shall be furnished to the RPR daily. The records shall cover all work placed subsequent to the previously furnished records and shall be verified and signed by the CQCPA.

Contractor QC records required for the contract shall include, but are not necessarily limited to, the following records:

a. Daily inspection reports. Each Contractor QC technician shall maintain a daily log of all inspections performed for both Contractor and subcontractor operations. These technician's daily reports shall provide factual evidence that continuous QC inspections have been performed and shall, as a minimum, include the following:

(1) Technical specification item number and description

(2) Compliance with approved submittals

(3) Proper storage of materials and equipment

(4) Proper operation of all equipment

(5) Adherence to plans and technical specifications

(6) Summary of any necessary corrective actions

(7) Safety inspection.

The daily inspection reports shall identify all QC inspections and QC tests conducted, results of inspections, location and nature of defects found, causes for rejection, and remedial or corrective actions taken or proposed.

The daily inspection reports shall be signed by the responsible QC technician and the CQCPA. The RPR shall be provided at least one copy of each daily inspection report on the work day following the day of record. When QC inspection and test results are recorded and transmitted electronically, the results must be archived.

b. Daily test reports. The Contractor shall be responsible for establishing a system that will record all QC test results. Daily test reports shall document the following information:

(1) Technical specification item number and description
(2) Test designation
(3) Location
(4) Date of test
(5) Control requirements
(6) Test results
(7) Causes for rejection
(8) Recommended remedial actions
(9) Retests

Test results from each day's work period shall be submitted to the RPR prior to the start of the next day's work period. When required by the technical specifications, the Contractor shall maintain statistical QC charts. When QC daily test results are recorded and transmitted electronically, the results must be archived.

9 Corrective action requirements. The CQCP shall indicate the appropriate action to be taken when a process is deemed, or believed, to be out of control (out of tolerance) and detail what action will be taken to bring the process into control. The requirements for corrective action shall include both general requirements for operation of the CQCP as a whole, and for individual items of work contained in the technical specifications.

The CQCP shall detail how the results of QC inspections and tests will be used for determining the need for corrective action and shall contain clear rules to gauge when a process is out of control and the type of correction to be taken to regain process control.

When applicable or required by the technical specifications, the Contractor shall establish and use statistical QC charts for individual QC tests. The requirements for corrective action shall be linked to the control charts.

10 Inspection and/or observations by the RPR. All items of material and equipment are subject to inspection and/or observation by the RPR at the point of production, manufacture or shipment to determine if the Contractor, producer, manufacturer or shipper maintains an adequate QC system in conformance with the requirements detailed here and the applicable technical specifications and plans. In addition, all items of materials, equipment and work in place shall be subject to inspection and/or observation by the RPR at the site for the same purpose.

Inspection and/or observations by the RPR does not relieve the Contractor of performing QC inspections of either on-site or off-site Contractor's or subcontractor's work.

11 Noncompliance.

a. The Resident Project Representative (RPR) will provide written notice to the Contractor of any noncompliance with their CQCP. After receipt of such notice, the Contractor must take corrective action.

b. When QC activities do not comply with either the CQCP or the contract provisions or when the Contractor fails to properly operate and maintain an effective CQCP, and no effective corrective actions have been taken after notification of non-compliance, the RPR will recommend the Owner take the following actions:

(1) Order the Contractor to replace ineffective or unqualified QC personnel or subcontractors

and/or

(2) Order the Contractor to stop operations until appropriate corrective actions are taken.

METHOD OF MEASUREMENT

12 Basis of measurement and payment. Contractor Quality Control Program (CQCP) is for the personnel, tests, facilities and documentation required to implement the CQCP. The CQCP will be paid as a lump sum with the following schedule of partial payments:

a. With first pay request, 25% with approval of CQCP and completion of the Quality Control (QC)/Quality Assurance (QA) workshop.

b. When 25% or more of the original contract is earned, an additional 25%.

c. When 50% or more of the original contract is earned, an additional 20%.

d. When 75% or more of the original contract is earned, an additional 20%

e. After final inspection and acceptance of project, the final 10%.

REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

National Institute for Certification in Engineering Technologies

(NICET) ASTM International (ASTM)

ASTM C1077	Standard Practice for Agencies Testing Concrete and Concrete Aggregates for Use in Construction and Criteria for Testing Agency Evaluation
ASTM D3665	Standard Practice for Random Sampling of Construction Materials
ASTM D3666	Standard Specification for Minimum Requirements for Agencies Testing and Inspecting Road and Paving Materials

END OF SECTION

SECTION 00 81 20

MOBILIZATION

1 Description. This item of work shall consist of, but is not limited to, work and operations necessary for the movement of personnel, equipment, material and supplies to and from the project site for work on the project except as provided in the contract as separate pay items.

2 Posted notices. Prior to commencement of construction activities, the Contractor must post the following documents in a prominent and accessible place where they may be easily viewed by all employees of the prime Contractor and by all employees of subcontractors engaged by the prime Contractor: Equal Employment Opportunity (EEO) Poster "Equal Employment Opportunity is the Law" in accordance with the Office of Federal Contract Compliance Programs Executive Order 11246, as amended; Davis Bacon Wage Poster (WH 1321) - DOL "Notice to All Employees" Poster; and Applicable Davis-Bacon Wage Rate Determination. These notices must remain posted until final acceptance of the work by the Owner.

3 Basis of measurement and payment. Based upon the contract lump sum price for "Mobilization" partial payments will be allowed as follows:

a. With first pay request, 25%.

b. When 25% or more of the original contract is earned, an additional 25%.

c. When 50% or more of the original contract is earned, an additional 40%.

d. After Final Inspection, Staging area clean-up and delivery of all Project Closeout materials as required by Section 90, paragraph 90-11, *Contractor Final Project Documentation,* the final 10%.

END OF SECTION

SECTION 00 81 30

METHOD OF ESTIMATING PERCENTAGE OF MATERIAL WITHIN SPECIFICATION LIMITS (PWL)

1 General. When the specifications provide for acceptance of material based on the method of estimating percentage of material within specification limits (PWL), the PWL will be determined in accordance with this section. All test results for a lot will be analyzed statistically to determine the total estimated percent of the lot that is within specification limits. The PWL is computed using the sample average (X) and sample standard deviation (S_n) of the specified number (n) of sublots for the lot and the specification tolerance limits, L for lower and U for upper, for the particular acceptance parameter. From these values, the respective Quality index, Q_L for Lower Quality Index and/or Q_U for Upper Quality Index, is computed and the PWL for the lot for the specified n is determined from Table 1. All specification limits specified in the technical sections shall be absolute values. Test results used in the calculations shall be to the significant figure given in the test procedure.

There is some degree of uncertainty (risk) in the measurement for acceptance because only a small fraction of production material (the population) is sampled and tested. This uncertainty exists because all portions of the production material have the same probability to be randomly sampled. The Contractor's risk is the probability that material produced at the acceptable quality level is rejected or subjected to a pay adjustment. The Owner's risk is the probability that material produced at the rejectable quality level is accepted.

It is the intent of this section to inform the Contractor that, in order to consistently offset the Contractor's risk for material evaluated, production quality (using population average and population standard deviation) must be maintained at the acceptable quality specified or higher. In all cases, it is the responsibility of the Contractor to produce at quality levels that will meet the specified acceptance criteria when sampled and tested at the frequencies specified.

2 Method for computing PWL. The computational sequence for computing PWL is as follows:

a. Divide the lot into n sublots in accordance with the acceptance requirements of the specification.

b. Locate the random sampling position within the sublot in accordance with the requirements of the specification.

c. Make a measurement at each location, or take a test portion and make the measurement on the test portion in accordance with the testing requirements of the specification.

d. Find the sample average (X) for all sublot test values within the lot by using the following formula:

$$X = (x_1 + x_2 + x_3 + \ldots x_n) / n$$

Where: X = Sample average of all sublot test values

within a lot $x_1, x_2, \ldots x_n$ = Individual sublot test values

n = Number of sublot test values

e. Find the sample standard deviation (S_n) by use of the following formula:

$$S_n = [(d_1^2 + d_2^2 + d_3^2 + \ldots d_n^2) / (n-1)]^{1/2}$$

Where: S_n = Sample standard deviation of the number of sublot test values in the set

$d_1, d_2, \ldots d_n$ = Deviations of the individual sublot test values $x_1, x_2, \ldots$ from the average value X

that is: $d_1 = (x_1 - X)$, $d_2 = (x_2 - X) \ldots d_n = (x_n - X)$

n = Number of sublot test values

f. For single sided specification limits (i.e., L only), compute the Lower Quality Index Q_L by use of the following formula:

$$Q_L = (X - L) / S_n$$

Where: L = specification lower tolerance limit

Estimate the percentage of material within limits (PWL) by entering Table 1 with Q_L, using the column appropriate to the total number (n) of measurements. If the value of Q_L falls between values shown on the table, use the next higher value of PWL.

g. For double-sided specification limits (i.e., L and U), compute the Quality Indexes Q_L and Q_U by use of the following formulas:

$$Q_L = (X - L) / S_n$$

and

$$Q_U = (U - X) / S_n$$

Where: L and U = specification lower and upper tolerance limits

Estimate the percentage of material between the lower (L) and upper (U) tolerance limits (PWL) by entering Table 1 separately with Q_L and Q_U, using the column appropriate to the total number (n) of measurements, and determining the percent of material above P_L and percent of material below P_U for each tolerance limit. If the values of Q_L fall between values shown on the table, use the next higher value of P_L or P_U. Determine the PWL by use of the following formula:

$$PWL = (P_U + P_L) - 100$$

Where: P_L = percent within lower specification limit

P_U = percent within upper specification limit

Project: Example Project

Test Item: Item P-401, Lot A.

EXAMPLE OF PWL CALCULATION

A. PWL Determination for Mat Density.

1. Density of four random cores taken from

Lot A. A-1 = 96.60
A-2 = 97.55
A-3 = 99.30
A-4 = 98.35
n = 4

2. Calculate average density for the

lot. $X = (x_1 + x_2 + x_3 + \ldots x_n)$

/ n
X = (96.60 + 97.55 + 99.30 + 98.35) / 4
X = 97.95% density

3. Calculate the standard deviation for the lot.

$S_n = [((96.60 - 97.95)^2 + (97.55 - 97.95)^2 + (99.30 - 97.95)^2 + (98.35 - 97.95)^2)) / (4 - 1)]^{1/2}$

$S_n = [(1.82 + 0.16 + 1.82 + 0.16) / 3]^{1/2}$

$S_n = 1.15$

4. Calculate the Lower Quality Index Q_L for the lot.

(L=96.3) $Q_L = (X - L) / S_n$

$Q_L = (97.95 - 96.30) / 1.15$

$Q_L = 1.4348$

5. Determine PWL by entering Table 1 with Q_L= 1.44 and

n= 4. PWL = 98

6.

B. PWL Determination for Air Voids.

1. Air Voids of four random samples taken from

Lot A. A-1 = 5.00
A-2 = 3.74
A-3 = 2.30
A-4 = 3.25

2. Calculate the average air voids for

the lot. $X = (x_1 + x_2 + x_3 \ldots n) / n$

X = (5.00 + 3.74 + 2.30 + 3.25) / 4

$X = 3.57\%$

3. Calculate the standard deviation S_n for the lot.

$S_n = [((3.57 - 5.00)^2 + (3.57 - 3.74)^2 + (3.57 - 2.30)^2 + (3.57 - 3.25)^2) / (4 - 1)]^{1/2}$

$S_n = [(2.04 + 0.03 + 1.62 + 0.10) / 3]^{1/2}$

$S_n = 1.12$

4. Calculate the Lower Quality Index Q_L for the lot. (L= 2.0) $Q_L = (X - L) / S_n$

$Q_L = (3.57 - 2.00) / 1.12$

$Q_L = 1.3992$

5. Determine P_L by entering Table 1 with $Q_L = 1.41$ and n = 4. $P_L = 97$

6. Calculate the Upper Quality Index Q_U for the lot.

(U= 5.0) $Q_U = (U - X) / S_n$

$Q_U = (5.00 - 3.57) / 1.12$

$Q_U = 1.2702$

7. Determine P_U by entering Table 1 with $Q_U = 1.29$ and n = 4. $P_U = 93$

8. Calculate Air Voids PWL

$PWL = (P_L + P_U) - 100$

$PWL = (97 + 93) - 100 = 90$

EXAMPLE OF OUTLIER CALCULATION (REFERENCE ASTM E178)

Project: Example Project

Test Item: Item P-401, LoT A.

A. Outlier Determination for Mat Density.

1. Density of four random cores taken from Lot A arranged in descending order. A-3 = 99.30
A-4 = 98.35
A-2 = 97.55
A-1 = 96.60

2. From ASTM E178, Table 1, for n=4 an upper 5% significance level, the critical value for test criterion = 1.463.

3. Use average density, standard deviation, and test criterion value to evaluate density measurements.

a. For measurements greater than the average:

If (measurement - average)/(standard deviation) is less than test criterion, then the measurement is not considered an outlier.

For A-3, check if (99.30 - 97.95) / 1.15 is greater than 1.463. Since 1.174 is less than 1.463, the value is not an outlier.

b. For measurements less than the average:

If (average - measurement)/(standard deviation) is less than test criterion, then the measurement is not considered an outlier.

For A-1, check if (97.95 - 96.60) / 1.15 is greater than 1.463.

Since 1.435 is less than 1.463, the value is not an outlier.

Note: In this example, a measurement would be considered an outlier if the density were: Greater than (97.95 + 1.463 × 1.15) = 99.63%

OR

less than (97.95 - 1.463 × 1.15) = 96.27%.

Table 1. Table for Estimating Percent of Lot Within Limits (PWL)

Percent Within Limits (PL and PU)	Positive Values of Q (QL and QU)							
	n=3	n=4	n=5	n=6	n=7	n=8	n=9	n=10
99	1.1541	1.4700	1.6714	1.800	1.888	1.952	1.9994	2.0362
98	1.1524	1.4400	1.6016	1.698	1.761	1.805	1.8379	1.8630
97	1.1496	1.4100	1.5427	1.618	1.666	1.699	1.7235	1.7420
96	1.1456	1.3800	1.4897	1.549	1.587	1.612	1.6313	1.6454
95	1.1405	1.3500	1.4407	1.488	1.518	1.538	1.5525	1.5635
94	1.1342	1.3200	1.3946	1.432	1.456	1.471	1.4829	1.4914
93	1.1269	1.2900	1.3508	1.381	1.399	1.411	1.4199	1.4265
92	1.1184	1.2600	1.3088	1.332	1.346	1.355	1.3620	1.3670
91	1.1089	1.2300	1.2683	1.286	1.296	1.303	1.3081	1.3118
90	1.0982	1.2000	1.2290	1.241	1.249	1.254	1.2576	1.2602
89	1.0864	1.1700	1.1909	1.199	1.204	1.207	1.2098	1.2115
88	1.0736	1.1400	1.1537	1.158	1.161	1.163	1.1643	1.1653
87	1.0597	1.1100	1.1173	1.119	1.119	1.120	1.1208	1.1212
86	1.0448	1.0800	1.0817	1.080	1.080	1.079	1.0791	1.0789
85	1.0288	1.0500	1.0467	1.043	1.041	1.039	1.0389	1.0382
84	1.0119	1.0200	1.0124	1.007	1.003	1.001	1.0000	0.9990
83	0.9939	0.9900	0.9785	0.971	0.967	0.964	0.9624	0.9610
82	0.9749	0.9600	0.9452	0.936	0.931	0.928	0.9258	0.9241
81	0.9550	0.9300	0.9123	0.902	0.896	0.892	0.8901	0.8882
80	0.9342	0.9000	0.8799	0.869	0.862	0.858	0.8554	0.8533
79	0.9124	0.8700	0.8478	0.836	0.829	0.824	0.8214	0.8192
78	0.8897	0.8400	0.8160	0.803	0.796	0.791	0.7882	0.7858
77	0.8662	0.8100	0.7846	0.771	0.764	0.759	0.7556	0.7531
76	0.8417	0.7800	0.7535	0.740	0.732	0.727	0.7236	0.7211
75	0.8165	0.7500	0.7226	0.708	0.700	0.695	0.6922	0.6896
74	0.7904	0.7200	0.6921	0.678	0.670	0.664	0.6613	0.6587
73	0.7636	0.6900	0.6617	0.647	0.639	0.634	0.6308	0.6282
72	0.7360	0.6600	0.6316	0.617	0.609	0.604	0.6008	0.5982
71	0.7077	0.6300	0.6016	0.587	0.579	0.574	0.5712	0.5686
70	0.6787	0.6000	0.5719	0.558	0.550	0.545	0.5419	0.5394
69	0.6490	0.5700	0.5423	0.529	0.521	0.516	0.5130	0.5105
68	0.6187	0.5400	0.5129	0.499	0.492	0.487	0.4844	0.4820
67	0.5878	0.5100	0.4836	0.471	0.463	0.459	0.4560	0.4537
66	0.5563	0.4800	0.4545	0.442	0.435	0.431	0.4280	0.4257
65	0.5242	0.4500	0.4255	0.413	0.407	0.403	0.4001	0.3980
64	0.4916	0.4200	0.3967	0.385	0.379	0.375	0.3725	0.3705
63	0.4586	0.3900	0.3679	0.357	0.351	0.347	0.3451	0.3432
62	0.4251	0.3600	0.3392	0.329	0.323	0.320	0.3179	0.3161
61	0.3911	0.3300	0.3107	0.301	0.296	0.293	0.2908	0.2892
60	0.3568	0.3000	0.2822	0.273	0.269	0.266	0.2639	0.2624
59	0.3222	0.2700	0.2537	0.246	0.241	0.239	0.2372	0.2358
58	0.2872	0.2400	0.2254	0.218	0.214	0.212	0.2105	0.2093
57	0.2519	0.2100	0.1971	0.191	0.187	0.185	0.1840	0.1829
56	0.2164	0.1800	0.1688	0.163	0.160	0.158	0.1575	0.1566
55	0.1806	0.1500	0.1406	0.136	0.133	0.132	0.1312	0.1304
54	0.1447	0.1200	0.1125	0.109	0.107	0.105	0.1049	0.1042
53	0.1087	0.0900	0.0843	0.081	0.080	0.079	0.0786	0.0781
52	0.0725	0.0600	0.0562	0.054	0.053	0.052	0.0524	0.0521
51	0.0363	0.0300	0.0281	0.027	0.026	0.026	0.0262	0.0260
50	0.0000	0.0000	0.0000	0.000	0.000	0.000	0.0000	0.0000

Percent Within Limits (P_L and P_U)	Negative Values of Q (Q_L and Q_U)							
	n=3	n=4	n=5	n=6	n=7	n=8	n=9	n=10
49	-0.0363	-	-	-	-	-	-	-0.0260
48	-0.0725	-	-	-	-	-	-	-0.0521
47	-0.1087	-	-	-	-	-	-	-0.0781
46	-0.1447	-	-	-	-	-	-	-0.1042
45	-0.1806	-	-	-	-	-	-	-0.1304
44	-0.2164	-	-	-	-	-	-	-0.1566
43	-0.2519	-	-	-	-	-	-	-0.1829
42	-0.2872	-	-	-	-	-	-	-0.2093
41	-0.3222	-	-	-	-	-	-	-0.2358
40	-0.3568	-	-	-	-	-	-	-0.2624
39	-0.3911	-	-	-	-	-	-	-0.2892
38	-0.4251	-	-	-	-	-	-	-0.3161
37	-0.4586	-	-	-	-	-	-	-0.3432
36	-0.4916	-	-	-	-	-	-	-0.3705
35	-0.5242	-	-	-	-	-	-	-0.3980
34	-0.5563	-	-	-	-	-	-	-0.4257
33	-0.5878	-	-	-	-	-	-	-0.4537
32	-0.6187	-	-	-	-	-	-	-0.4820
31	-0.6490	-	-	-	-	-	-	-0.5105
30	-0.6787	-	-	-	-	-	-	-0.5394
29	-0.7077	-	-	-	-	-	-	-0.5686
28	-0.7360	-	-	-	-	-	-	-0.5982
27	-0.7636	-	-	-	-	-	-	-0.6282
26	-0.7904	-	-	-	-	-	-	-0.6587
25	-0.8165	-	-	-	-	-	-	-0.6896
24	-0.8417	-	-	-	-	-	-	-0.7211
23	-0.8662	-	-	-	-	-	-	-0.7531
22	-0.8897	-	-	-	-	-	-	-0.7858
21	-0.9124	-	-	-	-	-	-	-0.8192
20	-0.9342	-	-	-	-	-	-	-0.8533
19	-0.9550	-	-	-	-	-	-	-0.8882
18	-0.9749	-	-	-	-	-	-	-0.9241
17	-0.9939	-	-	-	-	-	-	-0.9610
16	-1.0119	-	-	-	-	-	-	-0.9990
15	-1.0288	-	-	-	-	-	-	-1.0382
14	-1.0448	-	-	-	-	-	-	-1.0789
13	-1.0597	-	-	-	-	-	-	-1.1212
12	-1.0736	-	-	-	-	-	-	-1.1653
11	-1.0864	-	-	-	-	-	-	-1.2115
10	-1.0982	-	-	-	-	-	-	-1.2602
9	-1.1089	-	-	-	-	-	-	-1.3118
8	-1.1184	-	-	-	-	-	-	-1.3670
7	-1.1269	-	-	-	-	-	-	-1.4265
6	-1.1342	-	-	-	-	-	-	-1.4914
5	-1.1405	-	-	-	-	-	-	-1.5635
4	-1.1456	-	-	-	-	-	-	-1.6454
3	-1.1496	-	-	-	-	-	-	-1.7420
2	-1.1524	-	-	-	-	-	-	-1.8630
1	-1.1541	-	-	-	-	-	-	-2.0362

END OF SECTION

SECTION 00 82 00

FAA SPECIAL PROVISIONS

A-01 ACCESS TO RECORDS AND REPORTS

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are close.

A-02 AFFIRMATIVE ACTION REQUIREMENT

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade:	3.82%
Goals for female participation in each trade:	6.9%

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract

Compliance Programs (OFCCP) within 14 calendar days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the “covered area” is State of Texas.

A-03 BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner’s notice will identify a specific date by which the Contractor must correct the breach. Owner may proceed with termination of the contract if the Contractor fails to correct the breach by the deadline indicated in the Owner’s notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

A-04 BUY AMERICAN PREFERENCE

The Contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must complete and submit the Buy America certification included herein with their bid or offer. The Owner will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

1. CERTIFICATE OF BUY AMERICAN

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with its proposal. The bidder or offeror must indicate how it intends to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (☐) or the letter "X".

☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:

a) Only installing steel and manufactured products produced in the United States; or
b) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- To faithfully comply with providing U.S. domestic products.
- To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

☐ The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

a) To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that supports the type of waiver being requested.
b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
d) To furnish U.S. domestic product for any waiver request that the FAA rejects.
e) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver – The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the "facility". The required documentation for a Type 3 waiver is:

a) Listing of all manufactured products that are not comprised of 100 percent U.S. domestic content (excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
b) Cost of non-domestic components and subcomponents, excluding labor costs associated with

final assembly and installation at project location.

c) Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

Type 4 Waiver – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a Type 4 of waiver is:

a) Detailed cost information for total project using U.S. domestic product
b) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date	Signature
Company NameTitle	

A-05 CIVIL RIGHTS - GENERAL

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

A-06 CIVIL RIGHTS – TITLE VI ASSURANCE

Title VI Solicitation Notice:

The Owner in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Acts and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, 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 procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor 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 its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
    a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
    b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq*., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq*.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq*.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- 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, sub- recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit 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 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- 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;

- 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, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

A-07 CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds $150,000.

A-08 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set

forth in paragraph (2) of this clause.

4. Subcontractors.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

A-09 COPELAND "ANTI-KICKBACK" ACT

Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

A-10 DAVIS-BACON REQUIREMENTS

1. Minimum Wages.

(i). All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii).

(A). The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C). In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D). The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii). Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv). If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: Provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets

for the meeting of obligations under the plan or program.

2. Withholding.

The Federal Aviation Administration or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and Basic Records.

(i). Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii).

(A). The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose

from the Wage and Hour Division Web site at www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B). Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C). The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (3)(ii)(B) of this section.

(D). The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii). The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i). Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii). Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division

determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii). Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

A-11 DEBARMENT AND SUSPENSION

CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

The successful bidder, by administering each lower tier subcontract that exceeds $25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: http://www.sam.gov.
2. Collecting a certification statement similar to the Certification of Offerer /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

A-12 DISADVANTAGED BUSINESS ENTERPRISES

The Contractor or subcontractor 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 Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

1) Withholding monthly progress payments;
2) Assessing sanctions;
3) Liquidated damages; and/or
4) Disqualifying the Contractor from future bidding as non-responsible.

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Sponsor The prime contractor agrees further to return retainage payments to each

subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

A-13 DISTRACTED DRIVING

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving", (10/1/2009) and DOT Order 3902.10, "Text Messaging While Driving", (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding $3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

A-14 ENERGY CONSERVATION REQUIREMENTS

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201*et seq*).

A-15 EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identify, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965,

and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

1. As used in these specifications:

   a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

   b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;

   c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;

   d. "Minority" includes:

      (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

      (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);

      (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

      (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work

involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other

contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Contractor during the training period and the Contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written

notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or female sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items, with onsite supervisory personnel such superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women

and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally), the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its

implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

A-16 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

A-17 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an 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.

(2) 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts undergrants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. 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.

A-18 PROHIBITION OF SEGREGATED FACILITIES

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

A-19 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

A-20 PROCUREMENT OF RECOVERED MATERIALS

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as

amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

a) The contract requires procurement of $10,000 or more of a designated item during the fiscal year; or

b) The contractor has procured $10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products. Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;

b) Fails to meet reasonable contract performance requirements; or

c) Is only available at an unreasonable price.

A-21 SEISMIC SAFETY

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

A-22 TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (□) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

1) The applicant represents that it is (□) is not (□) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2) The applicant represents that it is (□) is not (□)is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify

the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

A-23 TERMINATION OF CONTRACT

TERMINATION FOR CONVENIENCE:

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.
4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

1. Completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
2. Documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
3. Reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
4. Reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

TERMINATION FOR DEFAULT

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes conditions, rights, and remedies associated with Owner termination of this contract due to default of the Contractor.

1. Fails to commence the Work under the Contract within the time specified in the Notice- to-Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within [10] days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor's right to proceed with the Work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

The rights and remedies of the Owner in this clause are in addition to any other rights and remedies provided by law or under this contract.

A-24 TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror -

1. who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
2. whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
3. who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in

order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

A-25 VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

END OF SECTION

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Robert Hanna, City Manager**

FROM: **Don Green, Director**

SUBJECT: **6. Resolution: Receive a Report, Hold a Discussion and Public Hearing and Take Action to Approve Change Order 1 to the Contract with Collier Construction for the Aircraft Rescue and Fire Fighting Station *(Don Green)***

GENERAL INFORMATION

Due to the large difference between Collier's awarded bid and the architect's estimate, and the Federal Aviation Administration's timeline to get the project awarded this fiscal year, Airport, Corgan, Jacob Martin and Collier staffs negotiated Change Order 1 reducing the features of the design to get a reduced contract amount of $4,474,815.58. This is a reduction of $825,184.42 from the original contract price of $5,300,000.00.

The reduced features include eliminating the back bay doors and driveway on and to the backside of the station so that it will not have drive-through bays. Bays will be backed into from the front. This does not reduce the size of the bays.

Collier Construction has agreed to Change Order 1.

SPECIAL CONSIDERATIONS

Texas Local Government Code section 252.048 provides that if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment or supplies to be furnished, the governing body of a municipality may approve change orders making the changes.

A change order that involves an increase or decrease of more than $50,000 requires approval by

the governing body, and not a designee.

FUNDING/FISCAL IMPACT

This change order reduces the contract amount to better fit within funding resources of AIP Grant 48 and Proposition 9 Funds from the 2015 GO Bond.

STAFF RECOMMENDATION

Staff recommends approval of the Change Order.

BOARD OR COMMISSION RECOMMENDATION

The Airport Development Board approved its recommendation at its August 19, 2020 meeting.

ATTACHMENTS:

1. Collier Contract CO1 Resolution
2. Collier Contract Change Order 1 Presentation (9-10-20)
3. CHANGE ORDER 1 (Collier)
4. 200814_ARFF VE Spreadsheet_FINAL

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING CHANGE ORDER 1 TO THE CONTRACT WITH COLLIER CONSTRUCTION FOR CONSTRUCTION OF THE AIRCRAFT RESCUE AND FIRE FIGHTING STATION AT ABILENE REGIONAL AIRPORT.

WHEREAS, the City of Abilene (City) owns and operates Abilene Regional Airport; and

WHEREAS, the City awarded the contract for construction of a new Aircraft Rescue and Fire Fighting (ARFF) Station to Collier Construction for $5,300,000.00; and

WHEREAS, the City and Collier Construction agreed to reduce the work in and cost of the contract to $4,474,815.58 through Change Order 1; and

WHEREAS, the Airport Development Board approved its recommendation at its August 19, 2020 meeting.

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

1. That the City Manager is authorized to approve Change Order 1 to the contract with Collier Construction to reduce the contract price to $4,474,815.58.
2. That this resolution takes effect immediately upon Council approval.

ADOPTED this 10th day of September 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

Change Order 1 to the Collier Construction Contract

CITY OF ABILENE TEXAS

Change Order 1 to the Collier Construction Contract

- Airport, Corgan, Jacob & Martin and Collier staffs negotiated Change Order 1 reducing the features of the design to get a reduced contract amount of $4,474,815.58.
- The changes to design did not reduce the size of the truck bays, but included deleting the drive through doors at the rear of the truck bays and a paved driveway connecting the front and back of the station.

ABI
ABILENE REGIONAL AIRPORT
CITY OF ABILENE
CORGAN

CHANGE ORDER

CITY OF ABILENE

CHANGE ORDER NUMBER: 01

Project: ARFF Station Construction

1. CONTRACTOR: Collier Construction
2. Change Order Work Limits:
   Sta. NA
   to Sta. NA
3. Type of Change: Major
   (Major/Minor)
4. Reasons: Reduce contract price.
5. Describe the work being revised: Amend plans and contract per agreed Value Engineering discussions.
6. New or revised plan sheet(s), sketch(es), and estimates are attached.

Each signatory hereby warrants that each has the authority to execute this Change Order (CO).

The contractor must sign the Change Order and, by doing so, agrees to waive any and all claims for additional compensation due. THE CONTRACTOR Date: _____ (Signature) Typed/Printed Name: Click or tap here to enter text. Typed/Printed Title: Click or tap here to enter text.	*The following information must be provided:* Change in contract time: None Original contract price: 5,300,000.00 Existing contract price: * **4,474,815.58** Amount added or subtracted by this CO: ($825,184.42) * Includes previous COs

CITY OF ABILENE

_____ _____
Director Date

_____
City Attorney Date

_____
City Manager Date

Abilene Regional Airport Aircraft Rescue & Fire Fighting Station
Value Engineering Update 8-11-2020

COLLIER CONSTRUCTION

Item	Spec Section	Item Description	Cost Savings	Comments
	General Conditions	We will not need a full time gate guard, we will only need a gate guard when there are unbadged trucks coming into the jobsite	$30,000.00	
Earthwork - $30,768.00				
	Earthwork	Cost savings on over excavation and fill under the building pad.	$26,820.00	
	Earthwork	Cost savings for not demolishing the existing concrete approach and driveway at the existing building	$3,948.00	
Concrete Paving - $250,434.00				
Concrete Paving	Earthwork	Deduct subgrade prep and 10" flex base under the 10" concrete paving that is being removed from the project and asphalt road millings	$55,328.00	
Concrete Paving	Earthwork	Added cost to provide general fill and grading in the areas where the concrete paving would have been	-$5,394.00	
Concrete Paving	Concrete	Deduct large areas of 10" concrete paving from the project	$198,000.00	
Concrete Paving	Concrete	Add back sidewalk where the 10" paving was reduced, 28' x 6' across the drive area and 58'x6' on the back side of the building and add back sidewalk where deck/patio is removed	-$7,500.00	
Concrete Paving	Joint Sealants	Reduced Amount of Joints in Concrete Paving	$10,000.00	
Landscaping - $27,069.00				
	Landscape	Deduct landscaping to the south of the connecting walkway between the old and new buildings.	$27,069.00	Reduced irrigation and Bermuda sod by 29%, reduced hydro mulch native grass by 75% and reduced 1 planting bed on the south side
Fuel Tank - $20,305.00				
Fuel Tank	Concrete	Deduct the fuel tank containment slab and foundation	$2,900.00	
Fuel Tank	Equipment	Remove fuel tank and fuel pump	$9,405.00	
Fuel Tank	Electrical	Deduct for the electrical, fixtures and spot lights associated with the fuel tank and pump	$8,000.00	
Patio Area and BBQ Wall - $32,800.00				
Patio Area	Concrete	Deduct the piers and grade beams for the deck/patio area	$6,500.00	Add back for the sidewalk is included in the concrete items above
Patio Area	Wood and Composites	Deduct Trex Decking and treated wood joists for deck/patio area	$21,572.00	
Patio Area	Plumbing	Remove French drain and gravel under patio/deck area	$1,500.00	
Patio Area	Framing/Metal Panels	Deduct Framing, Sheathing and Metal Wall Panels for the BBQ Wall	$3,228.00	

Apparatus Bay Structure, Hoist and Mezzanine - $102,900.00				
Curved Roof Structure	Structural Steel	Deduct the rolled beams from the apparatus bay roof and other steel as noted, substitute with new beams and joists as shown, substitute 1.5wr deck for dovetail acoustical deck as shown on markups	$70,000.00	
Mezzanine	Concrete	Deduct the composite slab at the mezzanine area	$2,900.00	
Mezzanine	Masonry	Deduct mezzanine CMU walls, will have non structural CMU walls for the decon room	$7,500.00	
Mezzanine	Structural Steel	Deduct the mezzanine steel framing and deck, access ladders and handrail	$3,500.00	
Mezzanine	Electrical	Deduct some mezzanine lighting and electrical	$3,000.00	
Trolley Hoist	Structural Steel	Remove the trolley hoist structure from the project (trolley hoist equipment deduct will be shown in separate line item)	$4,000.00	
Trolley Hoist	Equipment	Remove Trolley Hoist	$12,000.00	
Exterior Finishes - $110,635.00				
	Masonry	Substitute all arriscraft stone for brick veneer, color to be selected by architect from selections provided by masonry contractor	$50,000.00	Color samples to be sent to architect for color selection
	Roofing	Change the roofing material from standing seam metal roofing to a GAF 60mil TPO membrane roof with the same R25 insulation and coverboard	$59,000.00	
	Paint	Pre-Finished exterior metal flashing in lieu of painted metal flashing. Metal flashing will already be pre-finished to match the wall panels	$1,635.00	
Millwork and Furniture Items - $22,195.00				
	Millwork	Provide off the shelf bed frame, mattress, small desk and wardrobe in each dorm room instead of the custom built millwork	$14,091.00	5 Bed frames $350 each, 5 mattresses $400 each, 4 desks $500 each, 4 wardrobe sets $1,500 each. All items to be off the shelf type furniture
	Millwork	Deduct millwork in laundry room	$3,441.00	
	Millwork	Deduct millwork in conference room	$2,563.00	
	Millwork	Substitute all remaining quartz countertops for a more economical solid surface	$2,100.00	
Overhead Doors - $41,016.00				
Omit South Doors	Sectional Doors	Eliminate 3 of the overhead doors from the south side	$40,982.00	
Omit South Doors	Doors and Bollards	Add back a walk door on the south side and 6 interior bollards with embed sleeves (2 bollards at each bay)	-$1,300.00	
Omit South Doors	Aluminum Storefront	Add back some windows on the south side where the overhead doors were removed. Assumed three small windows	-$2,500.00	
Omit South Doors	Framing	Add back framing and sheathing to infill where OHD's are removed	-$5,186.00	
Omit South Doors	Masonry	Brick veneer infill where overhead doors removed	-$4,000.00	Architect would prefer to select a second brick color for these three areas
	Sectional Doors	Provide low e tempered glass in lieu of solarban 70XL	$4,035.00	
	Sectional Doors	Provide Standard Aluminum finish on the overhead doors in lieu of black powder coat finish	~~$8,985.00~~	This deduct would be only two options: dark bronze anodized or clear anodized aluminum doors. The "standard" color selections as shown on Overhead Door website is the regular cost powder coat finish and would not result in the $8,985 deduct

Storefront and Glazing - $37,428.42				
	Storefront and Glazing	Deduct Glazing Elevation AC	$3,250.00	
	Storefront and Glazing	Omit Air and Water Testing called for in spec sections	$10,000.00	
	Storefront and Glazing	provide black anodized aluminum finish in lieu of high performance organic black finish. Anodized finish comes with standard 5 year finish warranty	$4,000.00	
	Storefront and Glazing	Provide front set storefront at elevation AA in lieu of curtain wall system	$6,000.00	
	Storefront and Glazing	Separate glazing elevations BA/AH and install an additional steel beam at 12' horizontally to allow the separate elevations (BB.BA,AH, AK) to be completed utilizing front set storefront instead of curtain wall systems	$10,665.00	
	Storefront and Glazing	Remove top row of glazing from all interior storefront elevations (AB, AD, AE, AF, AM)	$3,513.42	
Interior Finishes and Equipment - $62,954.00				
	Tile	Deduct the floor tile in the restrooms and deduct the shower tile and shower waterproofing and use a pre-fabricated shower unit instead	$9,623.00	
	Carpet	Switch to a more cost effective carpet and walk off carpet	$11,859.00	Will send samples to architect for color selection. New walk off carpet depth will be coordinated with recess in slab depth
	Paint	Paint all exposed structure with KM480 dry fog paint instead of high build coating, single color	$7,820.00	Sample to be approved by owner/architect for this deduct
	Specialties	Remove Lockers from Scope of Project	$9,794.00	
	Equipment	Remove Geargrid Mobile Hose Dryer	$5,000.00	
	Equipment	Provide more economical equipment (see equipment breakdown)	$18,858.00	
Plumbing and Mechanical - $10,475.00				
	Plumbing	Remove RO system? Plumbers were coordinating the RO system but the equipment was scheduled to be leased by the owner and not purchased directly by the contractor	$0.00	
	HVAC	Use sterling Unit Heaters in lieu of Modine Heaters (cannot be integrated into building management system in the future)	$5,075.00	
	HVAC	Delete the centralized controller and license for VRF system and all rooms will be independent control	$5,400.00	
Electrical and Communications - $46,178.00				
	Electrical	Use VE fixture for Type J and omit bollard lights and conduit associated	$15,378.00	
	Electrical	Change the indoor ceiling fans from BAF fans to MinkaAire 3 blade fans	$8,800.00	
	Electrical	Omit the load bank from the generator (No change to controls)	$19,500.00	
	Communications	Deduct the fiber connection to the existing building, leave the underground conduit with pull string	$2,500.00	
Total VE Savings if All Items Accepted $825,157.42				

- 8,985.00
+9,012.00
$825,184.42

Abilene Regional Airport Aircraft Rescue & Fire Fighting Station
Value Engineering - Contractor Supplied Specialty Equipment Breakdown

COLLIER CONSTRUCTION

	Description and Model Specified	Quantity	Unit Price	Total Line Item Cost	Item to Substitute	Unit Price	New Line Item Cost	Amount of Savings
1	Champion Air Compressor 100 gallon	1	$7,000.00	$7,000.00	Ingersoll Rand Type-30 208 3-phase	$4,000.00	~~$4,000.00~~	(3,000.00)
2	Cox Reels Hose Reel 100ft	1	$750.00	$750.00	No Substitute	$750.00	$750.00	0.00
3	Whirlpool Refrigerator	3	$2,200.00	$6,600.00	Whirlpool WRS315SDHM	$1,400.00	$4,200.00	(2,400.00)
4	Gas Range with Griddle	1	$10,000.00	$10,000.00	Vulcan SX36-6BN Sx series 6-burner range	$3,000.00	$3,000.00	(7,000.00)
5	Bosch Dishwasher	1	$1,600.00	$1,600.00	Whirlpool WDF520PADM 24" Dishwasher	$780.00	$780.00	(820.00)
7	Whirlpool Washer	1	$1,200.00	$1,200.00	Whirlpool WFW5620HW	$950.00	~~$950.00~~	(250.00)
8	Whirlpool Dryer	1	$1,200.00	$1,200.00	Whirlpool WED5620HW	$950.00	~~$950.00~~	(250.00)
9	Bunn Airport Coffee Brewer With Decanters	1	$1,000.00	$1,000.00	No Substitute	$1,000.00	~~$1,000.00~~	0.00
10	TV wall Mounts and Pre Wire Boxes	6	$150.00	$900.00	No Substitute	$150.00	$900.00	0.00
11	Hoshizaki Undercounter Ice Maker	1	$2,300.00	$2,300.00	Scotsman CU0415MA	$1,762.00	~~$1,762.00~~	(538.00)
12	Samsung 49" monitors	4	$1,500.00	$6,000.00	Samsung qb55r	$1,100.00	$4,400.00	(1,600.00)
13	Samsung 65" monitors	2	$3,000.00	$6,000.00	Samsung qb65r	$1,500.00	$3,000.00	(3,000.00)
14	Whirlpool Microwave	1	$350.00	$350.00	No Substitute	$350.00	~~$350.00~~	0.00
							Total Equipment Savings	(18,858.00)

($9,012.00)

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Robert Hanna, City Manager**

FROM: **Don Green, Director**

SUBJECT: **7. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Contract with Corgan Associates to Provide Construction Management Services During the Construction of the New Aircraft Rescue and Fire Fighting Station at Abilene Regional Airport *(Don Green)***

GENERAL INFORMATION

To insure the highest quality result and resolve unexpected issues during construction of the new Aircraft Rescue and Fire Fighting Station, the Airport proposes to contract with the design architect, Corgan Associates, to perform Construction Management Services. Corgan will use personnel from Jacob Martin to be the Resident Project Representative.

Corgan staff will be available throughout construction to resolve issues, conduct progress inspections and meetings.

This task order falls under the master contract for architectural services with Corgan.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

This contract will cost $179,900.00.

The Airport conducted an Independent Fee Estimate by another firm that estimated the fee

$179,201.65, but FAA agrees that Corgan's fee is within reason for the scope of work.

This fee is funded by the 2015 GO Bond Proposition 9 funds.

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

The Airport Development Board approved its recommendation at it August 19, 2020 meeting.

ATTACHMENTS:

1. Corgan CMS Contract Resolution
2. Corgan CMS Contract Presentation (9-10-20)
3. ABI Task Order #003_signed

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING A CONTRACT WITH CORGAN ASSOCIATES FOR CONSTRUCTION MANAGEMENT SERVICES DURING CONSTUCTION OF THE AIRCRAFT RESCUE AND FIRE FIGHTING STATION AT ABILENE REGIONAL AIRPORT.

WHEREAS, the City of Abilene (City) owns and operates Abilene Regional Airport; and

WHEREAS, the Airport demonstrated the need for a new Aircraft Rescue and Fire Fighting (ARFF) Station to accommodate expected increased ARFF truck sizes; and

WHEREAS, to insure the highest quality result and resolve unexpected issues during construction of the new Aircraft Rescue and Fire Fighting Station, the Airport proposed to contract with the design architect, Corgan Associates, to perform Construction Management Services; and

WHEREAS, Corgan will use personnel from Jacob Martin to be the Resident Project Representative; and

WHEREAS, this contract will cost $179,900.00; and

WHEREAS, this fee is funded by the 2015 GO Bond Proposition 9 funds; and

WHEREAS, the Airport Development Board approved its recommendation at its August 19, 2020 meeting.

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

1. That the City Manager is authorized to enter into the contract with Corgan Associates for Construction Management Services for the New ARFF Station for $179,900.00.
2. That this resolution takes effect immediately upon Council approval.

ADOPTED this 10th day of September 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

ARFF Station Construction Management Services Contract with Corgan Associates

CITY OF
ABILENE
TEXAS

ARFF Station Construction Management Services Contract with Corgan Associates

- To insure the highest quality result and resolve unexpected issues during construction of the new Aircraft Rescue and Fire Fighting Station, the Airport proposes to contract with the design architect, Corgan Associates, to perform Construction Management Services.
- Corgan will use personnel from Jacob Martin to be the Resident Project Representative.
- Corgan staff will be available throughout construction to resolve issues, conduct progress inspections and meetings.

ABI
ABILENE REGIONAL AIRPORT
CITY OF ABILENE
CORGAN

TASK ORDER # 003
PROJECT NAME: ABI ARFF Construction Administration Phase

1. **Summary:**

   Abilene Regional Airport is replacing their existing ARFF station with a new facility. The scope of work includes Construction Administration and Project Closeout for a new construction building approximately 10,000 sq. ft. to meet the recommended program outlined in the FAA Advisory Circular 150/5210-15A.

2. **Team:**

   Corgan – Architect of Record, Construction Administration Lead
   AG&E – Structural
   Jacob Martin – MEP, Civil, IT
   Jacob Martin – Resident Project Representative Services

3. **Scope of Work/Schedule:**

   Administration Lead
   - Corgan to coordinate file transfers including submittals and RFIs for review.
   - Contractor training/onboarding for construction administration processes.

   Construction Administration- 15 Months
   - Preconstruction Meeting held at the Airport
   - Submittal/RFI Review and Responses
   - Pay Application Review and Approval
   - Biweekly OAC progress meetings onsite
   - (30) site visits with observation reports
   - A final punch list visit

   Project Closeout – 2.5 Weeks
   - O&M Manual Review and Issue
   - Record Document Review and Issue
   - Post substantial completion punch list at 11 months

4. **Assumptions:**

   - The Resident Project Representative will review overall project completion for all disciplines. The resident project representative will prepare field reports weekly and distribute to the design team. Onsite project visits and inspections will at a minimum be provided weekly and as needed at all major construction milestones.

5. **Exclusions:**

   - Geotechnical Engineering Services are not included.
   - Lease negotiations
   - Specialty lighting designer
   - Signage design (by vendor)
   - Asbestos report
   - Construction means and methods
   - Construction life safety
   - LEED and/or Green Building programs, documentation and analyses are not included.
   - Fees do not include City review fees, permitting fees, filing fees, taxes, TAS review fees and COM Check fees

6. **Fees:**

Fees are based on a lump sum as dictated below and include consultant services. Please note reimbursable expenses, while shown separate will be considered a part of our lump sum fee.

ABI ARFF CA Services	
Corgan	$91,000.00
AG&E	$15,700.00
Jacob Martin - Civil,MEP,IT	$11,200.00
Jacob Martin - Resident Project Representative	$60,000.00
Sub-Total	**$177,900.00**
Reimbursable Cost (Travel/Printing/Misc.)	$2,000.00
Lump Sum Total:	**$179,900.00**

7. **ATTACHMENTS: N/A**

Upon execution of this Task Order by authorized representatives of the City of Abilene and Corgan Associates, Inc., this Task Order is incorporated as a part of the Professional Services Contract, dated July 27, 2018 ("PSA"). In the event of a conflict between the PSA and Task Order terms and conditions, the terms and conditions contained in this PSA shall govern only if this PSA includes a clear and express modification of the PSA.

City of Abilene	**Corgan Associates, Inc.**
Signature	*Signature*
	Ross Payton - Principal
Printed Name and Title	*Printed Name and Title*
	09 / 08 / 2020
Date	*Date*

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Robert Hanna, City Manager**

FROM: **Don Green, Director**

SUBJECT: **8. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Purchase Three (3) Support Vehicles for CityLink *(Don Green)***

GENERAL INFORMATION

CityLink requested pricing to purchase three Ford Edges to replace three vehicles used for staff support. CityLink received Quote 00B5 from Rockland Country Ford dba Caldwell Country through BuyBoard. The quote is $28,365.00 per vehicle and $85,495.00 for all three.

CityLink currently operates four vehicles for supervisors and staff use. Supervisors use these to check road conditions, observe how safely operators are driving around town and staying within expected routes. They are also used for staff to pick up parts and even occasionally transport customers.

The current fleet consists of two 2005 Trailblazers and two 2010 Impalas.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

This purchase is funded at 100% by FTA FY17 5339 Bus/Bus Facilities grant TX 2020-013-00.

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. CityLink Support Vehicles Purchase Resolution 9-10-20
2. CPS-BUYBOARD-ROCKDALE COUNTRY FORD.doc ABILENE -2021 FORD EDGE SE K3G-3X-AUGUST27 (ATLAS BLUE)
3. Additional Info about Support Vehicles 8-24-2020 (1)
4. CityLink Support Vehicles Purchase Presentation (9-10-20)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING PURCHASE OF THREE FORD EDGES FROM ROCKLAND COUNTRY FORD dba CALDWELL COUNTRY THROUGH BUYBOARD QUOTE 00B5 FOR CITYLINK

WHEREAS, the City of Abilene (City) contracts for the operation of CityLink as the City's public transit service; and

WHEREAS, the City receives grant funding through Federal Transportation Administration (FTA), as authorized by the Congress of the United States of America and Texas Department of Transportation (TXDOT) operating costs; and

WHEREAS, CityLink has a need to replace three vehicles used for staff support; and

WHEREAS, CityLink received BuyBoard Quote 00B5 from Rockland Country Ford dba Caldwell Country for a total of $85,495.00; and

WHEREAS, CityLink has funding from FTA 5339 Bus/Bus Facilities Grant TX 2020-013-00 with no City match required.

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

Part 1. That the City Manager is authorized to approve the purchase of the three Ford Edges from Rockland Country Ford dba Caldwell Country for a total of $85,495.00 through BuyBoard Quote 00B5.

Part 2. That this resolution is effective immediately.

ADOPTED this 10th day of September, 2020

ATTEST:

_____ _____

Shawna Atkinson, City Secretary Anthony Williams, Mayor

APPROVED:

_____

Stanley Smith, City Attorney

QUOTE# 00B5

CONTRACT PRICING WORKSHEET

End User: CITY OF ABILENE	Contractor: ROCKDALE COUNTRY
Contact Name: KURT HURICK BOBBY SHARPE	ROCKDALE COUNTRY FORD DBA CALDWELL COUNTRY
Email: KURT.HURICK@ABILENETX.GOV BOBBY.SHARPE@ABILENETX.GOV	Prepared By: Averyt Knapp
Phone #: 325-676-6423 325-676-6403	Email: aknapp@caldwellcountry.com
Fax #:	Phone #: 979-567-6116
Location City & State: ABILENE, TX	Fax #: 979-567-4376
Date Prepared: AUGUST 27, 2020	Address: P. O. Box 72, ROCKDALE, TX 76567
Contract Number: BUY BOARD #601-19	Tax ID # 27-3037856
Product Description: 2021 FORD EDGE SE K3G	

A Base Price & Options:	$27,980

B Fleet Quote Option:

Code	Description	Cost	Code	Description	Cost
	SE PACKAGE, 2.0L-ECO BOOST, 8-SPD AUTOMATIC, CARPET FLOOR W/MATS, AIR CONDITION, AMFM-STEREO W/SYNC, TILT, CRUISE, POWER WINDOWS, POWER LOCKS, POWER MIRRORS, KEYLESS ENTRY, DEEP TINT GLASS, REAR VISION CAMERA, ATLAS BLUE W/EBONY CLOTH	INCL			
	FORD WARRANTY 5YR/60,000 MILES POWERTRAIN @ N/C	INCL		ROCKDALE COUNTRY FORD PO BOX 72 ROCKDALE, TEXAS 76567	
Subtotal B					INCL

C Unpublished Options

Code	Description	Cost	Code	Description	Cost
Subtotal C					

D Other Price Adjustments (Installation, Delivery, Etc...)

Subtotal D	$385
E Unit Cost Before Fee & Non-Equipment Charges(A+B+C+D)	$28,365

Quantity Ordered	3
Subtotal E	$85,095
F Non-Equipment Charges (Trade-In, Warranty, Etc...)	
BUY BOARD FEE	$400
G. Color of Vehicle: ATLAS BLUE	
H. Total Purchase Price (E+F)	$85,495
Estimated Delivery Date:	150 DAYS APPX

Additional information for the CityLink Transit support vehicles

Unit #	Assignment	Year	Make	Model	Mileage	Repair Cost	PM Cost	Total Maintenance Cost	Disposal Method	Replacement Reasoning	Est. Idle Hours
002	Citylink	2010	Chevy	Impala	58,549	$6,804.89	$12,561.30	$19,366.19	City Auction	Surpassed the useful life of 8 years as required by FTA. Transmission severely slips in all forward ranges. Replacement transmission: $4400. We will have exceeded the original cost of the vehicle when purchased. Electrical short that drains the battery 3-4 times per week. Airbag issue, dealership tried several times but cannot fix.	2,000 hrs. This vehicle idles about 55 minutes a day. In mileage 2,000 x 33 miles = 66,000 additional miles on the vehicle that is not accounted for.
003	Citylink	2010	Chevy	Impala	81,040	$4,603.89	$12,320.17	$14,521.17	City Auction	Surpassed the useful life of 8 years as required by FTA. Transmission is sliping in some forward ranges. Replacement transmission: $4400. Engine burning oil. With all the maintenance this vehicle will have exceeded the purchase price of the vehicle.	2,000 hrs. This vehicle idles about 55 minutes a day. In mileage 2,000 x 33 miles = 66,000 additional miles on the vehicle that is not accounted for.
904	Citylink	2005	Chevy	Blazer	93,896	$9,566.52	$14,039.28	$23,605.80	City Auction	Surpassed the useful life of 8 years as required by FTA. This vehicle has some minor hail damage from 2014 storm. The driver front door hinge worn out, has been repaired/replaced several times, still a problem. This vehicle has an electrical short that continues to drain the battery at all times. At times during heavy rain the vehicle leaks water inside. Front end suspension has been replaced twice, still a problem. Check engine-emissions control valve, been replaced several times, still a problem, next step of repair would be replace sending unit, line and purge valve, est. $2000. Replacement parts becoming obsolete. Driver seat been replaced with salvage yard seat since not in stock. Engine burning oil.	2,500 hrs. This vehicle idles about 46 minutes a day. In mileage 2,500 x 33 miles = 82,500 additional miles on the vehicle that is not accounted for.
905	Citylink	2005	Chevy	Blazer	86,925	$6,873.86	$12,780.76	$19,654.62	City Auction	Surpassed the useful life of 8 years as required by FTA. The vehicle has severe hail damage from 2014. Insurance totaled this vehicle-salvage title, we bought vehicle from insurance. During a good rain event water leaks inside the vehicle. The driver front door hinge worn out, has been repaired/replaced several times, still a problem. Front end suspension has been replaced twice, still a problem. Check engine-emissions control valve, been replaced several times, still a problem, next step of repair would be replace sending unit, line and purge valve, est. $2000. Replacement parts becoming obsolete. Driver seat been replaced with salvage yard seat since not in stock. Engine burning oil.	2,500 hrs. This vehicle idles about 46 minutes a day. In mileage 2,500 x 33 miles = 82,500 additional miles on the vehicle that is not accounted for.

CityLink Support Vehicles Replacement

CITY OF ABILENE TEXAS

CityLink Support Vehicles Replacement

- CityLink requested pricing to purchase three Ford Edges to replace three vehicles used for staff support. CityLink received Quote 00B5 from Rockland Country Ford dba Caldwell Country through BuyBoard. The quote is $28,365.00 per vehicle and $85,495.00 for all three.
- CityLink currently operates four vehicles for supervisors and staff use. Supervisors use these to check road conditions, observe how safely operators are driving around town and staying within expected routes. They are also used for staff to pick up parts and even occasionally transport customers.
- This purchase is funded at 100% by FTA FY17 5339 Bus/Bus Facilities grant TX 2020-013-00.

ABILENE PUBLIC
LIBRARY
1003
002
002
TEXAS
108-0192

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Robert Hanna, City Manager**

FROM: **Don Green, Director**

SUBJECT: **9. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Approve a Purchase from On Site Marketing for Bus Lifts for CityLink *(Don Green)***

GENERAL INFORMATION

CityLink requested quotes from three companies to purchase four bus lifts, six jack stands and two cross beams to be used in CityLink's bus repair shop to allow for two buses to be lifted an worked on at the same time.

The lowest quote was from On-Site Marketing for a total of $49,900.00.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

This purchase is an eligible expense under the CARES Act grant received from the Federal Transit Administration. No City match is required.

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Bus Lift Purchase Resolution 9-10-20
2. Bus Lift Purchase Presentation (9-10-20)
3. Arnold Oil Company MOBILE COLUMN LIFT 2020 Quote
4. Carl Turner Equipment QUOTATION.CITY LINK 419 MAX
5. On Site Marketing City Link Abilene quote

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING THE PURCHASE OF BUS LIFTS FOR CITYLINK

WHEREAS, the City of Abilene (City) contracts for the operation of CityLink as the City's public transit service; and

WHEREAS, the City receives grant funding through Federal Transportation Administration (FTA), as authorized by the Congress of the United States of America and Texas Department of Transportation (TXDOT) for operating costs; and

WHEREAS, CityLink has a need to purchase four bus lifts, six jack stands and two cross beams to be used in CityLink's bus repair shop to allow for two buses to be lifted and worked on at the same time.

WHEREAS, the lowest quote received was from On-Site Marketing for a total of $49,900.00; and

WHEREAS, CityLink has made other purchases from On-Site Marketing to cause cumulative expenditures in FY20 to exceed $50,000 with this company; and

WHEREAS, this purchase is an eligible expense under the CARES Act Grant received from the Federal Transit Administration. No City match is required.

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

Part 1. That this purchase from On-Site Marketing in the amount of $49,900.00 is approved.

Part 2. That this resolution is effective immediately.

ADOPTED this 10th day of September, 2020

ATTEST:

_____ _____

Shawna Atkinson, City Secretary Anthony Williams, Mayor

APPROVED:

_____

Stanley Smith, City Attorney

Purchase of Bus Lifts for CityLink

CITY OF ABILENE TEXAS

Purchase Bus Lifts for CityLink

- CityLink requested quotes from three companies to purchase four bus lifts, six jack stands and two cross beams to be used in CityLink's bus repair shop to allow for two buses to be lifted and worked on at the same time.
- The lowest quote was from On-Site Marketing for a total of $49,900.00.
- This purchase is an eligible expense under the CARES Act grant received from the Federal Transit Administration. No City match is required.

ROTARY LIFT

Date
8/17/2020

Arnold Oil Company of Austin, L.P.
Equipment Division
5909 Burleson Road
Austin, Tx 78744
(512)477-1211
fax 512-476-7711

CODY STEELE
CITY LINK

ATTN: KURT | 1189 S 2ND ST | PHONE:

QTY	PART #	DESCRIPTION	$/PER	TOTAL
4	FLEXMAX419	ROTARY MOBILE COMLUMN LIFTS 19K CAPACITY EACH	$ 12,500.00	$ 50,000.00
1	FRT	EST INBOUND FREIGHT FOR LIFTS		$ 2,083.00
6	RS2052SYL	JACK STANDS	$ 742.00	$ 4,452.00
1	FRT	INBOUND FREIGHT FOR JACKS		$ 30.00
1	ML41YL	SADDLE CROSS BEAM		$ 1,720.00
1	FRT	INBOUND FREIGHT FOR SADDLE BEAM		$ 70.00
			TOTAL	**$ 58,355.00**

WARRANTY:
1YR LABOR, 1YR PARTS

Does not include electrical,unless specified
Above ground lifts: Additional charges may apply if 1/4" steel shim plates are required to provide level surface
Underground obstructions such as water lines, sewer lines gas lines,electrical lines or any other service lines broken during installation shall be the responsibility of the customer.
Our workers are fully covered by Workers Compensation Insurance.
Quote valid for 45 days

ACCEPTED BY:_____ Date:_____

Carl Turner Equipment Inc.

CARL TURNER EQUIPMENT INC.

5427 BREWSTER
SAN ANTONIO, TEXAS 78233
(210) 590-8111 FAX (210) 590-8199
www.CarlTurnerEquipment.com

" CELEBRATING 32 YEARS OF QUALITY SERVICE"

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AMMCO IAT COATS ROTARY GRACO

Tire Changers • Brake Lathes • Balancers • Lifts • Alignment • Wheel Weights • Freon Reclaimers • Accessories

QUOTATION FOR : CITY LINK ABILENE
YOUR REPRESENTATIVE : BOB TURNER
DATE: 8/17/20
TERMS: NET DUE 30 DAYS

Quantity	Model	Description	Price Per Unit	Extend
4	419FLEXMAX	ROTARY MOBILE COLUMN LIFT	11315.00	45260.00
1		FREIGHT/ SET UP AND TRAINING		1623.00
6	RS2052SYL	ROTARY ADJUSTABLE JACK STAND	715.00	4290.00
1	ML41YL	ROTARY CROSSBEAM		1806.00
			SUB-TOTAL	52979.00
			SALES TAX	---------
			TOTAL	52979.00

INCLUDES DELIVERY, INSTALLATION & INSTRUCTION
DOES NOT INCLUDE ELECTRICAL OR PLUMBING

Effective March 1st,2019 the company that processes our credit card payments will begin charging a 3.5% processing fee for all credit card transactions. To avoid this fee, we gladly accept debit cards, cash and check payments. We thank you for your understanding and truly value your business.

We are pleased to submit the above quotation for your consideration. When you place your order, be assured it will receive prompt attention. This quotation is valid for 7 days. There after is subject to change without notice. All returns on special orders are subject to a 15% restocking fee. Above prices include delivery, Set-up and instruction unless otherwise indicated. Quotation does NOT include any applicable sales tax. Above prices do not include electrical or plumbing unless otherwise indicated. ** PLEASE NOTE: EQUIPMENT DESIGNATED ON QUOTATION WILL NOT BE ORDERED WITHOUT A SIGNED QUOTE ACCEPTING THE CONTENTS OF THE ABOVE QUOTATION. CANCELLATIONS ARE SUBJECT TO RESTOCKING FEE AND FREIGHT CHARGES INCURRED IN RETURNING MERCHANDISE TO MANUFACTURER. CARL TURNER EQUIPMENT DOES NOT WARRANT LOST FREON DUE TO LEAKS ON FREON RECOVERY MACHINES.CARL TURNER EQUIPMENT RESERVES THE RIGHT TO AMMEND PRICING ERRORS.*

Accepted by: _____ Date: _____

THANK YOU!

Quote

Factory Representatives for Automotive and Petroleum Equipment
105 Commercial Place
PO Box 362
Schertz, TX 78154
Phone 210.637.6990 Fax 210.637.6709

DATE 8/17/2020

SHIP TO ADDRESS
City Link Abilene
1189 South 2nd. Street
Abilene, TX 79602
Attn: Kurt Hurick

VENDOR
OSM

Comments or Special Instructions:

ORIGINATOR	P.O. NUMBER	SHIP DATE	SHIP VIA	F.O.B. POINT	TERMS
TT	Kurt	ASAP	Unknown		NET 30

QUANTITY	DESCRIPTION	UNIT PRICE	T	AMOUNT
4	Rotary Flex Max 419 Mobile Columns	$ 10,750.00	T	$ 43,000.00
6	RS2052SYL - Jack Stands	$ 600.00	T	$ 3,600.00
1	ML41YL - Cross Beam	$ 1,716.00		$ 1,716.00
			SUBTOTAL	$ 48,316.00
			TAX RATE	8.25%
			SALES TAX	$0.00
			Freight	1,584.00
			TOTAL	$ 49,900.00

If you have any questions concerning this Purchase Order contact Tanner Timmons, On-Site Marketing, (512)577-3196.

THANK YOU FOR YOUR BUSINESS!

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Robert Hanna, City Manager**

FROM: **Rodney Taylor, Director**

SUBJECT: **10. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Awarding Bids for Purchase of Bulk Chemicals to be Used by Water and Wastewater Treatment Plants in Fiscal Year 2021 (*Rodney Taylor*)**

GENERAL INFORMATION

The City of Abilene Water Department is requesting that by written resolution the City Council award bids for CB-2061 Water Treatment Chemicals. The bid is for the purchase of bulk chemicals to be used in water and wastewater treatment processes. Notices were published in the Abilene Reporter News on May 17th and 24th, 2020, and the bid opening date was June 4th, 2020. The following table lists the individual chemicals bid, the staff recommended low bidder, the unit price for that bid, the pricing unit used for each chemical, and the maximum projected annual cost for each chemical during fiscal year 2021. It is customary that the bulk treatment chemicals be purchased based on unit prices.

SPECIAL CONSIDERATIONS

The following chemicals are used for the treatment of drinking water at the Grimes, Northeast, and Hargesheimer Water Treatment Plants, and/or for the treatment of wastewater at the Hamby Water Reclamation Facility.

CHEMICAL	RECOMMENDED VENDOR	UNIT PRICE	PRICING UNIT	ANNUAL $
Liquid Chlorine	DPC Industries, Inc.	774.00	Liquid Ton	$225,285.08

Ferrous Chloride	Pencco	978.00	Dry Ton	$300,975.59
Dry Polymer	Nalco Water	3,480.00	Dry Ton	$70,178.10
Ferric Sulfate	Pencco	456.00	Dry Ton	$285,228.00
Sodium Chlorite	Evoqua Water Technologies	3,431.25	Dry Ton	$527,976.73
Fluorosilicic Acid	Pencco	1,760.00	Dry Ton	$42,127.01
Bleach (Mini-Bulk)	Hydro Plus, LLC	2.88	Gallon	$24,480.00
Sodium Permanganate	Shannon Chemical Corp.	8.87	Gallon	$9,168.53
Alum	Chameleon Industries Inc.	309.00	Dry Ton	$970,520.80
LAS	Chameleon Industries Inc.	410.00	Dry Ton	$53,204.15
Caustic	DPC Industries, Inc.	719.00	Dry Ton	$696,009.11
Citric Acid	Chemstation	0.720	Wet Pound	$160,859.52
Bleach (Bulk)	DPC Industries, Inc.	0.790	Gallon	$227,520.00
Sodium Bisulfite 40%	Southern Ionics, Inc.	522.66	Dry Ton	$88,329.54
Liquid Oxygen	Air Products & Chemicals	0.00806	Cubic Ft.	$33,397.42

Three bids were received for Citric Acid. The second lowest bid, submitted by local vendor Chemstation, is within 5% of the lowest bid. Staff recommends awarding the bid to Chemstation based on local preference. In accordance with the City of Abilene Purchasing Policy, 2018 Edition, the City Council may award the bid to Chemstation based on local preference if determined that the local bidder offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the City and increased tax revenues to the City.

FUNDING/FISCAL IMPACT

Funds for the purchase of bulk chemicals come from the fiscal year 2021 Annual Operating Budget of the Water Utilities Department.

STAFF RECOMMENDATION

It is recommended that the City Council award the bulk chemical supply contracts as described above and as recommended by staff.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. WrittenResolution-WtrDpt-AwardBid-Purchase Bulk Chemicals for W-WW Treatment-FY2021-9-10-2020
2. CB2061TAB
3. Presentation-Resolution Award Bid for Purchase of Bulk Chemicals for W-WW-9-10-2020

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AWARDING BID TO VARIOUS VENDORS FOR THE PURCHASE OF BULK CHEMICALS USED FOR WATER AND WASTEWATER TREATMENT PROCESSES DURING FISCAL YEAR 2021.

WHEREAS, The City of Abilene (City) owns and operates the Grimes, Northeast, and Hargesheimer Water Treatment Plants (WTPs) and the Hamby Water Reclamation Facility (WRF); and

WHEREAS, the WTPs and the WRF utilize large quantities of chemicals in the respective treatment processes, and the chemicals are purchased in bulk quantities from various vendors based on the results of an annual bid solicitation process; and

WHEREAS, City staff evaluated all bids for conformance with the specifications, and the following list identifies the recommended low bidder and unit price for each bulk chemical bid item for fiscal year 2021:

CHEMICAL	RECOMMENDED VENDOR	UNIT PRICE	PRICING UNIT	ANNUAL $
Liquid Chlorine	DPC Industries, Inc.	774.00	Liquid Ton	$225,285.08
Ferrous Chloride	Pencco	978.00	Dry Ton	$300,975.59
Dry Polymer	Nalco Water	3,480.00	Dry Ton	$70,178.10
Ferric Sulfate	Pencco	456.00	Dry Ton	$285,228.00
Sodium Chlorite	Evoqua Water Technologies	3,431.25	Dry Ton	$527,976.73
Fluorosilicic Acid	Pencco	1,760.00	Dry Ton	$42,127.01
Bleach (Mini-Bulk)	Hydro Plus, LLC	2.88	Gallon	$24,480.00
Sodium Permanganate	Shannon Chemical Corp.	8.87	Gallon	$9,168.53
Alum	Chameleon Industries Inc.	309.00	Dry Ton	$970,520.80
LAS	Chameleon Industries Inc.	410.00	Dry Ton	$53,204.15
Caustic	DPC Industries, Inc.	719.00	Dry Ton	$696,009.11
Citric Acid	Chemstation	0.720	Wet Pound	$160,859.52
Bleach (Bulk)	DPC Industries, Inc.	0.790	Gallon	$227,520.00
Sodium Bisulfite 40%	Southern Ionics, Inc.	522.66	Dry Ton	$88,329.54
Liquid Oxygen	Air Products & Chemicals	0.00806	Cubic Ft.	$33,397.42

WHEREAS, the recommended vendor for Citric Acid is second lowest bidder Chemstation based on local preference in accordance with the City's purchasing policy; and

WHEREAS, City staff, after evaluating the bid submittals for fiscal year 2021, does recommend awarding the bids to the low bidders identified herein; and

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

Part 1: The City Manager is hereby authorized to execute a contract with each low bidder identified above in the amount of each associated unit price for the fiscal year 2021.

Part 2: That the City Council has determined that Chemstation, a local bidder, offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award for Citric Acid, including the employment of residents of the City and increased tax revenues to the City.

ADOPTED this 10th day of September, 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley E. Smith, City Attorney

CITY OF ABILENE
PURCHASING DIVISION
TABULATION OF BIDS

DEPARTMENT: WATER
BID NO.: CB-2061
TIME OF OPENING: 11:00 A.M.
DATE OF OPENING: JUNE 4, 2020

VENDOR / ITEM DESCRIPTION	ITEM 1. LIQUID CHLORINE	ITEM 2. FERROUS CHLORIDE	ITEM 3. DRY POLYMER	ITEM 4. FERRIC SULFATE	ITEM 5. SODIUM CHLORITE	ITEM 6. FLUORO-SILICIC ACID	ITEM 7. BLEACH, MINI-BULK	ITEM 8. SODIUM PERMAN-GANATE	ITEM 9. ALUM	ITEM 10. LAS	ITEM 11. CAUSTIC	ITEM 12. CITRIC ACID	ITEM 13. BLEACH, BULK	ITEM 14. SODIUM BISULFITE	ITEM 15. LIQUID OXYGEN
DPC INDUSTRIES, INC. CLEBURNE, TX	*774.00										*719.00		*.79		
PENCCO, INC SAN FELIPE, TX		*978.00		*456.00		*1,760.00									
SNF POLYDYNE RICEBORO, GA			3720.00												
INTERNATIONAL DIOXCIDE INC NORTH KINGSTOWN, RI					3,688.39										
UNIVAR SOLUTIONS KENT, WA						1,834.78		13.1675			765.00				
SOUTHERN IONICS INC WEST POINT, MS														*522.66	
EVOQUA WATER TECHNOLOGIES, LLC SARASOTA, FL					*3,431.25										
AIR PRODUCTS AND CHEMICALS, INC ALLENTOWN, PA															*.00806
NALCO WATER NAPERVILLE, IL			*3,480.00												
GEO SPECIALTY CHEMICALS, INC LITTLE ROCK, AR									510.00						
BRENNTAG SOUTHWEST INC HOUSTON, TX									420.00	595.00	928.00				
CHEMTRADE CHEMICALS US, LLC PARSIPPANY, NJ				482.00					445.00	625.00					
SHANNON CHEMICAL CORP MALVERN, PA						2,727.00		*8.87				.693			
DIMMIT SULFUR PRODUCTS PORTALES, NM														525.00	
STERLING WATER TECHNOLOGIES, LLC COLUMBIA, TN										945.7894					
PVS MINIBULK INC. DETROIT, MI							3.74								
UMC CORPORATION NEW YORK, NY								9.38							
AFFINITY CHEMICAL, LLC FLANDERS, NJ									422.00						
HYDRO PLUS, LLC ABILENE, TX							*2.88			465.00		.87			
CHEMSTATION ABILENE, TX												**.72			
CHAMELEON INDUSTRIES INC MESQUITE, TX									*309.00	*410.00					

*Recommended Award / **5% Local Vendor Preference

Awarding Bids for Purchase of Bulk Chemicals Used for Water and Wastewater Treatment Plants During Fiscal Year 2021.

CITY OF ABILENE TEXAS

Awarding Bids for Purchase of Bulk Chemicals

- The City's three Water Treatment Plants and the Water Reclamation Plant utilize large quantities of chemicals in the respective treatment processes.
- Treatment chemicals are purchased in bulk quantities from various vendors based on the results of an annual bid solicitation process.
- It is typical that bulk chemicals be purchased using unit pricing.
- Each chemical must comply with standards developed by the American Water Works Association.

City staff evaluated all bids for conformance with the specifications, and the following list identifies the low bidder recommended for each bid item for FY2021:

CHEMICAL	RECOMMENDED VENDOR	UNIT PRICE	PRICING UNIT	ANNUAL $
Liquid Chlorine	DPC Industries, Inc.	774.00	Liquid Ton	$225,285.08
Ferrous Chloride	Pencco	978.00	Dry Ton	$300,975.59
Dry Polymer	Nalco Water	3,480.00	Dry Ton	$70,178.10
Ferric Sulfate	Pencco	456.00	Dry Ton	$285,228.00
Sodium Chlorite	Evoqua Water Technologies	3,431.25	Dry Ton	$527,976.73
Fluorosilicic Acid	Pencco	1,760.00	Dry Ton	$42,127.01
Bleach (Mini-Bulk)	Hydro Plus, LLC	2.88	Gallon	$24,480.00
Sodium Permanganate	Shannon Chemical Corp.	8.87	Gallon	$9,168.53
Alum	Chameleon Industries Inc.	309.00	Dry Ton	$970,520.80
LAS	Chameleon Industries Inc.	410.00	Dry Ton	$53,204.15
Caustic	DPC Industries, Inc.	719.00	Dry Ton	$696,009.11
Citric Acid*	Chemstation	0.720	Wet Pound	$160,859.52
Bleach (Bulk)	DPC Industries, Inc.	0.790	Gallon	$227,520.00
Sodium Bisulfite 40%	Southern Ionics, Inc.	522.66	Dry Ton	$88,329.54
Liquid Oxygen	Air Products & Chemicals	0.00806	Cubic Ft.	$33,397.42

* Staff recommends awarding the bid for Citric Acid to Chemstation based on local preference: the Chemstation bid is within 5% of the lowest bid.

Awarding Bids for Purchase of Bulk Chemicals Used for Water and Wastewater Treatment Plants During Fiscal Year 2021.

QUESTIONS?

CITY OF ABILENE TEXAS

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Robert Hanna, City Manager**

FROM: **Rodney Taylor, Director**

SUBJECT: **11. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Authorizing Combined Purchases from the Specified Vendors in Amounts Exceeding $50,000 During Fiscal Year 2020 *(Rodney Taylor)***

GENERAL INFORMATION

Staff is recommending that the Abilene City Council approve the resolution authorizing total combined purchases in excess of $50,000 during fiscal year 2020 for each vendor listed in the following table.

COMPANY	FY2020 TO DATE
Abilene Plumbing Supply Co.	$ 206,193.96
Ana-Lab Corporation	$ 82,459.00
Atlas Utility Supply Co.	$ 130,147.60
Benmark Supply / formerly Plastic Wholesale	$ 221,692.35
Hach Company	$ 45,612.62
Core & Main / formerly HD Supply	$ 156,231.22

SPECIAL CONSIDERATIONS

During the course of each fiscal year City staff is required to make numerous purchases of

materials, services, parts, and equipment from various vendors. Those purchases can be made by only one City department or made by several City departments each acting independently. The individual purchases are made in accordance with applicable City policy and state regulations. This normal practice can result in total combined expenditures that exceed $50,000 during a fiscal year. City policy requires that the Abilene City Council approve of total combined purchases exceeding $50,000 in value from a single vendor during a fiscal year. Purchases of individual items exceeding $50,000 in value will continue to require specific authorization of the City Council.

FUNDING/FISCAL IMPACT

Funding for the total combined purchases will not exceed the associated available funds as allocated in the FY 2020 Annual Operating Budget.

STAFF RECOMMENDATION

Staff Recommends that the Abilene City Council approve the resolution authorizing the total combined purchases from each of the listed vendors in amounts exceeding $50,000 during Fiscal Year 2020.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. WrittenResolution-WtrDpt-Authorize Combined Purchases-Various Vendors-FY2020-9-10-2020
2. Presentation-Authorize Combined Purchases-Various Vendors-FY2020-9-10-2020

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AUTHORIZING COMBINED PURCHASES FROM THE SPECIFIED VENDORS IN AMOUNTS EXCEEDING $50,000 DURING FISCAL YEAR 2020.

WHEREAS, various City of Abilene City Departments and Divisions may act independently in making purchases of materials, services, parts, and/or equipment from a common vendor or vendors in compliance with respective spending policies and limits but resulting in total combined purchases that exceed $50,000; and

WHEREAS, City Policy requires that the Abilene City Council approve of total combined purchases exceeding $50,000.00 in value from a single vendor during a fiscal year; and

WHEREAS, during the course of fiscal year 2020 City staff will make total combined purchases in excess of $50,000.00 from each of the following vendors:

COMPANY
Abilene Plumbing Supply Co.
Ana-Lab Corporation
Atlas Utility Supply Co.
Benmark Supply / formerly Plastic Wholesale
Hach Company
Core & Main / formerly HD Supply

WHEREAS, staff is requesting that the City Council approve combined purchases from each listed vendor in amounts exceeding $50,000 during fiscal year 2020; and

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

That the City Manager or his designated staff is authorized to make combined purchases from each of the above listed vendors in amounts exceeding $50,000 during fiscal year 2020.

ADOPTED this 10th day of September, 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley E. Smith, City Attorney

Authorizing Combined Purchases From Specified Vendors in Amounts Exceeding $50,000 During Fiscal Year 2020.

- City staff is required to regularly make purchases of materials, services, parts, and equipment in order to provide customer services and for the upkeep of equipment and facilities.
- Various City Departments act independently in making purchases from a common vendor or vendors in compliance with respective spending policies.
- Total combined purchases from a single vendor may exceed $50,000 during a fiscal year.
- City Policy requires that the Abilene City Council approve of total combined purchases exceeding $50,000.00 from a single vendor during a fiscal year.

- Total Combined Purchases will not exceed the allocated funds of the FY2020 Annual Operating Budget.
- Purchases of individual items valued at greater than $50,000 will continue to require specific approval of the City Council.
- The Water Utilities Department has the highest annual City expenditures to each of the listed vendors for FY2020.
- Staff is seeking Council authorization for combined purchases exceeding $50,000 during FY 2020 from each of the specified vendors.

- It is anticipated that during FY2020 total combined purchases by the City will exceed $50,000.00 for each of the following vendors:

COMPANY	FY2020 TO DATE
Abilene Plumbing Supply Co.	$ 206,193.96
Ana-Lab Corporation	$ 82,459.00
Atlas Utility Supply Co.	$ 130,147.60
Benmark Supply / formerly Plastic Wholesale	$ 221,692.35
Hach Company	$ 45,612.62
Core & Main / formerly HD Supply	$ 156,231.22

Authorizing Combined Purchases From Specified Vendors in Amounts Exceeding $50,000 During Fiscal Year 2020.

Questions
?

CITY OF ABILENE TEXAS

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Robert Hanna, City Manager**

FROM: **Travis McClure**

SUBJECT: **12.**

Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Award of Bid No. CB-2072 – Sale of Land (1642 Merchant Street) ***(Travis McClure)***

GENERAL INFORMATION

Pursuant to Texas Local Government Code Section 272.001, the City placed the following parcel of land for sale by giving public notice by advertisement in the Abilene Reporter-News on August 2, 2020 and August 9, 2020, and accepting sealed bids:

College Heights, Block 51, Lot 1-3 Addressed as 1642 Merchant Street, Abilene, Texas, Taylor CAD Property ID No. 14242

The minimum bid amount was set at the Taylor County Appraisal District appraised market value of $4,200.00.

Sealed bid(s) were received and opened on August 18, 2020; one bid was received.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends that the City Council award the bid to the high bidder, Barry Fletcher, President NuHome Constructors of Abilene for the bid amount of $4,350.00 plus the reimbursement for the advertising cost of $761.60, for a total purchase price of $5,111.60.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. CouncilResolution
2. BidTapSheet
3. Presentation2020

RESOLUTION NO._____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AWARDING BID TO BARRY FLETCHER, PRESIDENT, NUHOME CONSTRUCTORS OF ABILENE, TEXAS

WHEREAS, the City of Abilene duly advertised and gave such notice, as required by law, for bids for the sale of College Heights, Block 51, Lot 1-3 Addressed as 1642 Merchant Street Abilene, Texas, Taylor CAD Property ID No. 14242.; and

WHEREAS, the following bid was received and opened on August 18, 2020:

Barry Fletcher, President, NuHome Constructors of Abilene $4,350.00

WHEREAS, Barry Fletcher, President NuHome Constructors of Abilene, Texas submitted the high bid in the amount of $4,350.00, staff recommends awarding the bid to the high bidder, Barry Fletcher, President NuHome Constructors of Abilene, 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 $4,350.00.

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

ADOPTED this 10th day of September, 2020.

ATTEST:

_____ _____

Shawna Atkinson, City Secretary Anthony Williams, Mayor

APPROVED:

_____

Stanley Smith, City Attorney

CITY OF ABILENE
PURCHASING DIVISION
TABULATION OF BIDS

DEPARTMENT: LAND
BID NO.: CB-2072
TIME OF OPENING: 11:00 A.M.
DATE OF OPENING: AUGUST 18, 2020

ITEM	DESCRIPTION	QTY	UNIT	BARRY FLETCHER ABILENE, TX UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION
1.	SALE OF LAND				4,350.00										
	BASE BID				4,350.00										
	DISCOUNT														
	TOTAL BID				4,350.00										

*NOTES: INDICATES RECOMMENDED AWARD

Agenda Item: Award of Bid No. CB-2072- Sale of Land

Resolution: Award of Bid No. CB-2072

(McClure)

CITY OF ABILENE TEXAS

Location Map

Agenda Item:
Award of Bid No. CB-2072

- Pursuant to Texas Local Government Code Section 272.001, the City placed the following parcel of land for sale by giving public notice by advertisement in the Abilene Reporter-News on August 2, 2020 and August 9, 2020, and accepting sealed bids for:
- The minimum bid amount was set at the Taylor County Appraisal District appraised market value of $4,200.00.
- Sealed bid(s) were received and opened on August 18, 2020; one bid was received.
- Staff recommends award of bid CB-2067 to Barry Fletcher, President NuHome Constructors of Abilene.

Questions?

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Robert Hanna, City Manager**

FROM: **Stanley Smith, City Attorney**

SUBJECT: **13. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving a Negotiated Settlement between the Atmos Cities Steering Committee and Atmos Energy Corp., Mid-Tex Division regarding the Company's 2020 Rate Review Mechanism Filing *(Stanley Smith)***

GENERAL INFORMATION

BACKGROUND AND SUMMARY

The City of Abilene, along with 171 other Mid-Texas cities served by Atmos Energy Corporation, Mid-Tex Division ("Atmos Mid-Tex" or "Company"), is a member of the Atmos Cities Steering Committee ("ACSC"). In 2007, ACSC and Atmos Mid-Tex settled a rate application filed by the Company pursuant to Section 104.301 of the Texas Utilities Code for an interim rate adjustment commonly referred to as a GRIP filing (arising out of the Gas Reliability Infrastructure Program legislation). That settlement created a substitute rate review process, referred to as Rate Review Mechanism ("RRM"), as a substitute for future filings under the GRIP statute.

Since 2007, there have been several modifications to the original RRM Tariff. The most recent iteration of an RRM Tariff was reflected in an ordinance adopted by ACSC members in 2018. On or about March 31, 2020, the Company filed a rate request pursuant to the RRM Tariff adopted by ACSC members. The Company claimed that its cost-of-service in a test year ending December 31, 2019, entitled it to additional system-wide revenues of $141.2 million. Application of the standards set forth in ACSC's RRM Tariff required Atmos to reduce its request to $136.3 million, $98.7 million of which would be applicable to ACSC

members. ACSC's consultants concluded that the system-wide deficiency under the RRM regime should be $111.5 million instead of the claimed $136.3 million. The amount of the $111.5 million deficiency applicable to ACSC members would be $80.8 million.

After the Company reviewed ACSC's consultants' report, ACSC's Executive Committee and the Company negotiated a settlement whereby the Company would receive an increase of $90 million from ACSC Cities, but with a two-month delay in the Effective Date until December 1, 2020. This should save ratepayers approximately $9 million such that the case is functionally equivalent to ACSC's consultants' recommendation of $80.8 million.

The Executive Committee recommends a settlement at $90 million. The Effective Date for new rates is December 1, 2020. ACSC members should take action approving the Resolution before November 1, 2020.

PROOF OF REVENUES

Atmos generated proof that the rate tariffs attached to the Resolution will generate $90 million in additional revenues from ACSC Cities. That proof is attached as Attachment 1 to this Staff Report. ACSC consultants have agreed that Atmos' Proof of Revenues is accurate.

BILL IMPACT

The impact of the settlement on average residential rates is an increase of $5.15 on a monthly basis, or 9.9 percent. The increase for average commercial usage will be $15.48 or 6.56 percent. A bill impact comparison is attached as Attachment 2.

SUMMARY OF ACSC'S OBJECTION TO THE UTILITIES CODE SECTION 104.301 GRIP PROCESS

ACSC strongly opposed the GRIP process because it constitutes piecemeal ratemaking by ignoring declining expenses and increasing revenues while rewarding the Company for increasing capital investment on an annual basis. The GRIP process does not allow any review of the reasonableness of capital investment and does not allow cities to participate in the Railroad Commission's review of annual GRIP filings or allow recovery of Cities' rate case expenses. The Railroad Commission undertakes a mere administrative review of GRIP filings (instead of a full hearing) and rate increases go into effect without any material adjustments. In ACSC's view, the GRIP process unfairly raises

customers' rates without any regulatory oversight. In contrast, the RRM process has allowed for a more comprehensive rate review and annual evaluation of expenses and revenues, as well as capital investment.

RRM SAVINGS OVER GRIP

While residents outside municipal limits must pay rates governed by GRIP, there are some cities served by Atmos Mid-Tex that chose to remain under GRIP rather than adopt RRM. Additionally, the City of Dallas adopted a variation of RRM which is referred to as DARR. When new rates become effective on December 1, 2020, ACSC residents will maintain a slight economic monthly advantage over GRIP and DARR rates. See Attachment 3.

EXPLANATION OF "BE IT RESOLVED" PARAGRAPHS:

1. This section approves all findings in the Resolution.

2. This section adopts the RRM rate tariffs and finds the adoption of the new rates to be just, reasonable, and in the public interest.

3. This section makes it clear that Cities may challenge future costs associated with gas leaks like the explosion in North Dallas or the evacuation in Georgetown.

4. This section finds that existing rates are unreasonable. Such finding is a necessary predicate to establishment of new rates. The new tariffs will permit Atmos Mid-Tex to recover an additional $90 million from ACSC Cities.

5. This section approves an exhibit that establishes a benchmark for pensions and retiree medical benefits to be used in future rate cases or RRM filings.

6. This section approves an exhibit to be used in future rate cases or RRM filings regarding recovery of regulatory liabilities, such as excess deferred income taxes.

7. This section requires the Company to reimburse the City for expenses associated with review of the RRM filing, settlement discussions, and adoption of the Resolution approving new rate tariffs.

8. This section repeals any resolution or ordinance that is inconsistent with the Resolution.

9. This section finds that the meeting was conducted in compliance with the Texas

Open Meetings Act, Texas Government Code, Chapter 551.

10. This section is a savings clause, which provides that if any section is later found to be unconstitutional or invalid, that finding shall not affect, impair, or invalidate the remaining provisions of this Resolution. This section further directs that the remaining provisions of the Resolution are to be interpreted as if the offending section or clause never existed.

11. This section provides for an effective date upon passage. December 1, 2020 represents a two month delay in the Effective Date established by the RRM tariff.

12. This section directs that a copy of the signed Resolution be sent to a representative of the Company and legal counsel for ACSC.

CONCLUSION

The Legislature's GRIP process allowed gas utilities to receive annual rate increases associated with capital investments. The RRM process has proven to result in a more efficient and less costly (both from a consumer rate impact perspective and from a ratemaking perspective) than the GRIP process. Given Atmos Mid-Tex's claim that its historic cost of service should entitle it to recover $141.2 million in additional system-wide revenues, the RRM settlement at $90 million for ACSC Cities reflects substantial savings to ACSC Cities. ACSC's consultants produced a report indicating that Atmos had justified increased revenues for ACSC Cities of at least $81 million. Settlement at $90 million (equivalent to $81 million with a two-month delay) is fair and reasonable. The ACSC Executive Committee consisting of city employees of 18 ACSC members urges all ACSC members to pass the Resolution before November 1, 2020. New rates become effective December 1, 2020.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval of the Resolution.

BOARD OR COMMISSION RECOMMENDATION

n/a

ATTACHMENTS:

1. 2020 Atmos Mid-Tex RRM Settlement Resolution
2. 2020 Atmos Mid-Tex RRM Settlement Resolution Attachments
3. 2020 Atmos Mid-Tex RRM Model Staff Report Attachments
4. Approve Atmos 2020 Rate Review Mechanism Filing

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE ATMOS CITIES STEERING COMMITTEE ("ACSC") AND ATMOS ENERGY CORP., MID-TEX DIVISION REGARDING THE COMPANY'S 2020 RATE REVIEW MECHANISM FILING; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE ATTACHED SETTLEMENT TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; APPROVING AN ATTACHED EXHIBIT ESTABLISHING A BENCHMARK FOR PENSIONS AND RETIREE MEDICAL BENEFITS; APPROVING AN ATTACHED EXHIBIT REGARDING AMORTIZATION OF REGULATORY LIABILITY; REQUIRING THE COMPANY TO REIMBURSE ACSC'S REASONABLE RATEMAKING EXPENSES; DETERMINING THAT THIS RESOLUTION WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND THE ACSC'S LEGAL COUNSEL.

WHEREAS, the City of Abilene, Texas ("City") is a gas utility customer of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company"), and a regulatory authority with an interest in the rates, charges, and services of Atmos Mid-Tex; and

WHEREAS, the City is a member of the Atmos Cities Steering Committee ("ACSC"), a coalition of similarly-situated cities served by Atmos Mid-Tex ("ACSC Cities") that have joined together to facilitate the review of, and response to, natural gas issues affecting rates charged in the Atmos Mid-Tex service area; and

WHEREAS, ACSC and the Company worked collaboratively to develop a Rate Review Mechanism ("RRM") tariff that allows for an expedited rate review process by ACSC Cities as a substitute to the Gas Reliability Infrastructure Program ("GRIP") process instituted by the

Legislature, and that will establish rates for the ACSC Cities based on the system-wide cost of serving the Atmos Mid-Tex Division; and

WHEREAS, the current RRM tariff was adopted by the City in a rate ordinance in 2018; and

WHEREAS, on about March 31, 2020, Atmos Mid-Tex filed its 2020 RRM rate request with ACSC Cities based on a test year ending December 31, 2019; and

WHEREAS, ACSC coordinated its review of the Atmos Mid-Tex 2020 RRM filing through its Executive Committee, assisted by ACSC's attorneys and consultants, to resolve issues identified in the Company's RRM filing; and

WHEREAS, the Executive Committee, as well as ACSC's counsel and consultants, recommend that ACSC Cities approve an increase in base rates for Atmos Mid-Tex of $90 million applicable to ACSC Cities with an Effective Date of December 1, 2020; and

WHEREAS, ACSC agrees that Atmos plant-in-service is reasonable; and

WHEREAS, with the exception of approved plant-in-service, ACSC is not foreclosed from future reasonableness evaluation of costs associated with incidents related to gas leaks; and

WHEREAS, the two month delayed Effective Date from October 1 to December 1 will save ACSC ratepayers approximately $9 million off new rates imposed by the attached tariffs (Exhibit A), the impact on ratepayers should approximate the reasonable value of the rate filing found by the ACSC Consultants' Report, which was $81 million; and

WHEREAS, the attached tariffs (Exhibit A) implementing new rates are consistent with the recommendation of the ACSC Executive Committee, are agreed to by the Company, and are just, reasonable, and in the public interest; and

WHEREAS, the settlement agreement sets a new benchmark for pensions and retiree medical benefits (Exhibit B); and

WHEREAS, the settlement agreement establishes an amortization schedule for regulatory liability prepared by Atmos Mid-Tex (Exhibit C); and

WHEREAS, the RRM Tariff contemplates reimbursement of ACSC's reasonable expenses associated with RRM applications;

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

Section 1. That the findings set forth in this Resolution are hereby in all things approved.

Section 2. That, without prejudice to future litigation of any issue identified by ACSC, the City Council finds that the settled amount of an increase in revenues of $90 million for ACSC Cities represents a comprehensive settlement of gas utility rate issues affecting the rates, operations, and services offered by Atmos Mid-Tex within the municipal limits arising from Atmos Mid-Tex's 2020 RRM filing, is in the public interest, and is consistent with the City's authority under Section 103.001 of the Texas Utilities Code.

Section 3. That despite finding Atmos Mid-Tex's plant-in-service to be reasonable, ACSC is not foreclosed in future cases from evaluating the reasonableness of costs associated with incidents involving leaks of natural gas.

Section 4. That the existing rates for natural gas service provided by Atmos Mid-Tex are unreasonable. The new tariffs attached hereto and incorporated herein as Exhibit A, are just and reasonable, and are designed to allow Atmos Mid-Tex to recover annually an additional $90 million from customers in ACSC Cities, over the amount allowed under currently approved rates. Such tariffs are hereby adopted.

Section 5. That the ratemaking treatment for pensions and retiree medical benefits in Atmos Mid-Tex's next RRM filing shall be as set forth on Exhibit B, attached hereto and incorporated herein.

Section 6. That subject to any future settlement or decision regarding the balance of Excess Deferred Income Tax to be refunded to ratepayers, the amortization of regulatory liability shall be consistent with the schedule found in Exhibit C, attached hereto and incorporated herein.

Section 7. That Atmos Mid-Tex shall reimburse the reasonable ratemaking expenses of the ACSC in processing the Company's 2020 RRM filing.

Section 8. That to the extent any resolution or ordinance previously adopted by the Council is inconsistent with this Resolution, it is hereby repealed.

Section 9. That the meeting at which this Resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 10. That if any one or more sections or clauses of this Resolution is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Resolution, and the remaining provisions of the Resolution shall be interpreted as if the offending section or clause never existed.

Section 11. That consistent with the City Ordinance that established the RRM process, this Resolution shall become effective from and after its passage with rates authorized by attached tariffs to be effective for bills rendered on or after December 1, 2020.

Section 12. That a copy of this Resolution shall be sent to Atmos Mid-Tex, care of Chris Felan, Vice President of Rates and Regulatory Affairs Mid-Tex Division, Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240, and to Geoffrey Gay, General

Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, ON THIS THE 10TH DAY OF SEPTEMBER, 2020.

_____
Mayor

ATTEST:

_____
City Secretary

APPROVED AS TO FORM:

_____
City Attorney

Exhibit A
to 2020 RRM Resolution or Ordinance

Mid-Tex Tariffs
Effective December 1, 2020

RATE SCHEDULE:	R – RESIDENTIAL SALES	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF	
EFFECTIVE DATE:	Bills Rendered on or after 12/01/2020	PAGE:

Application
Applicable to Residential Customers for all natural gas provided at one Point of Delivery and measured through one meter.

Type of Service
Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate
Customer's monthly bill will be calculated by adding the following Customer and Ccf charges to the amounts due under the riders listed below:

Charge	Amount
Customer Charge per Bill	$ 20.25 per month
Rider CEE Surcharge	$ 0.05 per month[1]
Total Customer Charge	$ 20.30 per month
Commodity Charge – All Ccf	$0.26651 per Ccf

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Agreement
An Agreement for Gas Service may be required.

Notice
Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

[1]Reference Rider CEE - Conservation and Energy Efficiency as approved in GUD 10170. Surcharge billing effective July 1, 2020.

RATE SCHEDULE:	C – COMMERCIAL SALES	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF	
EFFECTIVE DATE:	Bills Rendered on or after 12/01/2020	PAGE:

Application
Applicable to Commercial Customers for all natural gas provided at one Point of Delivery and measured through one meter and to Industrial Customers with an average annual usage of less than 30,000 Ccf.

Type of Service
Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate
Customer's monthly bill will be calculated by adding the following Customer and Ccf charges to the amounts due under the riders listed below:

Charge	Amount
Customer Charge per Bill	$ 54.50 per month
Rider CEE Surcharge	$ 0.02 per month[1]
Total Customer Charge	$ 54.52 per month
Commodity Charge – All Ccf	$ 0.11728 per Ccf

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Agreement
An Agreement for Gas Service may be required.

Notice
Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

[1] Reference Rider CEE - Conservation and Energy Efficiency as approved in GUD 10170. Surcharge billing effective July 1, 2020.

RATE SCHEDULE:	**I – INDUSTRIAL SALES**	
APPLICABLE TO:	**ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF**	
EFFECTIVE DATE:	**Bills Rendered on or after 12/01/2020**	**PAGE:**

Application
Applicable to Industrial Customers with a maximum daily usage (MDU) of less than 3,500 MMBtu per day for all natural gas provided at one Point of Delivery and measured through one meter. Service for Industrial Customers with an MDU equal to or greater than 3,500 MMBtu per day will be provided at Company's sole option and will require special contract arrangements between Company and Customer.

Type of Service
Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate
Customer's monthly bill will be calculated by adding the following Customer and MMBtu charges to the amounts due under the riders listed below:

Charge	Amount
Customer Charge per Meter	$ 1,014.50 per month
First 0 MMBtu to 1,500 MMBtu	$ 0.4157 per MMBtu
Next 3,500 MMBtu	$ 0.3044 per MMBtu
All MMBtu over 5,000 MMBtu	$ 0.0653 per MMBtu

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Curtailment Overpull Fee
Upon notification by Company of an event of curtailment or interruption of Customer's deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailment or interruption, pay Company 200% of the midpoint price for the Katy point listed in *Platts Gas Daily* published for the applicable Gas Day in the table entitled "Daily Price Survey."

Replacement Index
In the event the "midpoint" or "common" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" is no longer published, Company will calculate the applicable imbalance fees utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

RATE SCHEDULE:	**I – INDUSTRIAL SALES**	
APPLICABLE TO:	**ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF**	
EFFECTIVE DATE:	**Bills Rendered on or after 12/01/2020**	**PAGE:**

Agreement
An Agreement for Gas Service may be required.

Notice
Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

Special Conditions
In order to receive service under Rate I, Customer must have the type of meter required by Company. Customer must pay Company all costs associated with the acquisition and installation of the meter.

RATE SCHEDULE:	T – TRANSPORTATION	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF	
EFFECTIVE DATE:	Bills Rendered on or after 12/01/2020	PAGE:

Application
Applicable, in the event that Company has entered into a Transportation Agreement, to a customer directly connected to the Atmos Energy Corp., Mid-Tex Division Distribution System (Customer) for the transportation of all natural gas supplied by Customer or Customer's agent at one Point of Delivery for use in Customer's facility.

Type of Service
Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate
Customer's bill will be calculated by adding the following Customer and MMBtu charges to the amounts and quantities due under the riders listed below:

Charge	Amount
Customer Charge per Meter	$ 1,014.50 per month
First 0 MMBtu to 1,500 MMBtu	$ 0.4157 per MMBtu
Next 3,500 MMBtu	$ 0.3044 per MMBtu
All MMBtu over 5,000 MMBtu	$ 0.0653 per MMBtu

Upstream Transportation Cost Recovery: Plus an amount for upstream transportation costs in accordance with Part (b) of Rider GCR.

Retention Adjustment: Plus a quantity of gas as calculated in accordance with Rider RA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Imbalance Fees
All fees charged to Customer under this Rate Schedule will be charged based on the quantities determined under the applicable Transportation Agreement and quantities will not be aggregated for any Customer with multiple Transportation Agreements for the purposes of such fees.

Monthly Imbalance Fees
Customer shall pay Company the greater of (i) $0.10 per MMBtu, or (ii) 150% of the difference per MMBtu between the highest and lowest "midpoint" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" during such month, for the MMBtu of Customer's monthly Cumulative Imbalance, as defined in the applicable Transportation Agreement, at the end of each month that exceeds 10% of Customer's receipt quantities for the month.

RATE SCHEDULE:	T – TRANSPORTATION	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF	
EFFECTIVE DATE:	Bills Rendered on or after 12/01/2020	PAGE:

Curtailment Overpull Fee
Upon notification by Company of an event of curtailment or interruption of Customer's deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailment or interruption, pay Company 200% of the midpoint price for the Katy point listed in *Platts Gas Daily* published for the applicable Gas Day in the table entitled "Daily Price Survey."

Replacement Index
In the event the "midpoint" or "common" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" is no longer published, Company will calculate the applicable imbalance fees utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

Agreement
A transportation agreement is required.

Notice
Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

Special Conditions
In order to receive service under Rate T, customer must have the type of meter required by Company. Customer must pay Company all costs associated with the acquisition and installation of the meter.

MID-TEX DIVISION
ATMOS ENERGY CORPORATION

RIDER:	WNA – WEATHER NORMALIZATION ADJUSTMENT	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF	
EFFECTIVE DATE:	Bills Rendered on or after 12/01/2020	PAGE:

Provisions for Adjustment

The Commodity Charge per Ccf (100 cubic feet) for gas service set forth in any Rate Schedules utilized by the cities of the Mid-Tex Division service area for determining normalized winter period revenues shall be adjusted by an amount hereinafter described, which amount is referred to as the "Weather Normalization Adjustment." The Weather Normalization Adjustment shall apply to all temperature sensitive residential and commercial bills based on meters read during the revenue months of November through April. The five regional weather stations are Abilene, Austin, Dallas, Waco, and Wichita Falls.

Computation of Weather Normalization Adjustment

The Weather Normalization Adjustment Factor shall be computed to the nearest one-hundredth cent per Ccf by the following formula:

$$WNAF_i = R_i \frac{(HSF_i \times (NDD-ADD))}{(BL_i + (HSF_i \times ADD))}$$

Where

i = any particular Rate Schedule or billing classification within any such particular Rate Schedule that contains more than one billing classification

$WNAF_i$ = Weather Normalization Adjustment Factor for the ith rate schedule or classification expressed in cents per Ccf

R_i = Commodity Charge rate of temperature sensitive sales for the ith schedule or classification.

HSF_i = heat sensitive factor for the ith schedule or classification divided by the average bill count in that class

NDD = billing cycle normal heating degree days calculated as the simple ten-year average of actual heating degree days.

ADD = billing cycle actual heating degree days.

BI_i = base load sales for the ith schedule or classification divided by the average bill count in that class

The Weather Normalization Adjustment for the jth customer in ith rate schedule is computed as:

$$WNA_i = WNAF_i \times q_{ij}$$

Where q_{ij} is the relevant sales quantity for the jth customer in ith rate schedule.

RIDER:	**WNA – WEATHER NORMALIZATION ADJUSTMENT**	
APPLICABLE TO:	**ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF**	
EFFECTIVE DATE:	**Bills Rendered on or after 12/01/2020**	**PAGE:**

Base Use/Heat Use Factors

	Residential		Commercial	
Weather Station	Base use Ccf	Heat use Ccf/HDD	Base use Ccf	Heat use Ccf/HDD
Abilene	10.73	0.1545	94.79	0.7284
Austin	9.53	0.1489	211.76	0.9405
Dallas	15.77	0.1792	199.74	0.9385
Waco	9.99	0.1341	145.27	0.7110
Wichita Falls	11.61	0.1402	120.34	0.5747

Weather Normalization Adjustment (WNA) Report

On or before June 1 of each year, the company posts on its website at atmosenergy.com/mtx-wna, in Excel format, a *Weather Normalization Adjustment (WNA) Report* to show how the company calculated its WNAs factor during the preceding winter season. Additionally, on or before June 1 of each year, the company files one hard copy and an Excel version of the *WNA Report* with the Railroad Commission of Texas' Gas Services Division, addressed to the Director of that Division.

Exhibit B
to 2020 RRM Resolution or Ordinance

Mid-Tex
2020 Benchmark for Pensions
and Retiree Benefits

ATMOS ENERGY CORP., MID-TEX DIVISION
PENSIONS AND RETIREE MEDICAL BENEFITS FOR CITIES APPROVAL
TEST YEAR ENDING DECEMBER 31, 2019

		Shared Services		Mid-Tex Direct			
Line No.	Description	Pension Account Plan	Post-Employment Benefit Plan	Pension Account Plan	Supplemental Executive Benefit Plan	Post-Employment Benefit Plan	Adjustment Total
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
1	Proposed Benefits Benchmark - Fiscal Year 2020 Willis Towers Watson Report as adjusted (1) (2) (3)	$ 3,460,135	$ 3,695,384	$ 6,132,704	$ 280,578	$ 4,992,449	
2	Allocation to Mid-Tex	43.29%	43.29%	76.59%	100.00%	76.59%	
3	Proposed Benefits Benchmark Costs Allocated to Mid-Tex (Ln 1 x Ln 2)	$ 1,497,774	$ 1,599,605	$ 4,697,072	$ 280,578	$ 3,823,744	
4	O&M and Capital Allocation Factor	100.00%	100.00%	100.00%	100.00%	100.00%	
5	Proposed Benefits Benchmark Costs to Approve (Ln 3 x Ln 4) (3)	$ 1,497,774	$ 1,599,605	$ 4,697,072	$ 280,578	$ 3,823,744	$ 11,898,774
6							
7							
8	Summary of Costs to Approve (1):						
9							
10	O&M Expense Factor (WP_F-2.3, Ln 2)	79.55%	79.55%	37.83%	11.67%	37.83%	
11							
12							
13	Total Pension Account Plan	$ 1,191,410		$ 1,777,056			$ 2,968,466
14	Total Post-Employment Benefit Plan		$ 1,272,412			$ 1,446,647	2,719,060
15	Total Supplemental Executive Benefit Plan				$ 32,754		32,754
16	Total (Ln 13 + Ln 14 + Ln 15)	$ 1,191,410	$ 1,272,412	$ 1,777,056	$ 32,754	$ 1,446,647	$ 5,720,280
17							
18	Notes:						
19	1. Studies not applicable to Mid-Tex or Shared Services are omitted.						
20	2. Mid-Tex is proposing that the Fiscal Year 2020 Willis Towers Watson actuarial amounts shown on WP_F-2.3 and WP_F-2.3.1, be approved by the RRM Cities as the						
21	benchmark amounts to be used to calculate the regulatory asset or liability for future periods. The benchmark amount approved by the RRM Cities for future periods						
22	includes only the expense amount. The amount attributable to capital is recorded to utility plant through the overhead process as described in the CAM.						
23	3. SSU amounts exclude cost centers which do not allocate to Mid-Tex for rate making purposes.						

Exhibit C
to 2020 RRM Resolution or Ordinance

Mid-Tex 2020 Schedule for
Amortization for Regulatory Liability

ATMOS ENERGY CORP., MID-TEX DIVISION
RATE BASE ADJUSTMENTS
TEST YEAR ENDING DECEMBER 31, 2019
AMORTIZATION OF REGULATORY LIABILITY

Line No.	Year Ended Dec. 31	Beginning of Year Rate Base Adjustment Amount	Annual Amortization (1)	End of Year Rate Base Adjustment Amount (2)	Corrected Balance for December 31, 2017 (3)
	(a)	(b)	(c)	(d)	(e)
1	2017		$ -	$ 292,268,881	$ 292,268,881
2	2018	292,268,881	12,075,562	280,193,319	
3	2019	280,193,319	12,085,165	268,108,155	
4	2020	268,108,155	11,171,173	256,936,982	
5	2021	256,936,982	11,171,173	245,765,809	
6	2022	245,765,809	11,171,173	234,594,635	
7	2023	234,594,635	11,171,173	223,423,462	
8	2024	223,423,462	11,171,173	212,252,289	
9	2025	212,252,289	11,171,173	201,081,116	
10	2026	201,081,116	11,171,173	189,909,943	
11	2027	189,909,943	11,171,173	178,738,770	
12	2028	178,738,770	11,171,173	167,567,597	
13	2029	167,567,597	11,171,173	156,396,424	
14	2030	156,396,424	11,171,173	145,225,251	
15	2031	145,225,251	11,171,173	134,054,077	
16	2032	134,054,077	11,171,173	122,882,904	
17	2033	122,882,904	11,171,173	111,711,731	
18	2034	111,711,731	11,171,173	100,540,558	
19	2035	100,540,558	11,171,173	89,369,385	
20	2036	89,369,385	11,171,173	78,198,212	
21	2037	78,198,212	11,171,173	67,027,039	
22	2038	67,027,039	11,171,173	55,855,866	
23	2039	55,855,866	11,171,173	44,684,692	
24	2040	44,684,692	11,171,173	33,513,519	
25	2041	33,513,519	11,171,173	22,342,346	
26	2042	22,342,346	11,171,173	11,171,173	
27	2043	11,171,173	11,171,173	(0)	
28					
29	Revenue Related Tax Factor		7.16%	See WP_F-5.1	
30	Revenue Related Taxes on Annual Amortization		$ 799,924	Amortization * Tax Factor	
31	Amortization Including Revenue		$ 11,971,097	Amortization + Taxes	
32					

33 Notes:
34 1. The annual amortization of a 26 year recovery period is based on the
35 Reverse South Georgia Method.
36 2. The Regulatory Liability is recorded to FERC Account 253, Sub Account 27909.
37 3. This is the final Mid-Tex liability balance filing the Fiscal Year 2018 tax return.

Attachment 1 to
Model Staff Report

2020 RRM

Proof of Revenues

ATMOS ENERGY CORP., MID-TEX DIVISION
RRM CITIES RATE REVIEW MECHANISM
PROOF OF REVENUES - RRM CITIES
TEST YEAR ENDING DECEMBER 31, 2019

Line No.	Customer Class	Current	Proposed	Bills	Ccf/MmBtu	Current Revenues	Proposed Revenues	Increase
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
1	**Residential**							
2	Customer Charge	$ 19.55	$ 20.25	13,644,834		$ 266,756,505	$ 276,307,889	
3	Consumption Charge	0.17423	0.26651		608,491,998	106,017,561	162,169,202	
4	Revenue Related Taxes					26,692,882	31,397,617	
5	Total Class Revenue					$ 399,466,948	$ 469,874,708	$ 70,407,760
6								
7	**Commercial**							
8	Customer Charge	$ 46.50	$ 54.50	1,115,081		$ 51,851,267	$ 60,771,915	
9	Consumption Charge	0.09924	0.11728		398,510,866	39,548,218	46,737,354	
10	Revenue Related Taxes					6,544,757	7,698,315	
11	Total Class Revenue					$ 97,944,242	$ 115,207,584	$ 17,263,342
12								
13	**Industrial & Transportation**							
14	Customer Charge	$ 845.50	$ 1,014.50	7,272		$ 6,148,476	$ 7,377,444	
15	Consumption Charge Tier 1	$ 0.3572	$ 0.4157		7,769,155	2,775,142	3,229,638	
16	Consumption Charge Tier 2	$ 0.2616	$ 0.3044		8,666,094	2,267,050	2,637,959	
17	Consumption Charge Tier 3	$ 0.0561	$ 0.0653		13,696,172	768,355	894,360	
18	Revenue Related Taxes					856,339	1,012,467	
19	Total Class Revenue					$ 12,815,362	$ 15,151,868	$ 2,336,505
20								
21	**Total Excluding Other Revenue**					$ 510,226,552	$ 600,234,159	$ 90,007,608
22								
23								
24	**Revenue Related Tax Factor**	7.1606%						

Attachment 2
to 2020 RRM Staff Report

Bill Impact

ATMOS ENERGY CORP., MID-TEX DIVISION
AVERAGE BILL COMPARISON - BASE RATES
TEST YEAR ENDING DECEMBER 31, 2019

Line No.							Current	Proposed	Change
1	**Rate R @ 44.5 Ccf**								
2	Customer charge						$ 19.55		
3	Consumption charge	44.5	CCF	X $ 0.17423	=		7.75		
4	Rider GCR Part A	44.5	CCF	X $ 0.17750	=		7.90		
5	Rider GCR Part B	44.5	CCF	X $ 0.29953	=		13.33		
6	Subtotal						$ 48.53		
7	Rider FF & Rider TAX		$ 48.53	X 0.07161	=		3.48		
8	Total						$ 52.01		
9									
10	Customer charge							$ 20.25	
11	Consumption charge	44.5	CCF	X $ 0.26651	=			11.86	
12	Rider GCR Part A	44.5	CCF	X $ 0.17750	=			7.90	
13	Rider GCR Part B	44.5	CCF	X $ 0.29953	=			13.33	
14	Subtotal							$ 53.34	
15	Rider FF & Rider TAX		$ 53.34	X 0.07161	=			3.82	
16	Total							$ 57.16	$ 5.15
17									9.90%
18									
19	**Rate C @ 357.4 Ccf**						**Current**	**Proposed**	**Change**
20	Customer charge						$ 46.50		
21	Consumption charge	357.4	CCF	X $ 0.09924	=		35.47		
22	Rider GCR Part A	357.4	CCF	X $ 0.17750	=		63.44		
23	Rider GCR Part B	357.4	CCF	X $ 0.20954	=		74.89		
24	Subtotal						$ 220.30		
25	Rider FF & Rider TAX		$ 220.30	X 0.07161	=		15.77		
26	Total						$ 236.07		
27									
28	Customer charge							$ 54.50	
29	Consumption charge	357.4	CCF	X $ 0.11728	=			41.91	
30	Rider GCR Part A	357.4	CCF	X $ 0.17750	=			63.44	
31	Rider GCR Part B	357.4	CCF	X $ 0.20954	=			74.89	
32	Subtotal							$ 234.74	
33	Rider FF & Rider TAX		$ 234.74	X 0.07161	=			16.81	
34	Total							$ 251.55	$ 15.48
35									6.56%

						Current	Proposed	Change
36	**Rate I @ 4143 MMBTU**							
37	Customer charge					$ 845.50		
38	Consumption charge	1,500	MMBTU	X $ 0.3572	=	535.80		
39	Consumption charge	2,643	MMBTU	X $ 0.2616	=	691.54		
40	Consumption charge	0	MMBTU	X $ 0.0561	=	-		
41	Rider GCR Part A	4,143	MMBTU	X $ 1.7334	=	7,182.31		
42	Rider GCR Part B	4,143	MMBTU	X $ 0.4531	=	1,877.54		
43	Subtotal					$ 11,132.69		
44	Rider FF & Rider TAX		$ 11,132.69	X 0.07161	=	797.17		
45	Total					$ 11,929.86		
46								
47	Customer charge						$ 1,014.50	
48	Consumption charge	1,500	MMBTU	X $ 0.4157	=		623.55	
49	Consumption charge	2,643	MMBTU	X $ 0.3044	=		804.68	
50	Consumption charge	0	MMBTU	X $ 0.0653	=		-	
51	Rider GCR Part A	4,143	MMBTU	X $ 1.7334	=		7,182.31	
52	Rider GCR Part B	4,143	MMBTU	X $ 0.4531	=		1,877.54	
53	Subtotal						$ 11,502.58	
54	Rider FF & Rider TAX		$ 11,502.58	X 0.07161	=		823.65	
55	Total						$ 12,326.23	$ 396.37
56								3.32%
57	**Rate T @ 4143 MMBTU**					Current	Proposed	Change
58	Customer charge					$ 845.50		
59	Consumption charge	1,500	MMBTU	X $ 0.3572	=	535.80		
60	Consumption charge	2,643	MMBTU	X $ 0.2616	=	691.54		
61	Consumption charge	0	MMBTU	X $ 0.0561	=	-		
62	Rider GCR Part B	4,143	MMBTU	X $ 0.4531	=	1,877.54		
63	Subtotal					$ 3,950.38		
64	Rider FF & Rider TAX		$ 3,950.38	X 0.07161	=	282.87		
65	Total					$ 4,233.25		
66								
67	Customer charge						$ 1,014.50	
68	Consumption charge	1,500	MMBTU	X $ 0.4157	=		623.55	
69	Consumption charge	2,643	MMBTU	X $ 0.3044	=		804.68	
70	Consumption charge	0	MMBTU	X $ 0.0653	=		-	
71	Rider GCR Part B	4,143	MMBTU	X $ 0.4531	=		1,877.54	
72	Subtotal						$ 4,320.27	
73	Rider FF & Rider TAX		$ 4,320.27	X 0.07161	=		309.36	
74	Total						$ 4,629.63	$ 396.38
75								9.36%

Attachment 3
to 2020 RRM Staff Report

RRM Monthly Savings Over GRIP and DARR Rates

ATMOS ENERGY CORP., MID-TEX DIVISION
RESIDENTIAL AVERAGE RATE COMPARISON
TEST YEAR ENDING DECEMBER 31, 2019

	ACSC Settled	DARR Filing	ATM Filing	Environs Filing
Cust Charge	$20.25	$23.75	$26.40	$24.60
Monthly Ccf	44.5	44.5	44.5	44.5
Cons Charge	$0.26651	$0.19336	$0.14846	$0.18653
Average Mo Bill	$32.11	$32.35	$33.01	$32.90
		-$0.24	-$0.90	-$0.79

Resolution Approving a Negotiated Settlement with Atmos Energy Corp., Mid-Tex Division regarding the Company's 2020 Rate Review Mechanism Filing

CITY OF ABILENE TEXAS

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Robert Hanna, City Manager**

FROM: **Mike Rains, Finance Director**

SUBJECT: **14. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Utilizing Cares Act Grant Funds for Wylie ISD's Operation Connectivity *(Mike Rains)***

GENERAL INFORMATION

Wylie ISD has requested the City utilize Cares Act grant funds the City has been allocated for a portion of the cost to fund Operation Connectivity. The total cost of the program is $268,400, Wylie ISD will utilize state funds for $201,300 of the cost. They are requesting the City and Taylor County fund $33,550 each from Cares Act funds.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

Funding would come from the City's Cares Act fund grant.

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution Utilizing Cares Act Grant Funds for Wylie ISD
2. Powerpoint - Resolution Utilizing Cares Act Grant Funds for Wylie ISD

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS UTILIZING CARES ACT GRANT FUNDS FOR WYLIE ISD.

WHEREAS, the City of Abilene has been awarded Cares Act grant funds from the State of Texas; and

WHEREAS, Wylie ISD has requested funds for Operation Connectivity to provide distance learning for students; and

WHEREAS, the total cost of the program is $268,400 of which the State will fund $201,300; and

WHEREAS, Wylie ISD is requesting the City to fund $33,550 of the program from the City's Cares Act grant funds; and

WHEREAS, distance learning is an eligible expense of the Cares Act Grant.

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

Part 1: The City Council approves utilizing Cares Act grant funds for Wylie ISD in the amount of $33,550.

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

ADOPTED this 10th day of September, 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

Resolution Utilizing Cares Act Grant Funds for Wylie ISD

Resolution Utilizing Cares Act Grant Funds for Wylie ISD

- Wylie ISD has requested the City fund a portion of their Connectivity Project with the City's allocation of Cares Act grant funds.

- The total project cost is $268,400 with the State funding $201,300. Wylie ISD is requesting $33,550 from the City and the same amount from Taylor County.

- The program is allowable under the Cares Act as a distance learning initiative.

Questions?

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Robert Hanna, City Manager**

FROM: **Greg McCaffery**

SUBJECT: **15. Presentation: Receive a Report, Hold a Discussion and Public Hearing on the Texas Ave and Dub Wright Intersection Improvements *(Greg McCaffery)***

GENERAL INFORMATION

Dyess Air Force Base (Dyesss AFB) has contacted the City regarding concerns at the intersection of Texas Avenue and Dub Wright Boulevard. Specifically, these concerns have been regarding vehicles driving through the intersection from Texas Avenue and damaging the fence line along the Dyess AFB property. This concern is of a security nature.

A stop sign exists at the intersection for west bound traffic on Texas Avenue. The posted speed limits are 45 mile per hour (mph) on Texas Avenue and 50 mph on Dub Wright Boulevard.

City staff has reviewed several options towards possible traffic safety improvements. Each of these has a costs associated to their improvement. Some have concerns related to conforming to the Manual of Uniformed Traffic Control Devices. (MUTCD). The MUTCD is guide that outlines requirements towards installation of various traffic control improvements (signage, pavement marking, etc.). A summary of these have been provided within the staff report.

Staff is recommending proceeding with items (1) (Right-of-way clearance along Texas Avenue), (2) (Installation of a non-illuminated stop ahead sign on Texas Avenue) and (3) (Installation of a illuminated stop sign at Texas Avenue). The total of costs of these three items are $26,550.00.

Staff is seeking direction from City Council on this item.

SPECIAL CONSIDERATIONS

Texas Avenue is under the jurisdiction of the City of Abilene. Dub Wright Boulevard and the intersection is under the jurisdiction of the Texas Department of Transportation (TxDOT).

FUNDING/FISCAL IMPACT

Cost Estimates:

1.Clear vegetation along north side of Texas Avenue $1300.00.

2. Install a un-illuminated advanced warning Stop Ahead sign $250.00.

3. Install a illuminated advanced warning Stop Ahead sign $25,000.00.

Funding for approved traffic control improvements is available within unspent funds within a 2011 CIP for Traffic Improvements.

STAFF RECOMMENDATION

Staff is seeking direction from City Council on improvements at the intersection of Texas Avenue and Dub Wright Boulevard.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 08192020_Staff_Recommendation_Memo_w_Attach
2. REV_Standard City Council Presentation Slides 2020 (2)

CITY OF ABILENE

PUBLIC WORKS

Inter-office Memorandum

To: Michael Rice, P.E. Assistant City Manager
From: Greg McCaffery, P.E., CFM, Director of Public Works
Date: August 19, 2020
Re: Texas Avenue and Dub Wright Boulevard Intersection Traffic Issues

---

Dyess AFB contacted the City regarding concerns at the intersection of Texas Avenue and Dub Wright Boulevard. Specifically, these concerns have been regarding individuals driving through the intersection from Texas Avenue and damaging the fence line along the Dyess AFB property. This concern is of a security nature.

Texas Avenue is under the jurisdiction of the City of Abilene. Dub Wright Boulevard and the intersection is under the jurisdiction of the Texas Department of Transportation (TxDOT).

A stop sign exist at the intersection for west bound traffic on Texas Avenue. The posted speed limits are 45 mile per hour (mph) on Texas Avenue and 50 mph on Dub Wright Boulevard.

Staff has been asked to look at possible traffic safety improvements at this intersection, provide related costs for each, and provide pros and cons if any on each possible improvements. Below are options per this request:

1. *Tree and brush clearance along the north side of Texas Avenue*
   Provide additional right-of-way clearance of the vegetation along the north side of Texas Avenue from 8 feet back of curb to 700 feet back from the intersection going west. This tree and brush clearance allows for greater visibility towards the intersection and additional visibility to oncoming traffic to the north on Dub Wright Blvd; however, vehicle operators still need to be aware to stop at the intersection of Texas Avenue and Dub Wright Blvd. This improvement is estimated to cost $1,300.00.

2. *Install an advance warning (Stop Ahead) sign*
   This improvement includes placement of a Stop Ahead sign along the north side of Texas Avenue and would warn vehicle operators of the upcoming stop sign at the intersection of Texas Ave and Dub Wright Blvd. This sign could be installed as an illuminated or unilluminated version. One concern with installing the sign is this location does not warrant a sign in accordance with the minimum requirements in the Manual of Uniformed Traffic Control Devises (MUTCD). Further, an increase in costs for maintenance (electrical and replacement) of the sign will be incurred by the City, if installed. Costs for this sign would be $25,000 for an illuminated and $250.00 for an unilluminated.

3. *Replace unilluminated stop sign with illuminated stop sign at intersection of Texas Ave and Dub Wright Blvd*
   This sign replacement illuminates the stop sign at the intersection of Texas Avenue and Dub Wright Blvd. Similar to the illuminated the stop ahead sign (item #2), this illuminated stop sign does not meet the minimum standard requirement of the MUTCD. Additionally, an increase in costs for maintenance (electrical and replacement) of the sign will be incurred by the City. With the location of the stop sign between the main lane and the turn lane of Texas Avenue, any turning traffic that clips this sign is likely to significantly damage and require replacement of the illuminated sign. This improvement would be approximately $25,000 initially with significant replacement costs associated.

4. *Install additional lighting at the intersection of Texas Ave and Dub Wright Blvd*
   Currently there are three street lights in the area of the intersection plus the lighting provided along Dyess's perimeter fence. One luminaire is just a few feet north of the intersection and illuminates Dub Wright Blvd. There is another across the street and to the south that also illuminates Dub Wright Blvd. The third light is 65' east of the intersection and illuminates Texas Ave. When properly functioning all lights provide adequate illumination according to industry standards for the entire intersection. AEP is currently checking to make sure all fixtures are operating properly. These fixtures could be upgraded to brighter fixtures, but would be subject to the dark sky legislation which limits the amount of light pollution produced. This could also limit the military's ability to conduct nighttime training. Replacing the poles with taller ones would also require approval from the Air Force Base. These lights belong to AEP and could be replaced at costs to the City and approval by TxDOT.

   Note: A traffic safety lighting project, in coordination with additional other improvements along Dub Wright Blvd., is planned for 2021 construction by TxDOT. This will provide improved lighting at this intersection; therefore, City Staff recommends awaiting the outcome of this project. In summary, TxDOT would install highway safety lighting and remove the existing lighting from the intersection. This removes the lights from the City's inventory and adds the lighting to TX DOT's. This funding would come from TX Dot's Highway Safety Fund, with no match required from the City.

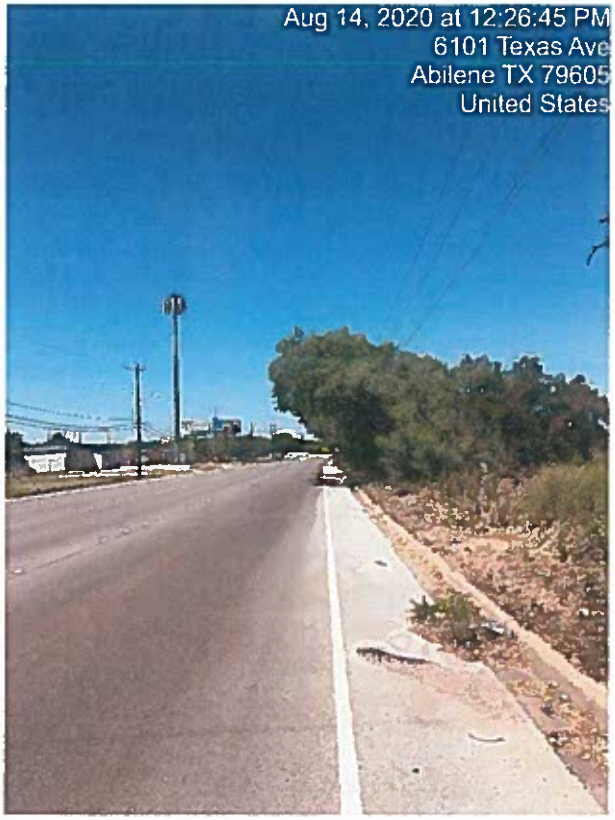
5. *Placement of rumble strips (either above or in-pavement type)*
   This improvement would involve the installation of either above pavement or cut-in pavement rumble strips to provide an advance warning to vehicles of the stop ahead sign. The City does not currently have any of these within the various City streets. Concerns of hydroplaning or slipping during weather events and with the speed limit on Texas Avenue is of concern to City staff. Additionally, noise produced by vehicular traffic over the rumble strips (24 hours a day) could be a significant nuisance to the residential neighborhood to the south of Texas Avenue. Additionally, this will add an additional burden to the street maintenance fund to maintain this in or on the pavement. It will also decrease the pavement life, by adding something that was not designed or constructed for. The costs to install rumble strips would be approximately $15,000.

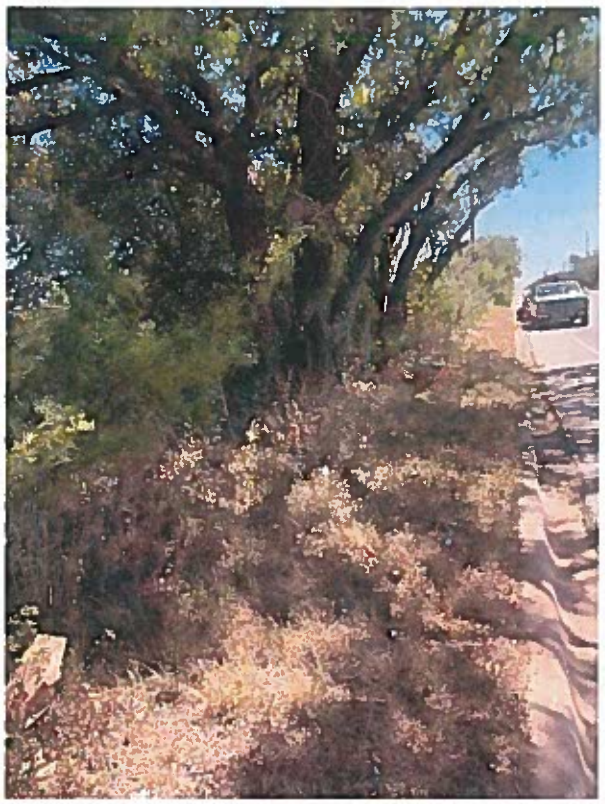
6. *Installation of Traffic Signal*
   The installation of a traffic signal would require the approval of TxDOT, as the intersection is under their jurisdiction. Also, the traffic signal would need to meet MUTCD traffic warrants for installation. As the intersection currently stands, it does not meet any of the required 9 warrants used for the installation of traffic signals. These warrants look to address excessive vehicle crashes, traffic volumes, pedestrian volumes, etc. If installed additional yearly maintenance of the signal, and the signal timing would be incurred. Given, the situation of not meeting any traffic

signal warrants, City staff does not recommend this improvement. The costs to install a traffic signal is approximately $250,000.

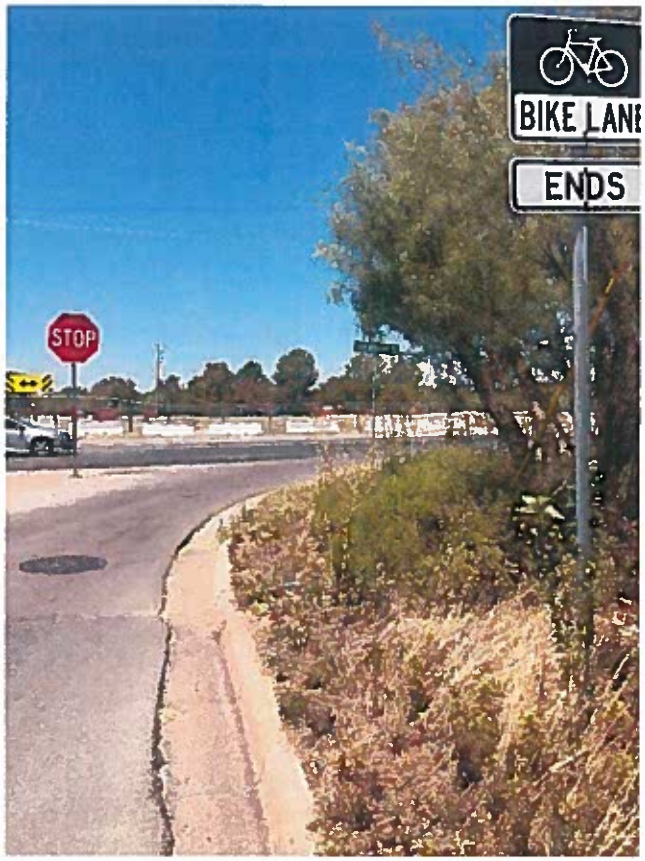
Funding for any improvement selected would require an appropriate budget for the respective improvement.

City of Abilene
Dub Wright and Texas Avenue Intersection
Site Photos





City of Abilene
Dub Wright and Texas Avenue Intersection
Site Photos



City of Abilene
Public Works Department
Texas Avenue and Dub Wright Bvld. Intersection Traffic Safety Improvements

Item	Activity	Estimated Costs	Comments
1	Clearance along northside of Texas Avenue	$ 1,300.00	Site Improvement. Currently Funding Exist
2A	Install an advance warning (Stop Ahead) sign	$ 25,000.00	Illimunated Sign/ MUTCD Issue
2B	Install an advance warning (Stop Ahead) sign	$ 250.00	Unillimunated Sign/ MUTCD Issue
3	Install Illuminated Stop Sign	$ 25,000.00	Illimunated Sign
4	Install additional lighting directly at the intersection	$ -	TxDOT Project in 2021
5	Placement of rumble strips (either above or in pavement type)	$ 15,000.00	Staffing Concerns
6	Installation of Traffic Signal	$ 250,000.00	Does not meet warrants

Texas Avenue & Dub Wright Boulevard Intersection Improvements

(Greg McCaffery)

CITY OF ABILENE TEXAS

Background

- Dyess AFB concerns at the intersection of Texas Avenue and Dub Wright Boulevard. Specifically, damage to the fence line along the Dyess AFB property. This concern is of a security nature.

- Texas Avenue is under the jurisdiction of the City of Abilene. Dub Wright Boulevard and the intersection is under the jurisdiction of the Texas Department of Transportation (TxDOT).

- A stop sign exist at the intersection for west bound traffic on Texas Avenue. The posted speed limits are 45 mile per hour (mph) on Texas Avenue and 50 mph on Dub Wright Boulevard.

- Staff review of possible traffic safety improvements at this intersection, provide related costs for each, and provide pros and cons if any on each possible improvement.

Texas & Dub Wright Intersection

Photos

Looking South

Looking North

Options

1. Tree and brush clearance along the north side of Texas Avenue.

2. Install an advance warning sign (Stop Ahead).

3. Replace unilluminated stop sign with illuminated stop sign on Texas Avenue.

4. Install lighting at the intersection of Texas Avenue and Dub Wright Boulevard.

5. Placement of rumble strips (either above or in-pavement type).

6. Installation of Traffic Signal.

Cost Analysist

City of Abilene
Public Works Department
Texas Avenue and Dub Wright Bvld. Intersection Traffic Safety Improvements

Item	Activity	Estimated Costs	Comments
1	Clearance along northside of Texas Avenue	$ 1,300.00	Site Improvement. Currently Funding Exist
2A	Install an advance warning (Stop Ahead) sign	$ 25,000.00	Illimunated Sign/ MUTCD Issue
2B	Install an advance warning (Stop Ahead) sign	$ 250.00	Unillimunated Sign/ MUTCD Issue
3	Install Illuminated Stop Sign	$ 25,000.00	Illimunated Sign
4	Install additional lighting directly at the intersection	$ -	TxDOT Project in 2021
5	Placement of rumble strips (either above or in pavement type)	$ 15,000.00	Staffing Concerns
6	Installation of Traffic Signal	$ 250,000.00	Does not meet warrants

Questions?

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Robert Hanna, City Manager**

FROM: **Greg McCaffery**

SUBJECT: **16. Presentation: Receive a Report, Hold a Discussion and Public Hearing regarding the Summary of the 2015 Traffic Signal Bond Project *(Greg McCaffery)***

GENERAL INFORMATION

In March 2016 the City retained Iteris, Inc. to design, inspect, provide integration, construction and general oversight of the Traffic Signal Project as part of the 2015 Proposition 1 General Obligation Bonds for various street improvements.

As part of Iteris's contract, and once the traffic signal upgrades were completed, they were required to provide an overview of 2015 Traffic Signal Bond Project; highlighting the enhanced signal operations, efficiencies and proactive measures of the new system.

Mr. Nada Ayoub from Iteris, Inc. will provide a presentation on these highlights and be available to answer any questions the City Council may have on the overall Traffic Signal Project.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

2015 Bond Project

STAFF RECOMMENDATION

N/A

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. REV_Abilene Signal Upgrade Project City of Abilene Format Ver 5

Traffic Signal Improvements – Selected Intersections Bond Program

(*Greg McCaffery*)

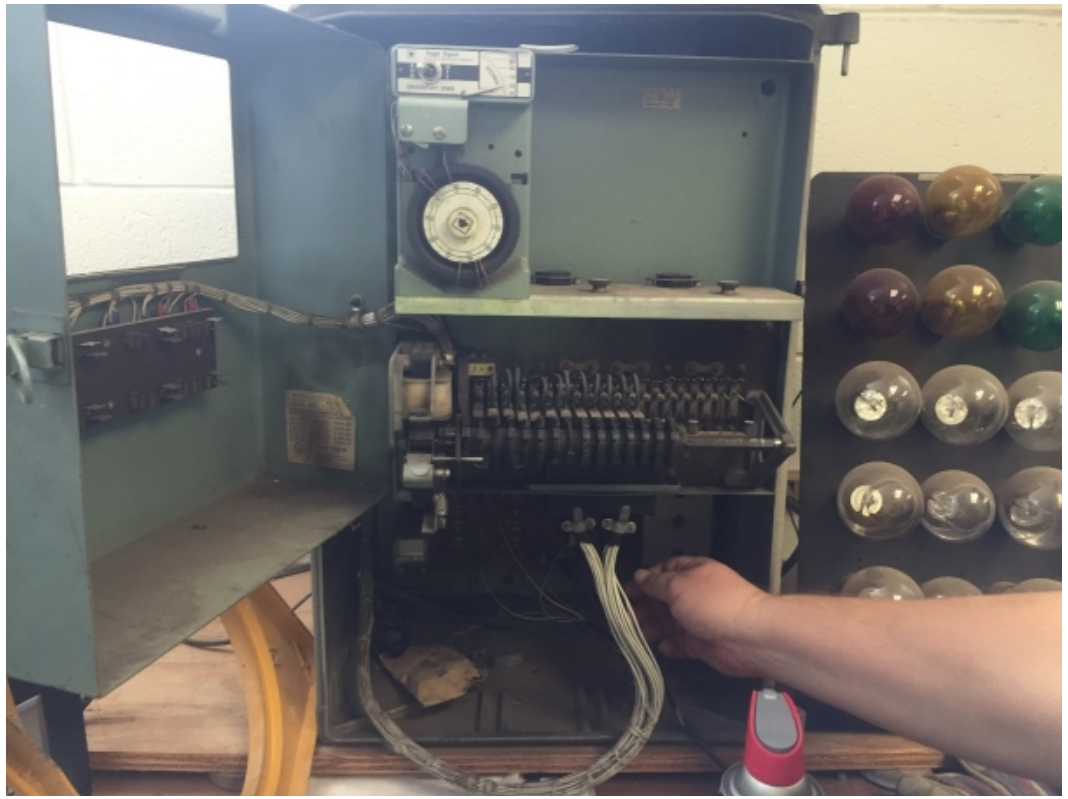
CITY OF ABILENE TEXAS

Project Goals

- Enhance Signal Operations
- Bring Efficiencies to Signal Operations
- Foundation for a Proactive Maintenance Program
- Scalable to Future Growth
- Improved Response to Citizen Complaints
- Fix the Issue Before a Citizen Complaint

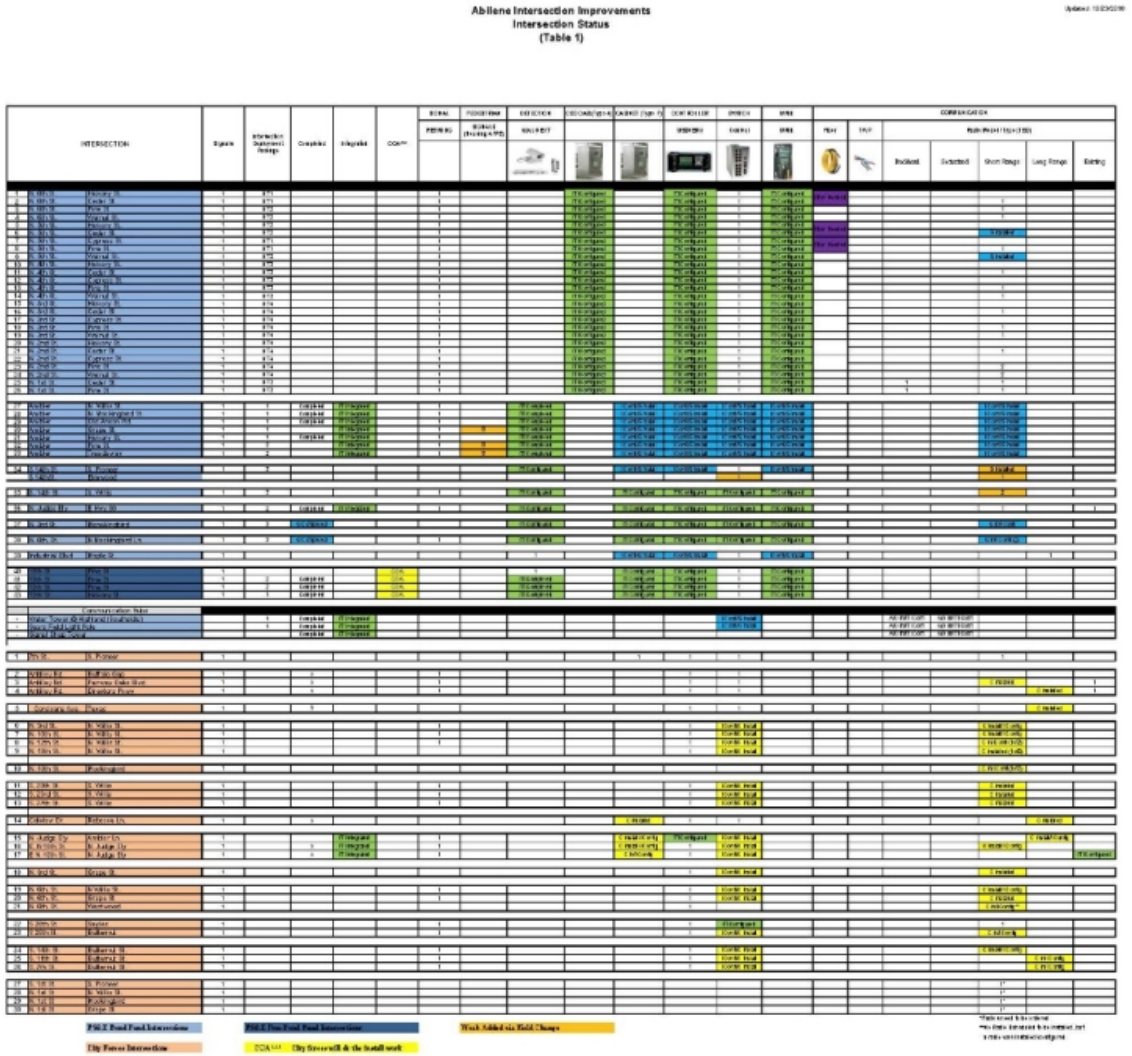
Services Performed

- Planning
  - Hardware Components
  - Design/Signal Operations
  - Construction
- Design
  - Traffic Signal (Upgrades/New Location)
  - Communication Network
- Construction
  - Civil Elements
  - Network Installation/Integration
  - Construction Support/Oversight
- Signal Timing
- Continued Remote Signal Operations



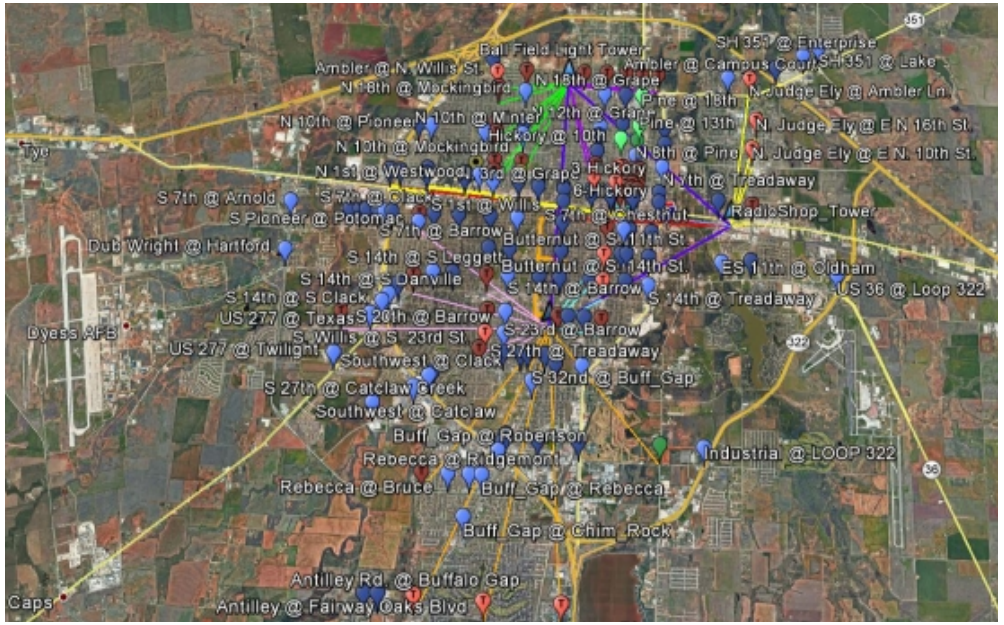
Planning

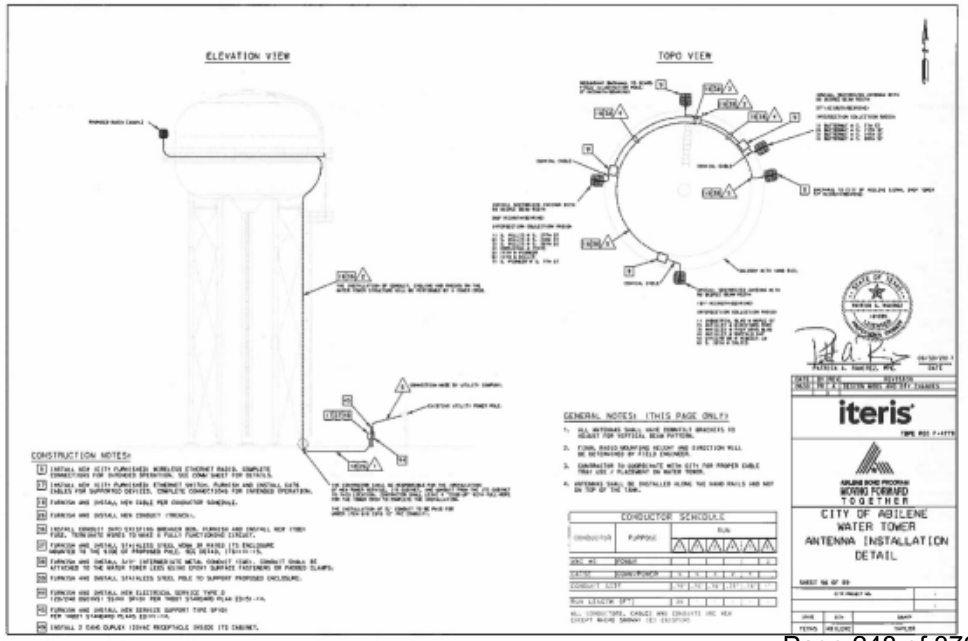
- Signal Hardware Evaluation
- Preliminary Communication Network Design
- Design/Bid/Build Construction



Design

- Traffic Signal Timing
- Communication Network Infrastructure
- Traffic Signal Intersection Improvements
- Communication Internet Protocol (IP) Networking Scheme



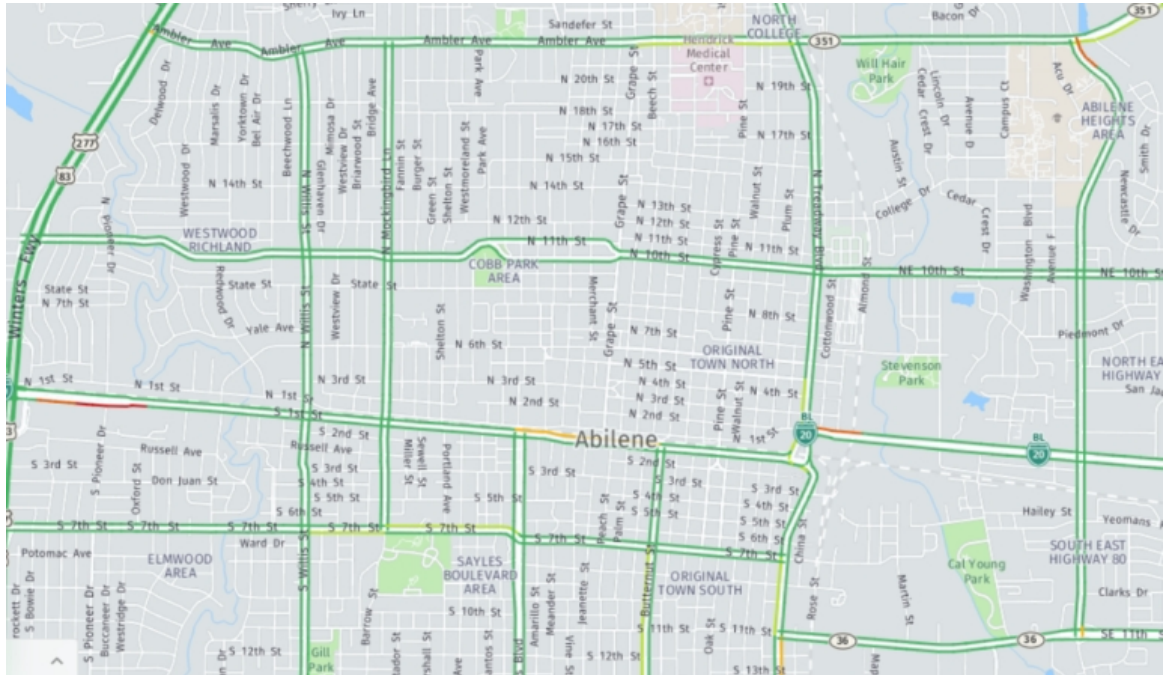


Construction

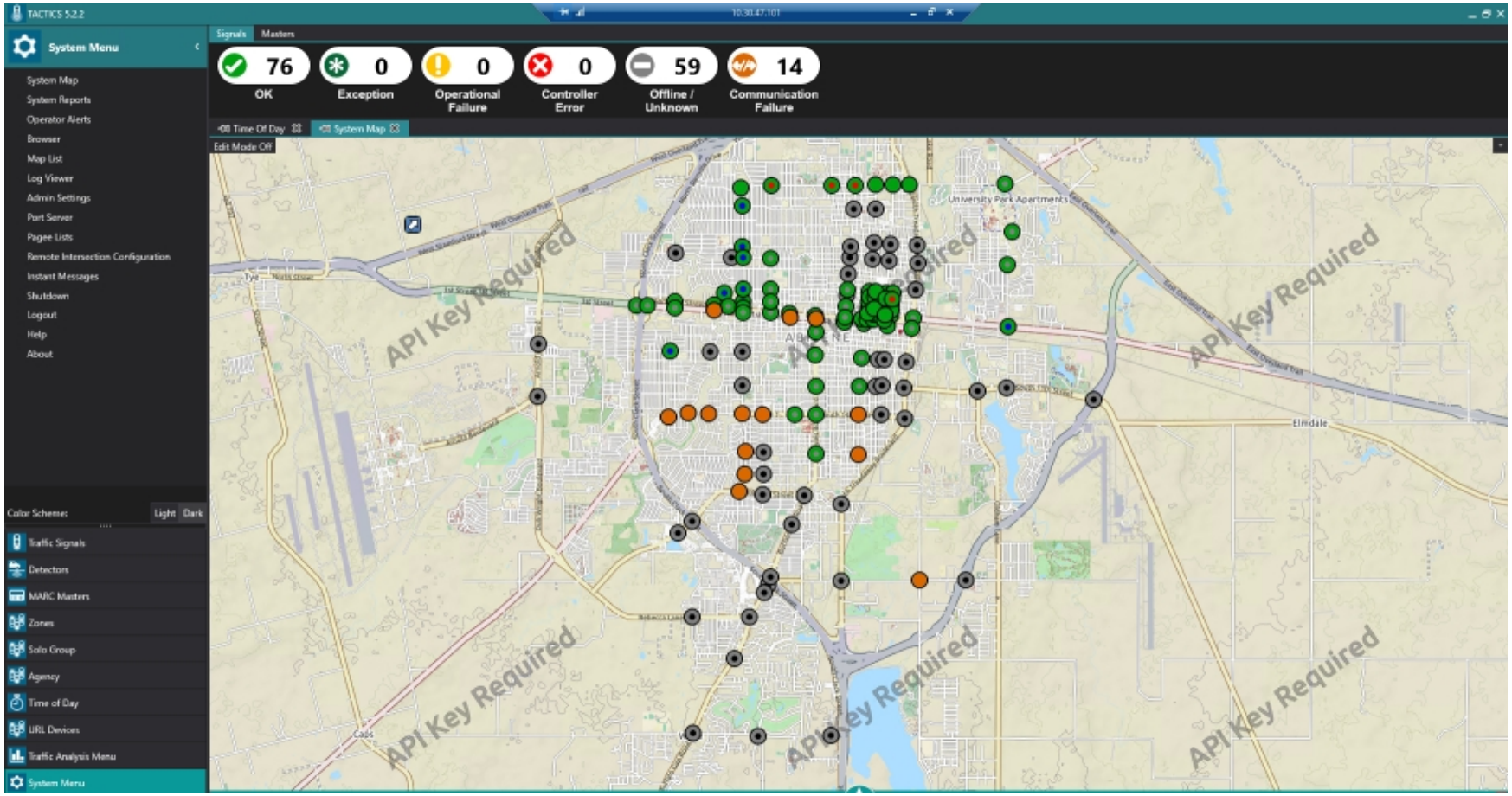
- $1.89M (Within 2% of Design Engineer's Cost Estimate)
- Integrated Controllers, MMUs, Wireless Radios, Vehicle Detection t Traffic Signal Shop
- Provides for Future Growth
- Field Changes Within 8.1% of Project Budget
- Total Spent $2.05M

Signal Timing

- All timing parameters were brought up to current MUTCD standards
  - *At times, this took time away from the major movements and required significantly longer cycle length times
- 17 Major Corridors (67 Intersections) Retimed
- Average Travel Time Reduced (14 seconds – 27.5 seconds)
- Annual Savings $834,000

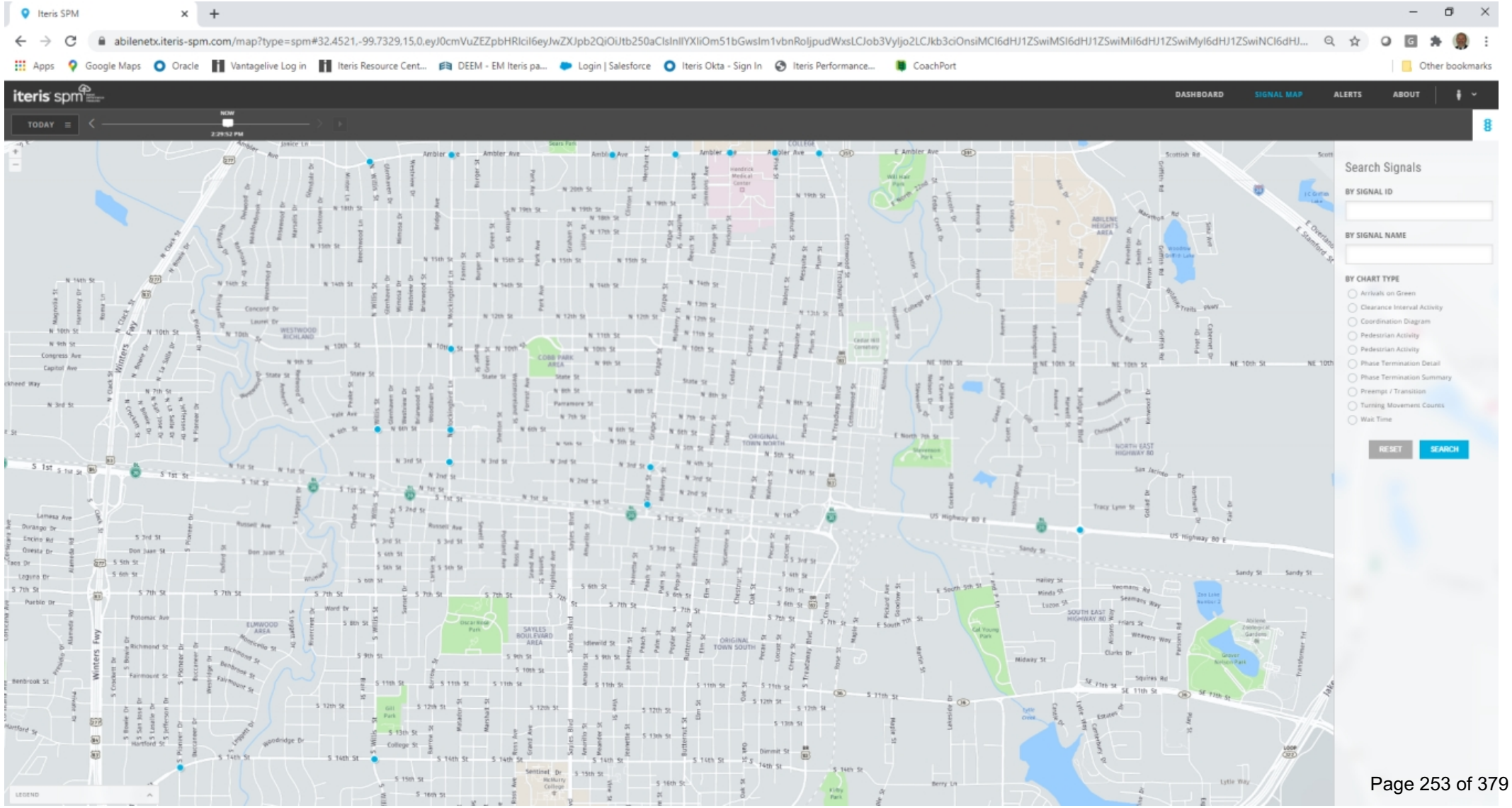


Remote Signal Operations

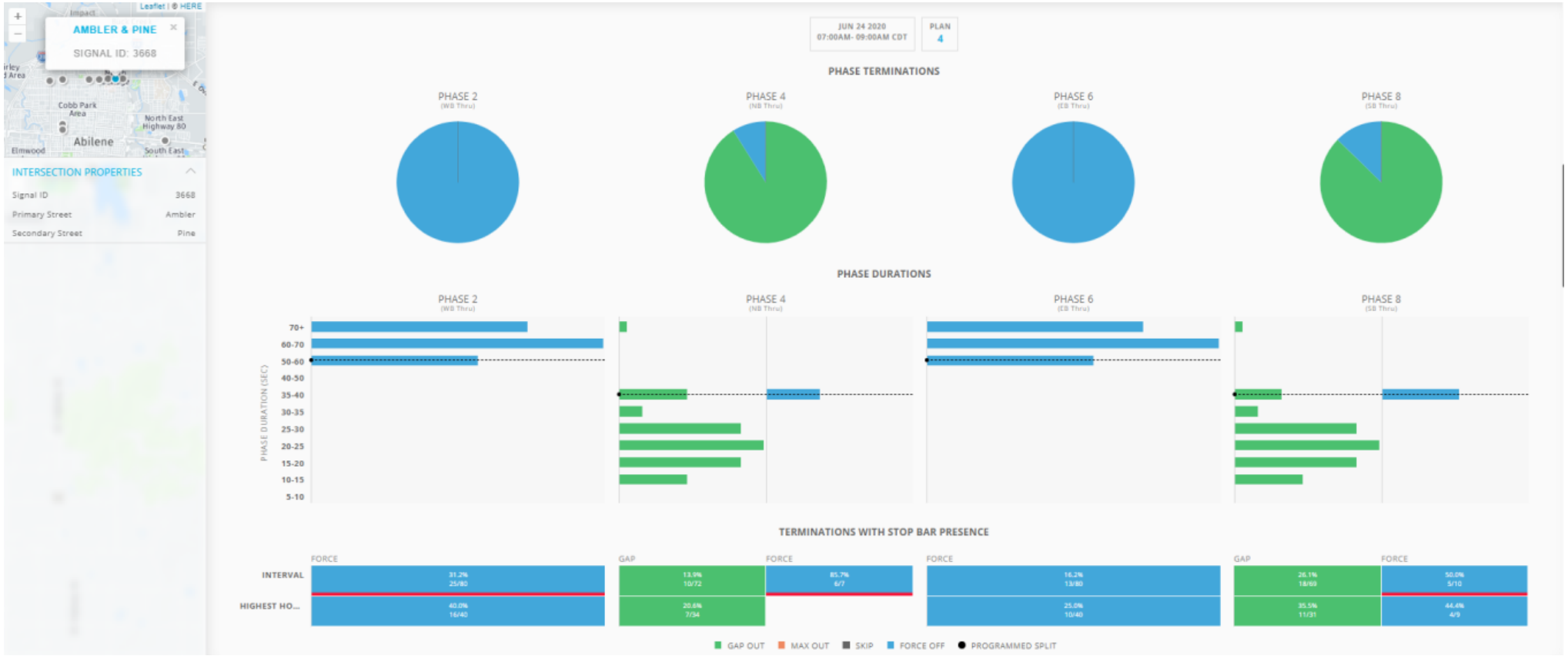


Remote Signal Operations/Enhanced Data

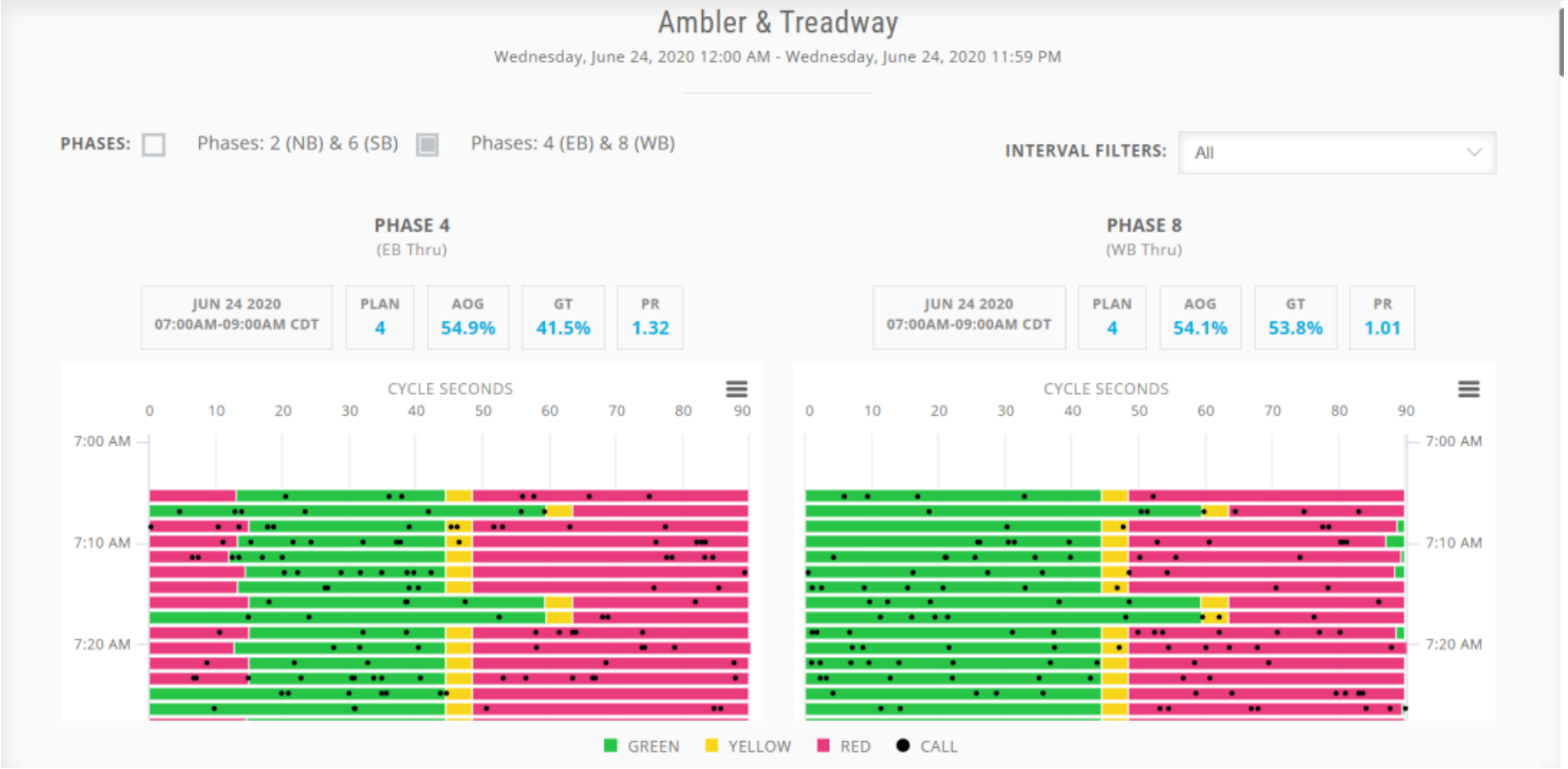
Signal Performance Measures (SPM)



SPM


AMBLER & PINE
SIGNAL ID: 3668
Cobb Park Area
North East Highway 80
Abilene
Elmwood
South East
INTERSECTION PROPERTIES
Signal ID 3668
Primary Street Ambler
Secondary Street Pine
JUN 24 2020
07:00AM- 09:00AM CDT
PLAN
4
PHASE TERMINATIONS
PHASE 2
PHASE 4
PHASE 6
PHASE 8
PHASE DURATIONS
PHASE DURATION (SEC)
70+
60-70
50-60
40-50
35-40
30-35
25-30
20-25
15-20
10-15
5-10
TERMINATIONS WITH STOP BAR PRESENCE
INTERVAL
HIGHEST HO...
FORCE
GAP
GAP OUT
MAX OUT
SKIP
FORCE OFF
PROGRAMMED SPLIT

SPM


Ambler & Treadway
Wednesday, June 24, 2020 12:00 AM - Wednesday, June 24, 2020 11:59 PM
PHASES:
Phases: 2 (NB) & 6 (SB)
Phases: 4 (EB) & 8 (WB)
INTERVAL FILTERS:
All
PHASE 4
(EB Thru)
JUN 24 2020
07:00AM-09:00AM CDT
PLAN
4
AOG
54.9%
GT
41.5%
PR
1.32
PHASE 8
(WB Thru)
JUN 24 2020
07:00AM-09:00AM CDT
PLAN
4
AOG
54.1%
GT
53.8%
PR
1.01
CYCLE SECONDS
0 10 20 30 40 50 60 70 80 90
7:00 AM
7:10 AM
7:20 AM
GREEN
YELLOW
RED
CALL

Project Goals and Results

- Enhance Signal Operations - Reduction in Travel Times
- Bring Efficiencies to Signal Operations - Reduction in Response Time
- Scalable to Future Growth - Additional Signals Added to SPM
- Improved Response to Citizen Complaints - Remote Verification and Reduced Response
- Fix the Issue Before a Citizen Complaint - Remote Notification of Issues Allows for a Proactive Maintenance Program

Questions

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Honorable Mayor and City Council Members**

FROM: **Stanley Smith, City Attorney**

SUBJECT: **17. 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. **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**
7. **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

8. **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**
9. **John Doe v. Robert Hanna, Individually and as City Manager; Cause No. 28078-B; In the 104th Judicial District Court, Taylor County, Texas; filed July 7, 2020**
10. **Kimberly Mattson v. City of Abilene (Board of Building Standards); Cause No. 12197-D, In the 350th Judicial District Court, Taylor County, Texas, filed July 30, 2020**
11. **The City of Abilene, Texas v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-20-004598, In the 53rd Judicial District Court, Travis County, Texas; filed September 1, 2020**
12. **Governor's Executive Orders COVID-19**
13. **Claim of Tommy Milliorn**

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 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. **Economic Development Agreement with KKP Investments, LLC**

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

None

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Honorable Mayor & Members of City Council**

FROM: **Misty Mayo**

SUBJECT: **18. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approval of a Resolution Authorizing Changes to the DCOA's Bylaws *(Misty Mayo)***

GENERAL INFORMATION

Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approval of a Resolution Authorizing Changes to the DCOA's Bylaws.

The DCOA Bylaws were most recently changed in 2015. A copy of those bylaws are attached for comparison.

SPECIAL CONSIDERATIONS

N/A

FUNDING/FISCAL IMPACT

N/A

STAFF RECOMMENDATION

The DCOA staff's recommendation is to approve a Resolution authorizing changes to the DCOA's Bylaws.

BOARD OR COMMISSION RECOMMENDATION

The DCOA Board's recommendation is to approve a Resolution authorizing changes to the DCOA's Bylaws.

ATTACHMENTS:

1. City Resolution - Bylaws
2. 2020.40 - DCOA Resolution - Bylaws
3. COMPARE_ 2015 BYLAWS to 2020 BYLAWS
4. DCOA Bylaws 2015
5. DCOA Bylaw Amendment Presentation

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING THE DEVELOPMENT CORPORATION OF ABILENE, INC.'S ("DCOA") AMENDED AND RESTATED BYLAWS.

WHEREAS, on August 26, 2020, the DCOA's Board of Directors adopted the Amended and Restated Bylaws of the Development Corporation of Abilene, Inc. (the "**Amended and Restated Bylaws**"); and

WHEREAS, the DCOA requests that the City Council of the City of Abilene approve the Amended and Restated Bylaws of the Development Corporation of Abilene, Inc.

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

PART 1. The City Council of the City of Abilene hereby approves the presented Amended and Restated Bylaws of the Development Corporation of Abilene, Inc.

PART 2. This Resolution takes effect immediately upon its adoption.

ADOPTED this 10th day of September, 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

AMENDED AND RESTATED BYLAWS OF THE DEVELOPMENT CORPORATION OF ABILENE, INC.

ARTICLE I
Purpose and Powers

Section 1.01 **PURPOSE.** The Development Corporation of Abilene, Inc. (the **"DCOA"**) is incorporated, on behalf of the City of Abilene, Texas (the "**City**"), and in accordance with the Development Corporation Act, as set forth in Tex. Loc. Gov't Code, Chapters 501, 502, and 504, as amended (collectively the **"Act"**), and other applicable laws. The purpose of the DCOA is to promote, assist, and enhance economic development activities for the City of Abilene, Texas in accordance with its Articles of Incorporation.

Section 1.02 **POWERS.** In the fulfillment of its corporate purpose, the DCOA shall be governed by the Act and the Texas Nonprofit Corporation Law, as set forth in the Tex. Bus. Orgs. Code, Chapters 20 and 22, as amended, and shall have all of the powers set forth and conferred in its Articles of Incorporation, the Act, the Texas Nonprofit Corporation Law, and other applicable laws, subject to the prescribed limitations (collectively the "**Governing Laws**").

ARTICLE II
Board of Directors

Section 2.01 **POWERS, NUMBER AND TERM OF OFFICE.**

(a) The affairs of the DCOA shall be managed and controlled by a Board of Directors (individually a **"Director"** and collectively the **"Board"**) and, subject to the restrictions imposed by the Governing Laws and these Bylaws.

(b) The Mayor of the City of Abilene (the **"Mayor"**) shall appoint the Directors of the DCOA with the approval of the City Council of the City of Abilene (the **"City Council"**). Each Director shall meet at least one (1) of the following qualifications:

(i) The candidate for appointment has served or is serving as the Chief Executive officer of a company; or

(ii) The candidate for appointment has served or is serving in a position of executive management of a company; or

(iii) The candidate for appointment is serving or has served the community in a professional capacity; or

(iv) The candidate for appointment shall have experience equivalent to any of the above qualifications.

The City Council shall consider an individual's experience, accomplishments, and educational background in appointing members to the Board to ensure that the interests

and concerns of all segments of the community are considered, as well as the mission of the DCOA.

(c) The number of Directors shall be five (5). Directors shall serve for a term of two (2) years.

(d) Except for Replacement Directors (defined hereafter), Director terms shall commence on January 1 of the calendar year following appointment, and end on December 31 of the last year of appointment, regardless of the date of appointment to, qualification for, or assumption of said office. No Director shall serve more than three (3) consecutive terms unless a Director is serving in a leadership role and it is determined that, to ensure the continuity and stability of the Board, a Director should be appointed for a fourth (4th) consecutive term.

(e) Directors who have been appointed to complete an unexpired term of a resigning or removed Director (a **"Replacement Director"**) shall complete the term of the Director who he or she has been appointed to replace, and such term shall not be considered to be a consecutive terms of said Director for purposes of this Section.

(f) Any Director may be removed from office by the City Council for cause or at will upon the affirmative vote of at least four (4) City Council members; however, should the City Council vote to remove a second Director within six (6) months from the removal of the first Director, then removal of any additional Directors within one (1) year of the removal of the first Director shall only be allowed with the affirmative vote of at least five (5) City Council members.

(g) The Board shall elect a Chairman of the Board (the "**Chair**") and a Vice Chair for one (1) year term at each annual meeting of the Board. The term of the Chair and Vice Chair shall commence on January 1 of the year of appointment, and end on December 31 that same year. No Director shall serve more than two (2) consecutive terms as Chair or Vice Chair.

(h) The Chair shall: (i) preside at all meetings of the Board; (ii) as directed by the Board, direct the President in the performance of duties of the President; and (iii) perform other duties prescribed by the Board. Additionally, the Chair may enter into agreements and/or deliver instruments that the Board has authorized the Chair to execute.

(i) When the Chair is absent, is unable to act, or refuses to act, the Vice Chair shall perform the duties of the Chair. When the Vice Chair acts in place of the Chair, the Vice Chair shall have all the powers of and be subject to all the restrictions upon the Chair. The Vice Chair shall perform other duties as assigned by the Chair or Board.

(j) Regular attendance of the Board meetings is required of all Directors. The following number of absences may constitute the need for replacement of a Director: three (3) consecutive absences or attendance reflecting absences constituting 50% or more of the meetings over a twelve (12) month period. In the event replacement is appropriate, the Chair or the President shall meet with the Director, and unless the Chair or the President

receives a commitment from the absentee Director to remedy their attendance at Board meetings, and such is shown by the Director's improved attendance at such meetings, the Chair or the President shall submit in writing to the City Secretary a request that the Director be replaced because of said Director's failure to meet the attendance requirements of this Section. Any vacancy occurring pursuant to this Section shall be filled by appointment of the Mayor with approval by the City Council.

Section 2.02 MEETINGS.

(a) The Board shall meet at least quarterly at places and times to be determined by the Chair. Any Director may request that an item be placed on the agenda by delivering the same in writing to the Secretary of the Board no later than ten (10) days prior to the date of the Board meeting.

(b) The annual meeting of the Board shall be during the first regularly scheduled Board meeting of each calendar year.

(c) Notice of all meetings of the Board shall be given to each Director at or before the time that any meeting notice is posted according to the Texas Open Meetings Act. The notice shall contain information regarding the time, date, and location of the meeting and agenda to be considered.

(d) All meetings of the Board shall be held in the City of Abilene, Texas. Subject to the requirements of the Texas Open Meetings Act as set forth in Tex. Gov't Code, Chapter 551, as amended (the "**Texas Open Meetings Act"**), Board members may attend Board meetings remotely.

(e) The City Manager and the Mayor may attend all meetings of the Board or Committees, provided, however, that they may not attend the executive session portion of a meeting, if the DCOA's Board determines that such attendance could waive the attorney/client privilege of the DCOA. These representatives shall not have the power to vote in the meetings they attend.

Section 2.03 QUORUM. Directors must be present in order to vote at any meeting. A majority of the entire membership of the Board shall constitute a quorum for the conduct of the official business of the DCOA. The act of a majority of the Directors present at a meeting at which a quorum is in attendance shall constitute the act of the Board and of the DCOA, unless the act of a greater number is required by law.

Section 2.04 CONDUCT OF BUSINESS.

(a) At the meetings of the Board, matters pertaining to the business of the DCOA shall be considered in accordance with rules of procedure as from time to time prescribed by the Board.

(b) The Board may plan and direct its work through the President, who is given the powers set forth in Section 3.02 and charged with the responsibility of carrying out the DCOA's programs as may be adopted and planned by the Board. The President shall serve

as the Chief Executive Officer ("**CEO**") of the DCOA unless the Board determines otherwise.

Section 2.05 **IMPLIED DUTIES.** The DCOA is authorized to do that which the Board deems desirable to accomplish, any of the purposes or duties set out or alluded to in these Bylaws, and in accordance with Texas law.

Section 2.06 **COMMITTEES OF THE BOARD.** The Chair may designate not more than two (2) Directors to constitute an official committee of the Board, with such other non-Board members of the committee as may be appointed by the Board, to exercise such authority of the Board as may be specified in a resolution. It is provided, however, that all final, official actions of the DCOA may be exercised only by the Board. Each committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded for that purpose in the principal office of the DCOA.

Section 2.07 **BOARD'S RELATIONSHIP WITH ADMINISTRATIVE DEPARTMENTS OF THE CITY.**

(a) Any request for services made to the administrative departments of the City shall be made by the Board or the President in writing to the City Manager. The City Manager may approve such request for assistance from the Board when he or she finds such requested services are available within the administrative departments of the City and that the DCOA has agreed to reimburse the administrative department's budget for the costs of such services so provided.

(b) Any requests for legal assistance shall be made by the Board or the President to the City Attorney. The City Attorney may provide such assistance when such services are available and the DCOA has agreed to reimburse the City for providing the legal services.

Section 2.08 **COMPENSATION OF DIRECTORS.** Directors shall not receive any salary or compensation for their services as Directors. However, they shall be reimbursed for their actual expenses incurred in the performance of their duties hereinunder.

Section 2.09 **CONFLICT OF INTEREST.** In the event that a Director is aware of a conflict of interest or potential conflict of interest with regard to any particular vote, the Board's actions shall be governed by the Tex. Bus. Org. Code, Section 22.230, as amended.

ARTICLE III
Officers

Section 3.01 <u>TITLES AND TERMS OF OFFICE.</u>

(a) The elected officers of the DCOA shall be a President, a Secretary and a Treasurer, and such other officers as the Board may from time to time elect or appoint, including one or more Vice Presidents. One person may hold more than one office, except that neither the President nor the Chair shall hold the office of Secretary. The terms of office for each officer shall be as follows:

(i) The President shall be appointed by the Board and shall be an employee or contractor of the DCOA. The President shall serve at the pleasure of the Board until such time as he or she resigns the position, is removed by the Board, his or her term ends, or his or her contract terminates.

(ii) The term of the President, Secretary and Treasurer shall commence on January 1 of the year of appointment, and end on December 31 of that same year, regardless of the date of appointment to, qualification for, or assumption of said office.

(b) All officers shall be subject to removal from office at any time by a vote of a majority of the entire Board.

(c) Vacancies may be filled by the Board for the unexpired portion of the term of that office, in the same manner as other officers are elected to the Board.

Section 3.02 <u>POWERS AND DUTIES OF THE PRESIDENT.</u> The President shall have the general powers and authority set forth below so that the President may transact the general business of the DCOA and efficiently carry out the DCOA's programs, oversee the administrative functions of the DCOA, and otherwise oversee the DCOA's affairs. The DCOA's President is authorized to take the following actions:

(a) Make expenditures of the funds as set forth in the DCOA's annual budget, as such annual budget is approved by the Board and the City Council;

(b) Enter into contracts for the purchase of goods and services, so long as said contracts do not involve expenditures that exceed the amounts set forth for said expenditure in the DCOA's annual budget;

(c) Employ, direct, control, evaluate, discipline, and discharge the DCOA's employees, other than the President;

(d) Establish the compensation for each DCOA position other than the President position, provided that the DCOA's annual budget has sufficient funds for the expenditures; and

(e) Develop various DCOA policies and procedures, provided that any financial, accounting, and purchasing policies and procedures shall also be approved by the Board.

The authority described above shall also authorize the President to enter into agreements and/or deliver instruments in the name of and on behalf of the DCOA. Said agreements and/or instruments may have provisions for contingent liabilities, provided that the contingent liability obligations are not reasonably expected to exceed the amounts set forth in the DCOA's annual budget, as determined by the President in his or her reasonable discretion.

Section 3.03 POWERS AND DUTIES OF THE INTERIM PRESIDENT. In the absence of the President, the Board shall appoint a person to perform the duties of President on an interim basis (the **"Interim President**") until such time that the Board appoints a new President. The Interim President may be either an employee or contractor of the DCOA. The Interim President shall perform such other duties as from time to time may be assigned to him or her by the Board.

Section 3.04 POWERS AND DUTIES OF THE VICE PRESIDENT. If a Vice President is appointed by the Board, he or she shall perform such duties as from time to time may be assigned to him or her by the President.

Section 3.05 POWERS AND DUTIES OF THE TREASURER. The Treasurer shall lead the Board in its process of selecting an auditor to audit the DCOA's books, records, accounts and financial statements on an annual basis in accordance with Section 4.04(b).

Section 3.06 POWERS AND DUTIES OF THE SECRETARY. The Secretary shall ensure that a record of the minutes of all meetings of the Board and of any committees of the Board are kept and are located at the principal office of the DCOA. The Secretary shall ensure that the President remains the custodian of the corporate records and seal of the DCOA, and keeps a registered mailing address and street address (if different) of each Director.

Section 3.07 EMPLOYEES.

(a) The Board shall, in the annual budget, make provisions for the compensation to be paid to the President and such compensation so established by the Board shall comprise the salary and benefits paid to the President for his or her services. The President shall be hired by the Board.

(b) The DCOA may employ, or contract for, such full or part-time employees as needed to carry out the programs of the DCOA. These employees shall perform those duties as are assigned to them by the President. As provided in Section 3.02, the President shall hire, direct, and control the work of all DCOA employees.

Section 3.08 BENEFITS. In accordance with Tex. Loc. Gov't Code, Section 501.067, the DCOA may obtain:

(a) health benefits coverage, liability coverage, workers' compensation coverage, and property coverage under the City's insurance policies, through self-funded

coverage, or under coverage provided under an interlocal agreement with a political subdivision; and/or

(b) retirement benefits under a retirement program the City participates in or operates.

Health benefits coverage may be extended to the DCOA's employees, and to the dependents of the DCOA's employees. Workers' compensation benefits may be extended to the Directors, employees, and volunteers. Liability coverage may be extended to protect the DCOA, the Directors, and the DCOA's employees. Retirement benefits may be extended to the DCOA's employees. The DCOA must reimburse the City for any expense incurred in providing said benefits.

Section 3.09 CONTRACTING FOR SERVICES. The DCOA may contract with any qualified and appropriate person, association, corporation or governmental entity to perform and discharge designated tasks which will aid or assist the Board in the performance of its duties. However, no such contract shall ever be approved or entered into which seeks or attempts to divest the Board of its discretion and policy-making functions in discharging its duties as set forth herein.

ARTICLE IV
Functional Corporate Duties and Requirements

Section 4.01 GENERAL DEVELOPMENT PLAN.

(a) The President shall, in consultation with the Board, research, develop, prepare, and submit to the City Council for its approval, an economic development plan for the City, which shall include proposed methods and the expected costs of implementation. The plan shall include both short-term and long-term goals for the economic development of the City, proposed methods for the expansion and development of a sound economic base for the City.

(b) The President shall review and update the plan each year, prior to or in conjunction with the submission of the DCOA's annual budget to the City Council.

Section 4.02 ANNUAL CORPORATE BUDGET. Prior to the commencement of each fiscal year of the DCOA, the Board shall adopt a proposed budget of expected revenues and proposed expenditures for the ensuing fiscal year. The budget shall not be effective until the same has been approved by resolution of the City Council. The City Council's approval of the budget shall be the City Council's approval of the DCOA's programs and expenditures outlined in the budget as required by the Act.

The Board and/or President may make expenditures within the total budget amount approved by the City Council so long as such expenditures (a) do not increase the total budget amount previously approved by the City Council, and (b) do not increase any single fund or budget classification by more than ten (10) percent.

Section 4.03 **EXPENDITURES OF COPORATE FUNDS.** For any "Project" as such is defined by the Act (each a **"Project Expenditure"** and collectively **"Project Expenditures"**), in the amount of $1,000,000 or less, the Board has sole approval authority over each Project Expenditure upon approval by the Board. For any Project Expenditure which exceeds $1,000,000, the City Council shall also approve said Project Expenditure. The DCOA shall not make a Project Expenditure over $1,000,000 if the Project Expenditure fails to receive the required City Council approval. This Section shall satisfy the requirements of Tex. Loc. Gov't Code, Section 501.073 requiring approval of project expenditures by the City Council, and it shall not be necessary for the DCOA to obtain the City Council's approval of an amended budget before making said Project Expenditure.

Section 4.04 **BOOKS, RECORDS, AND AUDITS.**

(a) The DCOA shall keep and properly maintain, in accordance with generally accepted accounting principles, corporate funds, activities, and affairs.

(b) The DCOA shall cause its books, records, accounts, and financial statements to be audited at least once each fiscal year by an outside, independent, auditing and accounting firm selected by the Board. Such audit shall be at the expense of the DCOA and shall be a certified audit.

Section 4.05 **DEPOSIT AND INVESTMENT OF CORPORATE FUNDS.**

(a) All proceeds from the issuance of bonds, notes, or other debt instruments (**"Obligations"**) issued by the DCOA shall be deposited and invested as provided in the resolution, order, indenture, or other documents authorizing or relating to their issuance.

(b) All other monies of the DCOA shall be deposited, secured and/or invested in accordance with Tex. Gov't Code, Chapter 2257, as amended; and investments of funds and accounts, not needed for obligations of the DCOA, shall be performed in accordance with Tex. Gov't Code, Chapter 2256, as amended. The Board shall (i) designate the accounts and depositories to be created and designated for such purposes, (ii) adopt financial policies and procedures to account for such funds, and (iii) adopt investment policies to make such investments.

(c) At the request of the DCOA and with the approval of the City Council, the monies of the DCOA may be deposited, secured and/or invested for the DCOA by the accountant, staff and personnel of the City. In such event, the DCOA shall pay to the City reasonable compensation for such service.

Section 4.06 **ISSUANCE OF OBLIGATIONS.** No Obligations, including refunding Obligations, shall be sold and delivered by the DCOA, unless the City Council shall approve such Obligations by action taken no more than sixty (60) days prior to the date of sale of the Obligations.

ARTICLE V
Miscellaneous Provisions

Section 5.01 PRINCIPAL OFFICE & REGISTERED AGENT.

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

(b) The DCOA shall have and shall continually designate a qualified registered agent at its registered office, as required by the Act.

Section 5.02 FISCAL YEAR. The fiscal year of the DCOA shall begin on October 1 and end on September 30 of the following year.

Section 5.03 OPEN MEETINGS ACT AND PUBLIC INFORMATION ACT. The DCOA is subject to the Texas Open Meetings Act, and the Texas Public Information Act, as set forth in Tex. Gov't Code, Chapter 552, as amended.

Section 5.04 CORPORATE SEAL. The Board shall obtain a corporate seal which shall bear the words "Corporate Seal of Development Corporation of Abilene, Inc.". The Board may thereafter use the corporate seal and may later alter the seal as necessary without changing the corporate name; but these Bylaws shall not be construed to require the use of the corporate seal.

Section 5.05 MEMBERS. The DCOA shall have no members.

ARTICLE VI
Indemnification of Directors, Officers, and Employees

As provided in Tex. Loc. Gov't Code, Section 504.107, the DCOA is, for the purposes of the Texas Tort Claims Act, as set forth in Tex. Civ. Prac. & Rem. Code, Chapter 101, as amended, a governmental unit and its actions are governmental functions.

The DCOA shall indemnify each and every Director or former Director of the Board, its officers, its employees, its attorneys, each member of the City Council and each employee of the City, to the fullest extent permitted by law, against any and all liability or expense, including attorneys' fees incurred by any of such persons by reason of any actions or omissions that may arise out of the functions and activities of the DCOA.

The Board shall authorize the DCOA to pay or reimburse any current or former Director or officer of the DCOA for any costs, expenses, fines, settlements, judgments, and other amounts, actually and reasonably incurred by such person in any action, suit, or proceeding to which he or she is made a party by reason of holding such position as officer or Director; provided, however, that such officer or Director shall not receive such indemnification if he or she be finally adjudicated in such instance to be liable for gross negligence or intentional misconduct in office. The indemnification herein provided shall also extend to good faith expenditures incurred in anticipation of, or preparation for, threatened or proposed litigation. The Board may, in proper

cases, extend the indemnification to cover the good faith settlement of any such action, suit, or proceedings, whether formally instituted or not.

To the extent the Board authorizes indemnification to Directors or officers of the DCOA, the City shall also provide indemnity to said Directors and officers. However, the City's indemnification shall only apply after the DCOA's ability to indemnify has been exhausted. Nothing in this Section creates personal liability on the part of officers and Directors to any extent not otherwise provided by statute or case law.

Furthermore, the DCOA agrees to indemnify and hold harmless and defend the City, its officers, agents, and its employees, from and against liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorneys' fees and other reasonable costs arising out of or resulting from the DCOA's activities and from any liability arising out of or resulting from the intentional acts or negligence or intentional acts or omissions of the DCOA, including but not limited to its officers, agents, employees, licensees, invitees, and other persons.

The DCOA further agrees that it shall at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, agents, employees, licensees, invitees, and other persons, as well as their property, while in the vicinity where activities are being performed. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the DCOA, including but not limited to, its officers, agents, employees, licensees, invitees, and other persons.

It is further agreed with respect to the above indemnity, that the City and the DCOA will provide the other prompt and timely notice of any event covered which in any way, directly or indirectly, contingently or otherwise, affects or might affect the DCOA or the City, and the City shall have the right to compromise and defend the same to the extent of its own interests. It is further agreed this indemnity clause shall be an additional remedy to the City and not an exclusive remedy.

ARTICLE VII
Effective Date, Amendments

Section 7.01 <u>EFFECTIVE DATE.</u> These Bylaws shall become effective upon the occurrence of all of the following events: the adoption of these Bylaws by the Board; and the approval and adoption of these Bylaws by the City Council.

Section 7.02 <u>AMENDMENTS TO BYLAWS.</u> These Bylaws may be amended or repealed and amended Bylaws may be adopted by an affirmative vote of at least three (3) Directors present at any regular meeting or any special meeting of the Board, if at least three (3) days written notice is given of an intention to amend, repeal, and/or adopt new Bylaws. Any Bylaw amendments will be effective upon approval of the City Council by resolution.

ARTICLE VIII
Dissolution

Upon the properly authorized dissolution of the DCOA, when the last of the DCOA's obligations are satisfied, any remaining assets of the DCOA shall be transferred to the City, and the existence of the DCOA shall be terminated.

CERTIFICATE OF ADOPTION OF AMENDED AND RESTATED BYLAWS

These Amended and Restated Bylaws were adopted on the ___ day of _____, 2020 by DCOA Resolution _____ and on the ___ day of _____, 2020 by the City Council.

_____
Misty Mayo, President and CEO

RESOLUTION NO. DCOA-2020.40

A RESOLUTION OF THE DEVELOPMENT CORPORATION OF ABILENE, INC. ("DCOA") ABILENE, TEXAS ADOPTING AMENDED AND RESTATED BYLAWS.

WHEREAS, the DCOA desires to adopt Amended and Restated Bylaws; and

WHEREAS, the attached Amended and Restated Bylaws of the Development Corporation of Abilene, Inc. are hereby adopted.

NOW THEREFORE, BE IT RESOLVED BY THE DEVELOPMENT CORPORATION OF ABILENE, INC., ABILENE, TEXAS, THAT:

PART 1. DCOA approves the attached Amended and Restated Bylaws of the Development Corporation of Abilene, Inc.

PART 2. This Resolution takes effect immediately upon passage.

ADOPTED this the 26th day of August, 2020.

ATTEST:

Vic Corley
Secretary/Treasurer

Jack Rich
President

APPROVED AS TO FORM:

Mark Zachary, Attorney at Law

~~BYLAWS~~

~~OF~~

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

~~ABILENE, TEXAS~~

~~SECTION I~~
~~OFFICES~~

~~1.01 Registered Office and Registered Agent~~

AMENDED AND RESTATED BYLAWS OF THE DEVELOPMENT CORPORATION OF ABILENE, INC.

ARTICLE I
Purpose and Powers

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

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

~~1.02 Principal Office~~

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

~~SECTION II~~
~~PURPOSES~~

~~2.01 Purposes~~

~~The Corporation is a Type A economic development corporation, and a Texas non-profit corporation specifically governed by the Texas Development Corporation Act, as defined in~~ Tex. Loc. Gov't Code, Chapters 501, 502, and 504~~of the Texas Local Government Code,~~ , as amended (~~formerly Art. 5190.6 of the Texas Revised Civil Statutes).~~collectively the **"Act"**), and other applicable laws. The purpose of the ~~Corporation~~DCOA is to promote, assist, and enhance

economic development activities for the City of Abilene, Texas in accordance with ~~the~~its Articles of Incorporation.

Section 1.02 ~~SECTION III~~
Section 1.02 ~~MEMBERS~~
Section 1.02
Section 1.02 ~~3.01 Members~~

Section 1.02 ~~The Corporation shall have no members.~~

Section 1.02

Section 1.02

Section 1.02 ~~**SECTION IV**~~
Section 1.02 ~~**BOARD OF DIRECTORS**~~

Section 1.02 ~~**4.01**~~ **POWERS.** In the fulfillment of its corporate purpose, the DCOA shall be governed by the Act and the Texas Nonprofit Corporation Law, as set forth in the Tex. Bus. Orgs. Code, Chapters 20 and 22, as amended, and shall have all of the powers set forth and conferred in its Articles of Incorporation, the Act, the Texas Nonprofit Corporation Law, and other applicable laws, subject to the prescribed limitations (collectively the "**Governing Laws**").

Board of Directors

Section 2.01

Section 2.01 **POWERS, NUMBER AND TERM OF OFFICE.**

(a) The ~~business and~~ affairs of the ~~Corporation and all corporate powers~~DCOA shall be ~~exercised~~managed and controlled by ~~or under authority of the~~a Board of Directors (~~the "~~individually a **"Director"** and collectively the **"Board**~~"), appointed by the governing body~~**"**) and, subject to the restrictions imposed by the Governing Laws and these Bylaws.

The Mayor of the City of Abilene (the **"**~~City Council"), and subject to applicable limitations imposed by the Texas Non-Profit Corporation Act, the Texas Business Corporation Act, the Articles of Incorporation, or these Bylaws. The Board may, by contract, resolution, or otherwise, give general or limited or special power and authority to the officers and employees of the Corporation to transact the general business or any special business of the Corporation, and may give powers of attorney to agents of the Corporation to transact any special business requiring such authorization.~~

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

~~**4.02 Number and Qualifications**~~

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

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

1. serve, or haveThe candidate for appointment has served or is serving as athe Chief Executive Officerofficer of a company; or

2. serve, or haveThe candidate for appointment has served, or is serving in a position of executive management of a company; or

3. serve, or haveThe candidate for appointment is serving or has served, the community in a professional capacity; or

4. have The candidate for appointment shall have experience equivalent to any of the above qualifications.

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

(c)

(c) **4.03 Bonds**

(c)

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

(c)

(c) **4.04 General Duties of the Board**

(c)

(c) The Board is hereby required to perform the following duties:

(c)

(c) 1. The Board shall develop an overall economic development plan for the City which shall include and set forth intermittent and/or short term goals which the Board deems necessary to accomplish compliance with its overall economic development plan. Such plan shall be communicated to City Council. The overall plan developed by the Board shall be one that includes the following elements:

(c)

(c) ~~a. An economic development strategy to permanently bolster the business climate throughout the City.~~

(c)

(c) ~~b. Strategies to fully utilize the assets of the City which enhance economic development.~~

(c)

(c) ~~c. Identification of strategies to coordinate public, private, military and academic resources to develop and enhance business opportunities for all citizens of Abilene. This plan shall include methods to improve communication and cooperation between the above-mentioned entities.~~

(c)

(c) ~~d. Assurance of accountability of all tax moneys expended for its implementation of the overall economic development plan.~~

(c)

(c) ~~e. Identification of strategies and provide for implementation of identified strategies for direct economic development as defined in this Section.~~

(c)

(c) ~~f. To assist the Board in the implementation of the overall economic development plan, the Board may seek out and employ a CEO. The CEO shall be responsible to the Board and shall act as the Board's administrator and shall assist the Board in carrying out the duties of the Board as set forth in this section. The Board shall, in the annual budget, make provisions for the compensation to be paid to the CEO and such compensation so established by the Board shall comprise the salary and benefits paid to the CEO for his/her services.~~

(c)

(c) ~~g. The Board may employ or contract for such personnel as may be necessary to discharge the Corporation's assigned duties. The compensation for all such employees shall be set by the Board in its annual budget and such compensation so established by the Board shall comprise the salary and benefits for such employees, and provided further, no such employee shall be hired until such time as the Board has established such compensation for the position in question.~~

(c)

(c) ~~h. The CEO shall be hired by the Board with the consent of the City Council and may be removed by a majority vote of the Board.~~

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

(c) ~~As used in this Section, "direct economic development" shall mean the expenditure of such tax funds for programs that directly accomplish or aid in the accomplishment of creating identifiable new jobs or retaining identifiable existing jobs including job training and/or planning and research activities necessary to promote said job creation and expand the tax base. The Corporation's focus will be primarily in the areas of:~~

(c) ~~a. Business retention and expansion~~

(c) ~~b. Formation of new businesses~~

(c) ~~c. Business attraction~~

(c)

(c) ~~**4.05 Implied Duties**~~

(c)

(c) ~~The Corporation is authorized to do that which the Board deems desirable to accomplish any of the purposes or duties set out or alluded to in Section 4.04 of these Bylaws and in accordance with State law.~~

(c)

(c) ~~**4.06 Tenure**~~

(c)

(c) ~~No member of the Board shall serve more than two (2) consecutive terms. The Mayor shall appoint the Directors of the Corporation with the approval of the City Council.~~ The number of Directors shall be five (5). Directors shall serve for a term of two (2) years.

(d) Except for Replacement Directors ~~shall serve for three (3) years. Directors shall be removable at any time by the~~ (defined hereafter), Director terms shall commence on January 1 of the calendar year following appointment, and end on December 31 of the last year of appointment, regardless of the date of appointment to, qualification for, or assumption of said office. No Director shall serve more than three (3) consecutive terms unless a Director is serving in a leadership role and it is determined that, to ensure the continuity and stability of the Board, a Director should be appointed for a fourth (4th) consecutive term.

(e) Directors who have been appointed to complete an unexpired term of a resigning or removed Director (a **"Replacement Director"**) shall complete the term of the Director who he or she has been appointed to replace, and such term shall not be considered to be a consecutive terms of said Director for purposes of this Section.

Any Director may be removed from office by the City Council for cause or at will upon the affirmative vote of at least four (4) City Council members; however, should the City Council vote to remove a second Director within six (6) months from the removal of the first Director, then removal of any additional Directors within one (1) year of the removal of the first Director shall only be allowed with the affirmative vote of at least five (5) City Council ~~by a majority vote of five (5) council~~ members.

(g)

(g) ~~**4.07 Vacancies**~~

(g)

(g) ~~Any vacancy occurring shall be filled by appointment by the Mayor with approval by City Council.~~

(g)

(g) **~~4.08 Meetings~~**

(g)

(g) ~~The Board shall meet at least once each month at a place and time to be determined by the President. All meetings of the Board shall be posted and conducted in accordance with the Texas Open Meetings Act, as set forth in Chapter 551 of the Texas Government Code, as amended. Any member of the Board may request that an item be placed on the agenda by delivering the same in writing to the secretary of the Board no later than ten (10) days prior to the date of the Board meeting. The President of the Board shall set regular meeting dates and times at the beginning of his/her term.~~

(g)

(g) ~~Notice of any meeting shall contain information regarding the particular time, date, and location of the meeting and the agenda to be considered.~~

(g)

(g) ~~The annual meeting of the Board of Directors shall be during the first regularly scheduled Board meeting of each calendar year.~~

(g)

(g) **~~4.09 Attendance~~**

(g)

(g) The Board shall elect a Chairman of the Board (the "**Chair**") and a Vice Chair for one (1) year term at each annual meeting of the Board. The term of the Chair and Vice Chair shall commence on January 1 of the year of appointment, and end on December 31 that same year. No Director shall serve more than two (2) consecutive terms as Chair or Vice Chair.

(h) The Chair shall: (i) preside at all meetings of the Board; (ii) as directed by the Board, direct the President in the performance of duties of the President; and (iii) perform other duties prescribed by the Board. Additionally, the Chair may enter into agreements and/or deliver instruments that the Board has authorized the Chair to execute.

(i) When the Chair is absent, is unable to act, or refuses to act, the Vice Chair shall perform the duties of the Chair. When the Vice Chair acts in place of the Chair, the Vice Chair shall have all the powers of and be subject to all the restrictions upon the Chair. The Vice Chair shall perform other duties as assigned by the Chair or Board.

Regular attendance of the Board meetings is required of all Directors. The following number of absences may constitute the need for replacement of a Director: three (3) consecutive absences~~,~~ or attendance reflecting absences constituting ~~fifty percent (~~50~~%)~~% or more of the meetings over a twelve (12-) month period. In the event replacement is ~~indicated~~appropriate, the ~~member will be counseled~~Chair or the President shall meet with the Director, and unless the Chair or the President receives a commitment from the absentee Director to remedy their attendance at Board meetings,

and such is shown by the President and, subsequently,Director's improved attendance at such meetings, the Chair or the President shall submit in writing to the City Secretary the need to replace the Board member in questiona request that the Director be replaced because of said Director's failure to meet the attendance requirements of this Section. Any vacancy occurring pursuant to this Section shall be filled by appointment of the Mayor with approval by the City Council.

Section 2.02 MEETINGS.

(a) The Board shall meet at least quarterly at places and times to be determined by the Chair. Any Director may request that an item be placed on the agenda by delivering the same in writing to the Secretary of the Board no later than ten (10) days prior to the date of the Board meeting.

(b) The annual meeting of the Board shall be during the first regularly scheduled Board meeting of each calendar year.

(c) Notice of all meetings of the Board shall be given to each Director at or before the time that any meeting notice is posted according to the Texas Open Meetings Act. The notice shall contain information regarding the time, date, and location of the meeting and agenda to be considered.

(d) All meetings of the Board shall be held in the City of Abilene, Texas. Subject to the requirements of the Texas Open Meetings Act as set forth in Tex. Gov't Code, Chapter 551, as amended (the "**Texas Open Meetings Act**"), Board members may attend Board meetings remotely.

(e) The City Manager and the Mayor may attend all meetings of the Board or Committees, provided, however, that they may not attend the executive session portion of a meeting, if the DCOA's Board determines that such attendance could waive the attorney/client privilege of the DCOA. These representatives shall not have the power to vote in the meetings they attend.

(e) **4.10 Quorum and Voting**

(e)

(e)

QUORUM. Directors must be present in order to vote at any meeting. A majority of the entire membership of the Board of Directors shall constitute a quorum for the conduct of the official business of the Corporation. DCOA. The act of a majority of the Directors present at a meeting at which a quorum is in attendance shall constitute the act of the Board of Directors and of the CorporationDCOA, unless the act of a greater number is required by law. A Director may not vote by proxy. Directors must be present in order to vote at any meeting.

Section 2.04

Section 2.04 ~~**4.11 Compensation**~~
Section 2.04

Section 2.04 ~~The duly appointed Directors of~~**CONDUCT OF BUSINESS.**

(a) At the ~~Board shall serve without compensation, but shall be reimbursed for actual or commensurate cost of travel, lodging and incidental expenses while on official~~ meetings of the Board, matters pertaining to the business of the ~~Board~~DCOA shall be considered in accordance with ~~State law.~~
(a)

(a) ~~**4.12 Conflicts**~~rules of ~~**Interest**~~
(a)

(a) ~~In the event that a Director is aware of a conflict of interest or potential conflict of interest, with regard~~procedure as from time to ~~any particular vote, the Board's actions shall be governed~~time prescribed by the ~~Texas Business Organizations Code, Title 2 Corporations, Chapter 22 Non Profit Corporations,~~Board.

The Board may plan and direct its work through the President, who is given the powers set forth in Section ~~22.230, as amended.~~

~~**4.13 Board's Relationship**~~3.02 and charged with ~~**City Council**~~

~~In accordance with State law, Section 501.073 of the Texas Local Government Code the City Council shall require that~~ the ~~Corporation be responsible to it for~~responsibility of carrying out the ~~proper discharge of its duties. All~~DCOA's programs ~~and expenditures shall be submitted for City Council approval,~~as may be adopted and planned by the Board ~~shall administer said programs accordingly.~~. The ~~Board shall determine its policies and direction within~~President shall serve as the ~~limitations~~Chief Executive Officer ("**CEO**") of the ~~duties herein imposed by applicable laws, the Articles of Incorporation, these Bylaws, contracts entered into with the City, and budget and fiduciary responsibilities. The Corporation shall be regularly accountable to the City Council for all activities undertaken by them or on their behalf, and shall report on all significant activities of the Corporation to the City Council, whether discharged directly by the Board or by any person, firm, corporation, agency, association or other entity on behalf of the Corporation~~DCOA unless the Board determines otherwise.

Section 2.05
Section 2.05

Section 2.05 ~~**4.14 Board's Relationship with Administrative Departments of the City**~~
Section 2.05

Section 2.05 **IMPLIED DUTIES.** The DCOA is authorized to do that which the Board deems desirable to accomplish, any of the purposes or duties set out or alluded to in these Bylaws, and in accordance with Texas law.

Section 2.06 **COMMITTEES OF THE BOARD.** The Chair may designate not more than two (2) Directors to constitute an official committee of the Board, with such other non-Board members of the committee as may be appointed by the Board, to exercise such authority of the Board as may be specified in a resolution. It is provided, however, that all final, official actions of the DCOA may be exercised only by the Board. Each committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded for that purpose in the principal office of the DCOA.

Section 2.07 **BOARD'S RELATIONSHIP WITH ADMINISTRATIVE DEPARTMENTS OF THE CITY.**

Any request for services made to the administrative departments of the City shall be made by the Board or ~~its designee~~the President in writing to the City Manager. The City Manager may approve such request for assistance from the Board when he or she finds such requested services are available within the administrative departments of the City and that the ~~Board~~DCOA has agreed to reimburse the administrative department's budget for the costs of such services so provided.

Any requests for legal assistance shall be made by the Board or ~~its designee~~the President to the City Attorney. The City Attorney may provide such assistance when such services are available and the ~~Board~~DCOA has agreed to reimburse the City for ~~cost~~ providing the legal services.

Section 2.08

Section 2.08 ~~**SECTION V**~~
Section 2.08 ~~**OFFICERS**~~
Section 2.08

Section 2.08 ~~**5.01**~~ **COMPENSATION OF DIRECTORS.** Directors shall not receive any salary or compensation for their services as Directors. However, they shall be reimbursed for their actual expenses incurred in the performance of their duties hereinunder.

Section 2.09 **CONFLICT OF INTEREST.** In the event that a Director is aware of a conflict of interest or potential conflict of interest with regard to any particular vote, the Board's actions shall be governed by the Tex. Bus. Org. Code, Section 22.230, as amended.

Officers ~~of the Corporation~~

Section 3.01

Section 3.01 TITLES AND TERMS OF OFFICE.

The elected officers of the ~~Corporation~~DCOA shall be a President, ~~Vice President,~~ a Secretary~~,~~ and a Treasurer~~. The Board may resolve to elect one or more Assistant Secretaries or one or more Assistant Treasurers as it may consider desirable. Such~~, and such other officers ~~shall have the authority and perform the duties of the office as~~ as the Board may from time to time ~~prescribe or as the Secretary or Treasurer may from time to time delegate to his or her respective Assistant.~~elect or appoint, including one or more Vice Presidents. One person may hold more than one office, except that neither the President nor the Chair shall ~~not~~ hold the office of Secretary. The terms of office for each officer shall be as follows:

(i)

(i) ~~**5.02 Selection of the Officers**~~

(i)

(i) The ~~initial President and Vice~~ President shall be ~~elected~~appointed by the Board and shall be an employee or contractor of the DCOA. The President shall serve ~~a term of one (1) year. On the expiration~~at the pleasure of the Board until such time as he or she resigns the position, is removed by the Board, his or her term ends, or his or her contract terminates.

(ii) The term of ~~office of the original President and Vice President, the Board shall select from among its members individuals to hold such office. The term of office of the~~ the President ~~and Vice President shall always be for a period of one year; provided, however, that the President and Vice President continue to serve until the election of their successors.~~

(ii)

(ii) ~~The~~, Secretary and Treasurer shall ~~be selected by the members~~commence on January 1 of the year of appointment, and end on December 31 of that same year, regardless of the date of appointment to, qualification for, or assumption of said office.

All officers shall be subject to removal from office at any time by a vote of ~~the Board and shall hold office for a period~~a majority of ~~one (1) year; provided, however, that they shall continue to serve until the election of their successors. Elections shall be held at the annual meeting of the~~the entire Board.

~~**5.03**~~ Vacancies

Vacancies in any office which occur by reason of death, resignation, disqualification, removal, or otherwise, may be filled by the Board of Directors for the unexpired portion of the term of that office, in the same manner as other officers are elected to the Board.

5.04 President

POWERS AND DUTIES OF THE PRESIDENT. The President shall be the presiding officer of the Board with the following authority:

1. Shall preside over all meetings of the Board.

2. Shall have the right to vote on all matters coming before the Board.

3. Shall have the authority, upon notice to the members of the Board, to call a special meeting of the Board when in his judgment such meeting is required.

4. Shall have the authority to appoint standing committees to aid and assist the Board in itsgeneral powers and authority set forth below so that the President may transact the general business undertakings or other matters incidental to the operationof the DCOA and efficiently carry out the DCOA's programs, oversee the administrative functions of the Board.

5. Shall have the authority to appoint ad hoc committees which may address issues of a temporary nature of concern or which have a temporary effect on the business of the Board.

In addition to the above-mentioned duties, the DCOA, and otherwise oversee the DCOA's affairs. The DCOA's President shall sign with the Secretary of the Board any deed, mortgage, bonds, contracts, or other instruments which the Board of Directors has approved and unless the execution of said document has been expressly delegated to some other officer or agent of the Corporation by appropriate Board resolution, by a specific provision of these Bylaws, or by statute. In general, the President shall perform all duties incident to the office, and such other duties as shall be prescribed from time to time by the Board of Directors.is authorized to take the following actions:

(a)

(a) **5.05 Vice President**

(a)

(a) Make expenditures of the funds as set forth in the DCOA's annual budget, as such annual budget is approved by the Board and the City Council;

(b) Enter into contracts for the purchase of goods and services, so long as said contracts do not involve expenditures that exceed the amounts set forth for said expenditure in the DCOA's annual budget;

(c) Employ, direct, control, evaluate, discipline, and discharge the DCOA's employees, other than the President;

(d) Establish the compensation for each DCOA position other than the President position, provided that the DCOA's annual budget has sufficient funds for the expenditures; and

(e) Develop various DCOA policies and procedures, provided that any financial, accounting, and purchasing policies and procedures shall also be approved by the Board.

The authority described above shall also authorize the President to enter into agreements and/or deliver instruments in the name of and on behalf of the DCOA. Said agreements and/or instruments may have provisions for contingent liabilities, provided that the contingent liability obligations are not reasonably expected to exceed the amounts set forth in the DCOA's annual budget, as determined by the President in his or her reasonable discretion.

POWERS AND DUTIES OF THE INTERIM PRESIDENT. In the absence of the President, ~~or in the event of his or her inability to act, the Vice~~the Board shall appoint a person to perform the duties of President on an interim basis (the **"Interim President"**) until such time that the Board appoints a new President. The Interim President may be either an employee or contractor of the DCOA. The Interim President shall perform ~~the duties of the President. When so acting, the Vice President shall have all power of and be subject to all the same restrictions as upon the President. The Vice President shall also perform~~ such other duties as from time to time may be assigned to him or her by the ~~President.~~Board.

Section 3.04

Section 3.04 ~~**5.06 Secretary**~~

Section 3.04

Section 3.04 ~~The~~ **POWERS AND DUTIES OF THE VICE PRESIDENT.** If a Vice President is appointed by the Board, he or she shall perform such duties as from time to time may be assigned to him or her by the President.

Section 3.05 **POWERS AND DUTIES OF THE TREASURER.** The Treasurer shall lead the Board in its process of selecting an auditor to audit the DCOA's books, records, accounts and financial statements on an annual basis in accordance with Section 4.04(b).

POWERS AND DUTIES OF THE SECRETARY. The Secretary shall ~~keep, or cause to be kept, at the registered office~~ensure that a record of the minutes of all meetings of the Board and of any committees of the Board~~.~~ are kept and are located at the principal office of the DCOA. The Secretary shall ~~also file a copy of said Minutes with the City and the same to be given, in accordance with the provisions of these Bylaws, or as required by the Texas Open Meetings Act or the Texas Public Information Act or other applicable law. The Secretary shall be~~ensure that the President remains the custodian of the corporate records and seal of the ~~Corporation~~DCOA, and ~~shall keep~~keeps a ~~register of the~~registered mailing address and street address~~,~~ (if different~~,~~) of each ~~director~~Director.

Section 3.07

Section 3.07 ~~**5.07 Treasurer**~~

Section 3.07

Section 3.07 ~~If the City of Abilene ceases to act as the fiscal agent for the Corporation, the Treasurer shall be bonded for the faithful discharge of his/her duties with such surety or sureties and in such sum as the Board of Directors shall determine by Board resolution, but in no event shall the amount of such bond be less than an amount equal to the average of the sums which the Treasurer has access to and the ability to convert during a twelve (12) month period of time. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation. The Treasurer shall receive and give receipt for money due and payable to the Corporation from any source whatsoever, and shall deposit all such moneys in the name of the Corporation in such bank, trust corporation, and/or other depositories as shall be specified in accordance with Section VII of these Bylaws. The Treasurer shall, in general, perform all the duties incident to that office, and such other duties as from time to time may be assigned to him by the President of the Board.~~

Section 3.07

Section 3.07 ~~**5.08 Assistant Secretaries and Assistant Treasurers**~~

Section 3.07

Section 3.07 ~~The Assistant Secretaries and Assistant Treasurers, if any, shall in general, perform such duties as may be assigned to them by the Secretary or the Treasurer, or by the President or the Board of Directors.~~

Section 3.07

Section 3.07 ~~**5.09 Chief Executive Officer**~~

Section 3.07

Section 3.07

Section 3.07 ~~The Corporation may employ a Chief Executive Officer. The CEO of the Corporation shall oversee all administrative functions of the Corporation. The CEO shall develop policies and procedures for the Corporation including financial, accounting, and purchasing policies and procedures to be approved by the Board.~~

Section 3.07

Section 3.07 ~~**5.10 Other Employees and Benefits**~~

Section 3.07

Section 3.07 ~~The Corporation~~**EMPLOYEES.**

(a) The Board shall, in the annual budget, make provisions for the compensation to be paid to the President and such compensation so established by the Board shall comprise the salary and benefits paid to the President for his or her services. The President shall be hired by the Board.

The DCOA may employ, or contract for, such full or part-time employees as needed to carry out the programs of the ~~Corporation~~DCOA. These employees shall perform those duties as are assigned to them by the ~~CEO. The CEO~~President. As provided in Section 3.02, the President shall hire, direct, and control the work of all ~~Corporation~~DCOA employees.

BENEFITS. In accordance with Tex. Loc. Gov't Code, Section 501.067~~ of~~, the ~~Texas Local Government Code, and subject to City Council approval, the Corporation~~DCOA may obtain:

~~a.~~ health benefits coverage, liability coverage, workers' compensation coverage, and property coverage under the City's insurance policies, through self-funded coverage, or under coverage provided under an interlocal agreement with a political subdivision; and/or

~~b.~~ retirement benefits under a retirement program the City participates in or operates.

Health benefits coverage may be extended to the ~~Directors and~~DCOA's employees, and to the dependents of the ~~Directors and~~DCOA's employees. Workers' compensation benefits may be extended to the Directors, employees, and volunteers. Liability coverage may be extended to protect the ~~Corporation~~DCOA, the Directors, and the ~~Directors and~~DCOA's employees. Retirement benefits may be extended to the ~~Corporation's~~DCOA's employees. The ~~Corporation~~DCOA must reimburse the City for any expense incurred in providing said benefits.

~~**5.11 Contract for Services**~~

~~The Corporation~~**CONTRACTING FOR SERVICES.** The DCOA may contract with any qualified and appropriate person, association, corporation or governmental entity to perform and discharge designated tasks which will aid or assist the Board in the performance of its duties. However, no such contract shall ever be approved or entered into which seeks or attempts to

divest the Board of ~~Directors of~~ its discretion and policy-making functions in discharging ~~the~~its duties ~~herein above~~as set forth ~~in this section.~~herein.

ARTICLE IV

ARTICLE IV

ARTICLE IV~~SECTION VI~~
ARTICLE IV~~COMMITTEES~~
ARTICLE IV
ARTICLE IV~~6.01 Committees~~
ARTICLE IV

ARTICLE IV~~The President may designate not more than two (2) directors to constitute an official committee of the Board of Directors, with such other non-Board members of the committee as may be appointed by the Board, to exercise such authority of the Board as may be specified in the resolution. It is provided, however, that all final, official actions of the Corporation may be exercised only by the Board. Each committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded in books kept for that purpose in the principal office of the Corporation.~~

ARTICLE IV

ARTICLE IV~~6.02 Ex-Officio Members~~

ARTICLE IV

ARTICLE IV~~The City Manager or his designee and the Mayor or his designee may attend all meetings of the Board of Directors or Committees~~

Functional Corporate Duties and Requirements

Section 4.01 **GENERAL DEVELOPMENT PLAN.**

(a) The President shall, in consultation with the Board, research, develop, prepare, and submit to the City Council for its approval, an economic development plan for the City, which shall include proposed methods and the expected costs of implementation. The plan shall include both short-term and long-term goals for the economic development of the City, proposed methods for the expansion and development of a sound economic base for the City.

(b) The President shall review and update the plan each year, prior to or in conjunction with the submission of the DCOA's annual budget to the City Council.

Section 4.02 **ANNUAL CORPORATE BUDGET.** Prior to the commencement of each fiscal year of the DCOA, the Board shall adopt a proposed budget of expected revenues and proposed expenditures for the ensuing fiscal year. The budget shall not be effective until the same has been approved by resolution of the City Council. The City Council's approval of the budget shall be the City Council's approval of the DCOA's programs and expenditures outlined in the budget as required by the Act.

The Board and/or President may make expenditures within the total budget amount approved by the City Council so long as such expenditures (a) do not increase the total budget amount previously approved by the City Council, and (b) do not increase any single fund or budget classification by more than ten (10) percent.

EXPENDITURES OF COPORATE FUNDS. For any "Project" as such is defined by the Act (each a **"Project Expenditure"** and collectively **"Project**~~. These representatives shall not have the power to vote in the meetings they attend. Their attendance shall be for the purpose of ensuring that information about the meetings are accurately communicated to the City Council and to satisfy the City Council obligation to control the powers of the Corporation.~~

~~**SECTION VII**~~
~~**FINANCIAL ADMINISTRATION**~~

~~The Corporation may contract with the City for financial and accounting services. The Corporation's financing and accounting records shall be maintained according to the following guidelines.~~

~~**7.01 Fiscal Year**~~

~~The fiscal year of Corporation shall begin on October 1 and end on September 30 of the following year.~~

~~**7.02 Budget**~~

~~A budget for the forthcoming fiscal year shall be submitted to, and approved by, the Board of Directors, and the City Council. In submitting the budget to the City Council, the Board of Directors shall submit the budget on forms prescribed by the City Manager and in accordance with the annual budget preparation schedule as set forth by the City Manager. The budget shall be submitted to the City Manager for inclusion of it in the annual budget presentation to the City Council. The budget proposed for adoption shall include the projected operating expenses, and such other budgetary information as shall be useful to or appropriate for the Board of Directors and the City Council.~~

~~**7.03 Contacts**~~

~~As provided in Section V above, the President and Secretary shall execute any contracts or other instruments which the Board has approved and authorized to be executed, provided, however, that the Board may by appropriate resolution, authorize any other officer or officers or any other agent or agents, including the CEO, to enter into contracts or execute and deliver any instrument in the name and on behalf of the Corporation. Such authority may be confined to specific instances or defined in general terms. When appropriate, the Board may grant a specific or general power of attorney to carry out some action on behalf of the Board, provided, however that no such power of attorney may be granted unless an appropriate resolution of the Board authorizes the same to be done.~~

~~**7.04 Checks and Drafts**~~

~~If the City of Abilene ceases to act as the fiscal agent for the Corporation, all checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed or bear the facsimile of the President or the Treasurer, or such other person as designated by the Board.~~

7.05 Deposits

All funds of the Corporation shall be deposited on a regular basis to the credit of the Corporation in a local bank which shall be federally insured and shall be selected following procedures and requirements for selecting a depository as set forth in Chapter 105 of the Texas Local Government Code.

7.06 Gifts

The Corporation may accept on behalf of the Corporation any contribution, gift, bequest, or device for the general purpose or for any special purposes of the Corporation.

7.07 Purchasing

All purchases made and contracts executed by the Corporation shall be made in accordance with the requirements of the Texas Constitution and statutes of the State of Texas.

7.08 Investments

Temporary and idle funds which are not needed for immediate obligations of the Corporation may be invested in any legal manner provided in the Public Funds Investment Act, Chapter 2256 of the Texas Government Code, as amended.

7.09 Bonds

Any bonds issued by the Corporation shall be in accordance with the statute governing this Corporation but in any event, no bonds shall be issued without approval of the City Council after review and comment by the City's bond counsel and financial advisor.

7.10 Uncommitted Funds

Any undesignated funds of the Corporation at the end of the fiscal year shall be considered a part of the Fund Balance. The Undesignated Fund Balance may be committed for any legal purpose.

7.11 Expenditures of Corporation Money for Projects or Borrow Money

For any specific project, job training, promotional expenditure, or borrowing of funds in the amount of TWO-HUNDRED-FORTY-NINE THOUSAND NINE HUNDRED NINETY-NINE DOLLARS AND NINETY-NINE CENTS ($ 249,999.99)”), in the amount of $1,000,000 or less, the Board of Directors has sole approval authority and may begin making expenditures or borrow monies over each Project Expenditure upon approval by the Board. For any project, job training, promotional expenditure, or borrowing of fundsProject Expenditure which exceeds TWO-HUNDRED-FORTY-NINE THOUSAND NINE HUNDRED NINETY-NINE DOLLARS AND NINETY-NINE CENTS ($ 249,999.99),$1,000,000, the City Council shall also approve the expenditure or borrowing of funds by

majority vote of the City Council. The Corporationsaid Project Expenditure. The DCOA shall not expend any funds for a project, job training, or promotional expenditure, or borrow monies which failmake a Project Expenditure over $1,000,000 if the Project Expenditure fails to receive the required City Council approval. This Section shall satisfy the requirements of Tex. Loc. Gov't Code, Section 501.073 requiring approval of project expenditures by the City Council, and it shall not be necessary for the DCOA to obtain the City Council's approval of an amended budget before making said Project Expenditure.

SECTION VIII

BOOKS AND, RECORDS, AND AUDITS.

(a)

(a) 8.01 Books and Records

(a)

(a) The Corporation shall keep correct and complete books and records of all actions of the Corporation, including books and records of account and the minutes of meetings of the Board of Directors and of any committee having any authority of the Board and to the City Council. City Council is entitled to access of the Corporation's books and records at all times. All books and records of the Corporation may be inspected by Directors of the Corporation or his/her agent or attorney at any reasonable time; and any information which may be designated as public information by law shall be open to public inspection at any reasonable time. The Texas Public Information Act and Texas Open Meetings Act shall apply to disclosure of public information. TheThe DCOA shall keep and properly maintain, in accordance with generally accepted accounting principles, corporate funds, activities, and affairs.

The DCOA shall cause its books, records, accounts, and financial statements of the Corporation shallto be audited at least once each fiscal year by an outside, independent, auditing and accounting firm approvedselected by the Board of Directors. This. Such audit mayshall be prepared in conjunction withat the annual financialexpense of the DCOA and shall be a certified audit of the City.

Section 4.05

Section 4.05 SECTION IX

Section 4.05 DEPOSIT AND INVESTMENT OF CORPORATE FUNDS.

(a) All proceeds from the issuance of bonds, notes, or other debt instruments (**"Obligations"**) issued by the DCOA shall be deposited and invested as provided in the resolution, order, indenture, or other documents authorizing or relating to their issuance.

(b) All other monies of the DCOA shall be deposited, secured and/or invested in accordance with Tex. Gov't Code, Chapter 2257, as amended; and investments of funds and accounts, not needed for obligations of the DCOA, shall be performed in accordance with Tex. Gov't Code, Chapter 2256, as amended. The Board shall (i) designate the accounts and depositories to be created and designated for such purposes, (ii) adopt financial policies and procedures to account for such funds, and (iii) adopt investment policies to make such investments.

(c) At the request of the DCOA and with the approval of the City Council, the monies of the DCOA may be deposited, secured and/or invested for the DCOA by the accountant, staff and personnel of the City. In such event, the DCOA shall pay to the City reasonable compensation for such service.

Section 4.06 **ISSUANCE OF OBLIGATIONS.** No Obligations, including refunding Obligations, shall be sold and delivered by the DCOA, unless the City Council shall approve such Obligations by action taken no more than sixty (60) days prior to the date of sale of the Obligations.

ARTICLE V
Miscellaneous Provisions

Section 5.01 **PRINCIPAL OFFICE & REGISTERED AGENT.**

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

(b) The DCOA shall have and shall continually designate a qualified registered agent at its registered office, as required by the Act.

Section 5.02 **FISCAL YEAR.** The fiscal year of the DCOA shall begin on October 1 and end on September 30 of the following year.

Section 5.03 **OPEN MEETINGS ACT AND PUBLIC INFORMATION ACT.** The DCOA is subject to the Texas Open Meetings Act, and the Texas Public Information Act, as set forth in Tex. Gov't Code, Chapter 552, as amended.

CORPORATE SEAL

~~**9.01 Seal**~~

. The Board of Directors shall obtain a corporate seal which shall bear the words "Corporate Seal of Development Corporation of Abilene, Inc.". The Board may thereafter use the corporate seal and may later alter the seal as necessary without changing the corporate name; but these Bylaws shall not be construed to require the use of the corporate seal.

Section 5.05

Section 5.05 **SECTION X**

Section 5.05 **PROGRAM**

Section 5.05

Section 5.05 **10.01 Authorization**

Section 5.05

Section 5.05 The Corporation shall carry out its program subject to its Articles of Incorporation and these Bylaws, and such resolutions as the Board may from time to time authorize.

Section 5.05

Section 5.05

Section 5.05 ~~**10.02 Program**~~

Section 5.05

Section 5.05 ~~The program of the Corporation shall be to assist, stimulate, and enhance economic development for the City of Abilene, Texas, subject to applicable state and Federal law, these Bylaws, and the Articles of Incorporation.~~

Section 5.05

Section 5.05 ~~**SECTION XI**~~

Section 5.05 ~~**PRELIMINARY AUTHORITY**~~

Section 5.05

Section 5.05 ~~**11.01 Effective Date**~~

Section 5.05

Section 5.05 ~~These bylaws shall become effective upon the occurrence of all of the following events: the adoption of these bylaws by the Board of Directors; and the approval and adoption of these bylaws by the City Council.~~

Section 5.05

Section 5.05 ~~**11.02 Amendments to Bylaws**~~

Section 5.05

Section 5.05 ~~These bylaws may be amended or repealed and amended bylaws may be adopted by an affirmative vote of at least three (3) Directors present at any regular meeting or any special meeting, if at least three (3) days written notice is given of an intention to amend, repeal, and/or adopt new bylaws. Any bylaw amendments will be effective upon approval of the City Council by resolution.~~

Section 5.05

Section 5.05 ~~**SECTION XII**~~

Section 5.05 ~~**DISSOLUTION**~~

Section 5.05

Section 5.05 ~~**12.01 Dissolution**~~

Section 5.05

Section 5.05 ~~On petition of ten percent (10%) or more of the registered voters of the City of Abilene requesting an election on the dissolution of the Corporation, the City Council shall order an election on the issue. The election must be conducted according to the applicable provision of the Election Code. The ballot for the election shall be printed to provide for voting for or against the proposition:~~

Section 5.05

Section 5.05 ~~"Dissolution of the Development Corporation of Abilene, Inc."~~

Section 5.05

Section 5.05 ~~If a majority of voters voting on the issue approve the dissolution, the Corporation shall continue operations only as necessary to pay the principal of and interest on its bonds and to meet obligations incurred before the date of the election and, to the extent practicable, shall dispose of its assets and apply the proceeds to satisfy those obligations. When the last of the obligations is satisfied, any remaining assets of the Corporation shall be transferred to the City, and the Corporation is dissolved.~~

Section 5.05 ~~**SECTION XIII**~~

Section 5.05 ~~**INDEMNITY**~~

Section 5.05

Section 5.05 ~~13.01 Indemnity~~
Section 5.05

Section 5.05 **MEMBERS.** The DCOA shall have no members.

ARTICLE VI
Indemnification of Directors, Officers, and Employees

As provided in ~~the~~Tex. Loc. Gov't Code, Section 504.107~~ of the Texas Local Government Code, the Corporation~~, the DCOA is, for the purposes of the Texas Tort Claims Act~~ (Subchapter A,~~ , as set forth in Tex. Civ. Prac. & Rem. Code, Chapter 101, ~~Texas Civil Practices and Remedies Code),~~as amended, a governmental unit and its actions are governmental functions.

The ~~Corporation~~DCOA shall indemnify each and every ~~member~~Director or former ~~member~~Director of the Board~~ of Directors~~, its officers, its employees, its attorneys, each member of the City Council and each employee of the City, to the fullest extent permitted by law, against any and all liability or expense, including attorneys' fees incurred by any of such persons by reason of any actions or omissions that may arise out of the functions and activities of the ~~Corporation~~DCOA.

The Board ~~of Directors~~ shall authorize the ~~Corporation~~DCOA to pay or reimburse any current or former Director or ~~Officer~~officer of the ~~Corporation~~DCOA for any costs, expenses, fines, settlements, judgments, and other amounts, actually and ~~reasonable~~reasonably incurred by such person in any action, suit, or proceeding to which he or she is made a party by reason of holding such position as ~~Officer~~officer or Director; provided, however, that such ~~Officer~~officer or Director shall not receive such indemnification if he~~/~~ or she be finally adjudicated in such instance to be liable for gross negligence or intentional misconduct in office. The indemnification herein provided shall also extend to good faith expenditures incurred in anticipation of, or preparation for, threatened or proposed litigation. The Board~~ of Directors~~ may, in proper cases, extend the indemnification to cover the good faith settlement of any such action, suit, or proceedings, whether formally instituted or not.

To the extent the Board ~~of Directors authorize~~authorizes indemnification to Directors or ~~Officers~~officers of the ~~Corporation,~~DCOA, the City~~ of Abilene~~ shall also provide indemnity to said Directors and ~~Officers~~officers. However, ~~City of Abilene's~~the City's indemnification shall only apply after ~~Corporation's~~the DCOA's ability to indemnify has been exhausted. Nothing in this ~~section~~Section creates personal liability on the part of ~~Officers~~officers and Directors to any extent not otherwise provided by statute or case law.

Furthermore, the ~~Corporation~~DCOA agrees to indemnify and hold harmless and defend the City~~ of Abilene~~, its officers, agents, and its employees, from and against liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorneys' fees and other reasonable costs arising out of or resulting from ~~Corporation's~~the DCOA's activities and from any liability arising out of or resulting from the intentional acts or negligence or intentional acts or omissions of ~~Corporation~~the DCOA, including but not limited to its officers, agents, employees, licensees, invitees, and other persons.

~~Corporation~~The DCOA further agrees that it shall at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, agents, employees, licensees, invitees, and other persons, as well as their property, while in the vicinity where activities are being performed. It is expressly understood and agreed that the City~~ of Abilene~~ shall not be liable or responsible for the negligence of ~~Corporation~~the DCOA, including but not limited to, its officers, agents, employees, licensees, invitees, and other persons.

It is further agreed with respect to the above indemnity, that ~~city of Abilene~~the City and ~~Corporation~~the DCOA will provide the other prompt and timely notice of any event covered which in any way, directly or indirectly, contingently or otherwise, affects or might affect ~~Corporation~~the DCOA or the City~~ of Abilene~~, and the City~~ of Abilene~~ shall have the right to compromise and defend the same to the extent of its own interests. It is further agreed this indemnity clause shall be an additional remedy to the City~~ of Abilene~~ and not an exclusive remedy.

ARTICLE VII

ARTICLE VII

ARTICLE VII~~SECTION XIV~~
ARTICLE VII~~MISCELLANEOUS~~

ARTICLE VII

ARTICLE VII~~14.01 Relation to Articles of Incorporation~~

ARTICLE VII

ARTICLE VII~~These Bylaws are subject to, and governed by, the Articles of Incorporation and applicable State statutes under which the Corporation is organized.~~

ARTICLE VII

ARTICLE VII

ARTICLE VII~~S:\DCOA\Bylaws & Guidelines\Revisions 2015\DCOA Bylaws revisions 2015 clean copy.docx~~

ARTICLE VII
Effective Date, Amendments

Section 7.01 **EFFECTIVE DATE.** These Bylaws shall become effective upon the occurrence of all of the following events: the adoption of these Bylaws by the Board; and the approval and adoption of these Bylaws by the City Council.

Section 7.02 **AMENDMENTS TO BYLAWS.** These Bylaws may be amended or repealed and amended Bylaws may be adopted by an affirmative vote of at least three (3) Directors present at any regular meeting or any special meeting of the Board, if at least three (3) days written notice is given of an intention to amend, repeal, and/or adopt new Bylaws. Any Bylaw amendments will be effective upon approval of the City Council by resolution.

ARTICLE VIII
Dissolution

Upon the properly authorized dissolution of the DCOA, when the last of the DCOA's obligations are satisfied, any remaining assets of the DCOA shall be transferred to the City, and the existence of the DCOA shall be terminated.

CERTIFICATE OF ADOPTION OF AMENDED AND RESTATED BYLAWS

These Amended and Restated Bylaws were adopted on the ___ day of _____, 2020 by DCOA Resolution _____ and on the ___ day of _____, 2020 by the City Council.

_____
Misty Mayo, President and CEO

BYLAWS

OF

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

ABILENE, TEXAS

SECTION I
OFFICES

1.01 Registered Office and Registered Agent

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

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

1.02 Principal Office

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

SECTION II
PURPOSES

2.01 Purposes

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

SECTION III
MEMBERS

3.01 Members

The Corporation shall have no members.

SECTION IV
BOARD OF DIRECTORS

4.01 Board of Directors

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

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

4.02 Number and Qualifications

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

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

1. serve, or have served as a Chief Executive Officer of a company; or

2. serve, or have served, in a position of executive management of a company; or

3. serve, or have served, in a professional capacity; or

4. have experience equivalent to any of the above qualifications.

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

4.03 Bonds

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

4.04 General Duties of the Board

The Board is hereby required to perform the following duties:

1. The Board shall develop an overall economic development plan for the City which shall include and set forth intermittent and/or short term goals which the Board deems necessary to accomplish compliance with its overall economic development plan. Such plan shall be communicated to City Council. The overall plan developed by the Board shall be one that includes the following elements:

   a. An economic development strategy to permanently bolster the business climate throughout the City.

   b. Strategies to fully utilize the assets of the City which enhance economic development.

   c. Identification of strategies to coordinate public, private, military and academic resources to develop and enhance business opportunities for all citizens of Abilene. This plan shall include methods to improve communication and cooperation between the above-mentioned entities.

   d. Assurance of accountability of all tax moneys expended for its implementation of the overall economic development plan.

   e. Identification of strategies and provide for implementation of identified strategies for direct economic development as defined in this Section.

   f. To assist the Board in the implementation of the overall economic development plan, the Board may seek out and employ a CEO. The CEO shall be responsible to the Board and shall act as the Board's administrator and shall assist the Board in carrying out the duties of the Board as set forth in this section. The Board shall, in the annual budget, make provisions for the compensation to be paid to the CEO and such compensation so established by the Board shall comprise the salary and benefits paid to the CEO for his/her services.

   g. The Board may employ or contract for such personnel as may be necessary to discharge the Corporation's assigned duties. The compensation for all such employees shall be set by the Board in its annual budget and such compensation so established by the Board shall comprise the salary and benefits for such employees, and provided further, no such employee shall be hired until such time as the Board has established such compensation for the position in question.

   h. The CEO shall be hired by the Board with the consent of the City Council and may be removed by a majority vote of the Board.

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

As used in this Section, "direct economic development" shall mean the expenditure of such tax funds for programs that directly accomplish or aid in the accomplishment of creating identifiable new jobs or retaining identifiable existing jobs including job training and/or planning and research activities necessary to promote said job creation and expand the tax base. The Corporation's focus will be primarily in the areas of:

a. Business retention and expansion

b. Formation of new businesses

c. Business attraction

4.05 Implied Duties

The Corporation is authorized to do that which the Board deems desirable to accomplish any of the purposes or duties set out or alluded to in Section 4.04 of these Bylaws and in accordance with State law.

4.06 Tenure

No member of the Board shall serve more than two (2) consecutive terms. The Mayor shall appoint the Directors of the Corporation with the approval of the City Council. The number of Directors shall be five (5). Directors shall serve for three (3) years. Directors shall be removable at any time by the City Council by a majority vote of five (5) council members.

4.07 Vacancies

Any vacancy occurring shall be filled by appointment by the Mayor with approval by City Council.

4.08 Meetings

The Board shall meet at least once each month at a place and time to be determined by the President. All meetings of the Board shall be posted and conducted in accordance with the Texas Open Meetings Act, as set forth in Chapter 551 of the Texas Government Code, as amended. Any member of the Board may request that an item be placed on the agenda by delivering the same in writing to the secretary of the Board no later than ten (10) days prior to the date of the Board meeting. The President of the Board shall set regular meeting dates and times at the beginning of his/her term.

Notice of any meeting shall contain information regarding the particular time, date, and location of the meeting and the agenda to be considered.

The annual meeting of the Board of Directors shall be during the first regularly scheduled Board meeting of each calendar year.

4.09 Attendance

Regular attendance of the Board meetings is required of all Directors. The following number of absences may constitute the need for replacement of a Director: three (3) consecutive absences, or attendance reflecting absences constituting fifty percent (50%) of the meetings over a 12-month period. In the event replacement is indicated, the member will be counseled by the President and, subsequently, the President shall submit in writing to the City Secretary the need to replace the Board member in question.

4.10 Quorum and Voting

A majority of the Board of Directors shall constitute a quorum for the conduct of the official business of the Corporation. The act of a majority of the Directors present at a meeting at which a quorum is in attendance shall constitute the act of the Board of Directors and of the Corporation unless the act of a greater number is required by law. A Director may not vote by proxy. Directors must be present in order to vote at any meeting.

4.11 Compensation

The duly appointed Directors of the Board shall serve without compensation, but shall be reimbursed for actual or commensurate cost of travel, lodging and incidental expenses while on official business of the Board in accordance with State law.

4.12 Conflicts of Interest

In the event that a Director is aware of a conflict of interest or potential conflict of interest, with regard to any particular vote, the Board's actions shall be governed by the Texas Business Organizations Code, Title 2 Corporations, Chapter 22 Non Profit Corporations, Section 22.230, as amended.

4.13 Board's Relationship with City Council

In accordance with State law, Section 501.073 of the Texas Local Government Code the City Council shall require that the Corporation be responsible to it for the proper discharge of its duties. All programs and expenditures shall be submitted for City Council approval, and the Board shall administer said programs accordingly. The Board shall determine its policies and direction within the limitations of the duties herein imposed by applicable laws, the Articles of Incorporation, these Bylaws, contracts entered into with the City, and budget and fiduciary responsibilities. The Corporation shall be regularly accountable to the City Council for all activities undertaken by them or on their behalf, and shall report on all significant activities of the Corporation to the City Council, whether discharged directly by the Board or by any person, firm, corporation, agency, association or other entity on behalf of the Corporation.

4.14 Board's Relationship with Administrative Departments of the City

Any request for services made to the administrative departments of the City shall be made by the Board or its designee in writing to the City Manager. The City Manager may approve such request for assistance from the Board when he finds such requested services are available within the administrative departments of the City and that the Board has agreed to reimburse the administrative department's budget for the costs of such services so provided.

Any requests for legal assistance shall be made by the Board or its designee to the City Attorney. The City Attorney may provide such assistance when such services are available and the Board has agreed to reimburse the City for cost providing the legal services.

SECTION V
OFFICERS

5.01 Officers of the Corporation

The elected officers of the Corporation shall be a President, Vice President, Secretary, and Treasurer. The Board may resolve to elect one or more Assistant Secretaries or one or more Assistant Treasurers as it may consider desirable. Such officers shall have the authority and perform the duties of the office as the Board may from time to time prescribe or as the Secretary or Treasurer may from time to time delegate to his or her respective Assistant. One person may hold more than one office, except that the President shall not hold the office of Secretary.

5.02 Selection of the Officers

The initial President and Vice President shall be elected by the Board and shall serve a term of one (1) year. On the expiration of the term of office of the original President and Vice President, the Board shall select from among its members individuals to hold such office. The term of office of the President and Vice President shall always be for a period of one year; provided, however, that the President and Vice President continue to serve until the election of their successors.

The Secretary and Treasurer shall be selected by the members of the Board and shall hold office for a period of one (1) year; provided, however, that they shall continue to serve until the election of their successors. Elections shall be held at the annual meeting of the Board.

5.03 Vacancies

Vacancies in any office which occur by reason of death, resignation, disqualification, removal, or otherwise, may be filled by the Board of Directors for the unexpired portion of the term of that office, in the same manner as other officers are elected to the Board.

5.04 President

The President shall be the presiding officer of the Board with the following authority:

1. Shall preside over all meetings of the Board.

2. Shall have the right to vote on all matters coming before the Board.

3. Shall have the authority, upon notice to the members of the Board, to call a special meeting of the Board when in his judgment such meeting is required.

4. Shall have the authority to appoint standing committees to aid and assist the Board in its business undertakings or other matters incidental to the operation and functions of the Board.

5. Shall have the authority to appoint ad hoc committees which may address issues of a temporary nature of concern or which have a temporary effect on the business of the Board.

In addition to the above-mentioned duties, the President shall sign with the Secretary of the Board any deed, mortgage, bonds, contracts, or other instruments which the Board of Directors has approved and unless the execution of said document has been expresslydelegated to some other officer or agent of the Corporation by appropriate Board resolution, by a specific provision of these Bylaws, or by statute. In general, the President shall perform all duties incident to the office, and such other duties as shall be prescribed from time to time by the Board of Directors.

5.05 Vice President

In the absence of the President, or in the event of his or her inability to act, the Vice President shall perform the duties of the President. When so acting, the Vice President shall have all power of and be subject to all the same restrictions as upon the President. The Vice President shall also perform other duties as from time to time may be assigned to him or her by the President.

5.06 Secretary

The Secretary shall keep, or cause to be kept, at the registered office a record of the minutes of all meetings of the Board and of any committees of the Board. The Secretary shall also file a copy of said Minutes with the City and the same to be given, in accordance with the provisions of these Bylaws, or as required by the Texas Open Meetings Act or the Texas Public Information Act or other applicable law. The Secretary shall be custodian of the corporate records and seal of the Corporation, and shall keep a register of the mailing address and street address, if different, of each director.

5.07 Treasurer

If the City of Abilene ceases to act as the fiscal agent for the Corporation, the Treasurer shall be bonded for the faithful discharge of his/her duties with such surety or sureties and in such sum as the Board of Directors shall determine by Board resolution, but in no event shall the amount of such bond be less than an amount equal to the average of the sums which the Treasurer has access to and the ability to convert during a twelve (12) month period of time. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation. The Treasurer shall receive and give receipt for money due and payable to the Corporation from any source whatsoever, and shall deposit all such moneysin the name of the Corporation in such bank, trust corporation, and/or other depositories as shall be specified in accordance with Section VII of these Bylaws. The Treasurer shall, in

general, perform all the duties incident to that office, and such other duties as from time to time may be assigned to him by the President of the Board.

5.08 Assistant Secretaries and Assistant Treasurers

The Assistant Secretaries and Assistant Treasurers, if any, shall in general, perform such duties as may be assigned to them by the Secretary or the Treasurer, or by the President or the Board of Directors.

5.09 Chief Executive Officer

The Corporation may employ a Chief Executive Officer. The CEO of the Corporation shall oversee all administrative functions of the Corporation. The CEO shall develop policies and procedures for the Corporation including financial, accounting, and purchasing policies and procedures to be approved by the Board.

5.10 Other Employees and Benefits

The Corporation may employ, or contract for, such full or part-time employees as needed to carry out the programs of the Corporation. These employees shall perform those duties as are assigned to them by the CEO. The CEO shall hire, direct, and control the work of all Corporation employees.

In accordance with Section 501.067 of the Texas Local Government Code, and subject to City Council approval, the Corporation may obtain:

a. health benefits coverage, liability coverage, workers' compensation coverage, and property coverage under the City's insurance policies, through self-funded coverage, or under coverage provided under an interlocal agreement with a political subdivision; or

b. retirement benefits under a retirement program the City participates in or operates.

Health benefits coverage may be extended to the Directors and employees, and to the dependents of the Directors and employees. Workers' compensation benefits may be extended to the Directors, employees, and volunteers. Liability coverage may be extended to protect the Corporation and the Directors and employees. Retirement benefits may be extended to the Corporation's employees. The Corporation must reimburse the City for any expense in providing said benefits.

5.11 Contract for Services

The Corporation may contract with any qualified and appropriate person, association, corporation or governmental entity to perform and discharge designated tasks which will aid or assist the Board in the performance of its duties. However, no such contract shall ever be approved or entered into which seeks or attempts to divest the Board of Directors of its discretion and policy-making functions in discharging the duties herein above set forth in this section.

SECTION VI
COMMITTEES

6.01 Committees

The President may designate not more than two (2) directors to constitute an official committee of the Board of Directors, with such other non-Board members of the committee as may be appointed by the Board, to exercise such authority of the Board as may be specified in the resolution. It is provided, however, that all final, official actions of the Corporation may be exercised only by the Board. Each committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded in books kept for that purpose in the principal office of the Corporation.

6.02 Ex-Officio Members

The City Manager or his designee and the Mayor or his designee may attend all meetings of the Board of Directors or Committees. These representatives shall not have the power to vote in the meetings they attend. Their attendance shall be for the purpose of ensuring that information about the meetings are accurately communicated to the City Council and to satisfy the City Council obligation to control the powers of the Corporation.

SECTION VII
FINANCIAL ADMINISTRATION

The Corporation may contract with the City for financial and accounting services. The Corporation's financing and accounting records shall be maintained according to the following guidelines.

7.01 Fiscal Year

The fiscal year of Corporation shall begin on October 1 and end on September 30 of the following year.

7.02 Budget

A budget for the forthcoming fiscal year shall be submitted to, and approved by, the Board of Directors, and the City Council. In submitting the budget to the City Council, the Board of Directors shall submit the budget on forms prescribed by the City Manager and in accordance with the annual budget preparation schedule as set forth by the City Manager. The budget shall be submitted to the City Manager for inclusion of it in the annual budget presentation to the City Council. The budget proposed for adoption shall include the projected operating expenses, and such other budgetary information as shall be useful to or appropriate for the Board of Directors and the City Council.

7.03 Contracts

As provided in Section V above, the President and Secretary shall execute any contracts or other instruments which the Board has approved and authorized to be executed, provided, however, that the Board may by appropriate resolution, authorize any other officer or officers or any other agent or

agents, including the CEO, to enter into contracts or execute and deliver any instrument in the name and on behalf of the Corporation. Such authority may be confined to specific instances or defined in general terms. When appropriate, the Board may grant a specific or general power of attorney to carry out some action on behalf of the Board, provided, however that no such power of attorney may be granted unless an appropriate resolution of the Board authorizes the same to be done.

7.04 Checks and Drafts

If the City of Abilene ceases to act as the fiscal agent for the Corporation, all checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed or bear the facsimile of the President or the Treasurer, or such other person as designated by the Board.

7.05 Deposits

All funds of the Corporation shall be deposited on a regular basis to the credit of the Corporation in a local bank which shall be federally insured and shall be selected following procedures and requirements for selecting a depository as set forth in Chapter 105 of the Texas Local Government Code.

7.06 Gifts

The Corporation may accept on behalf of the Corporation any contribution, gift, bequest, or device for the general purpose or for any special purposes of the Corporation.

7.07 Purchasing

All purchases made and contracts executed by the Corporation shall be made in accordance with the requirements of the Texas Constitution and statutes of the State of Texas.

7.08 Investments

Temporary and idle funds which are not needed for immediate obligations of the Corporation may be invested in any legal manner provided in the Public Funds Investment Act, Chapter 2256 of the Texas Government Code, as amended.

7.09 Bonds

Any bonds issued by the Corporation shall be in accordance with the statute governing this Corporation but in any event, no bonds shall be issued without approval of the City Council after review and comment by the City's bond counsel and financial advisor.

7.10 Uncommitted Funds

Any undesignated funds of the Corporation at the end of the fiscal year shall be considered a part of the Fund Balance. The Undesignated Fund Balance may be committed for any legal purpose.

7.11 Expenditures of Corporation Money for Projects or Borrow Money

For any specific project, job training, promotional expenditure, or borrowing of funds in the amount of TWO-HUNDRED FORTY-NINE THOUSAND NINE HUNDRED NINETY-NINE DOLLARS AND NINETY-NINE CENTS ($ 249,999.99) or less, the Board of Directors has sole approval authority and may begin making expenditures or borrow monies upon approval by the Board. For any project, job training, promotional expenditure, or borrowing of funds which exceeds TWO-HUNDRED FORTY-NINE THOUSAND NINE HUNDRED NINETY-NINE DOLLARS AND NINETY-NINE CENTS ($ 249,999.99), the City Council shall also approve the expenditure or borrowing of funds by majority vote of the City Council. The Corporation shall not expend any funds for a project, job training, or promotional expenditure, or borrow monies which fail to receive the required City Council approval.

SECTION VIII
BOOKS AND RECORDS

8.01 Books and Records

The Corporation shall keep correct and complete books and records of all actions of the Corporation, including books and records of account and the minutes of meetings of the Board of Directors and of any committee having any authority of the Board and to the City Council. City Council is entitled to access of the Corporation's books and records at all times. All books and records of the Corporation may be inspected by Directors of the Corporation or his/her agent or attorney at any reasonable time; and any information which may be designated as public information by law shall be open to public inspection at any reasonable time. The Texas Public Information Act and Texas Open Meetings Act shall apply to disclosure of public information. The books, records, accounts, and financial statements of the Corporation shall be audited at least once each fiscal year by an outside, independent auditing and accounting firm approved by the Board of Directors. This audit may be prepared in conjunction with the annual financial audit of the City.

SECTION IX
SEAL

9.01 Seal

The Board of Directors shall obtain a corporate seal which shall bear the words "Corporate Seal of Development Corporation of Abilene, Inc.". The Board may thereafter use the corporate seal and may later alter the seal as necessary without changing the corporate name; but these Bylaws shall not be construed to require the use of the corporate seal.

SECTION X
PROGRAM

10.01 Authorization

The Corporation shall carry out its program subject to its Articles of Incorporation and these Bylaws, and such resolutions as the Board may from time to time authorize.

10.02 Program

The program of the Corporation shall be to assist, stimulate, and enhance economic development for the City of Abilene, Texas, subject to applicable state and Federal law, these Bylaws, and the Articles of Incorporation.

SECTION XI
PRELIMINARY AUTHORITY

11.01 Effective Date

These bylaws shall become effective upon the occurrence of all of the following events: the adoption of these bylaws by the Board of Directors; and the approval and adoption of these bylaws by the City Council.

11.02 Amendments to Bylaws

These bylaws may be amended or repealed and amended bylaws may be adopted by an affirmative vote of at least three (3) Directors present at any regular meeting or any special meeting, if at least three (3) days written notice is given of an intention to amend, repeal, and/or adopt new bylaws. Any bylaw amendments will be effective upon approval of the City Council by resolution.

SECTION XII
DISSOLUTION

12.01 Dissolution

On petition of ten percent (10%) or more of the registered voters of the City of Abilene requesting an election on the dissolution of the Corporation, the City Council shall order an election on the issue. The election must be conducted according to the applicable provision of the Election Code. The ballot for the election shall be printed to provide for voting for or against the proposition:

"Dissolution of the Development Corporation of Abilene, Inc."

If a majority of voters voting on the issue approve the dissolution, the Corporation shall continue operations only as necessary to pay the principal of and interest on its bonds and to meet obligations incurred before the date of the election and, to the extent practicable, shall dispose of its assets and apply the proceeds to satisfy those obligations. When the last of the obligations is satisfied, any remaining assets of the Corporation shall be transferred to the City, and the Corporation is dissolved.

SECTION XIII
INDEMNITY

13.01 Indemnity

As provided in the Section 504.107 of the Texas Local Government Code, the Corporation is, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practices and Remedies Code), a governmental unit and its actions are governmental functions.

The Corporation shall indemnify each and every member or former member of the Board of Directors, its officers, its employees, its attorneys, each member of the City Council and each employee of the City, to the fullest extent permitted by law, against any and all liability or expense, including attorneys' fees incurred by any of such persons by reason of any actions or omissions that may arise out of the functions and activities of the Corporation.

The Board of Directors shall authorize the Corporation to pay or reimburse any current or former Director or Officer of the Corporation for any costs, expenses, fines, settlements, judgments, and other amounts, actually and reasonable incurred by such person in any action, suit, or proceeding to which he or she is made a party by reason of holding such position as Officer or Director; provided, however, that such Officer or Director shall not receive such indemnification if he/she be finally adjudicated in such instance to be liable for gross negligence or intentional misconduct in office. The indemnification herein provided shall also extend to good faith expenditures incurred in anticipation of, or preparation for, threatened or proposed litigation. The Board of Directors may, in proper cases, extend the indemnification to cover the good faith settlement of any such action, suit, or proceedings, whether formally instituted or not.

To the extent the Board of Directors authorize indemnification to Directors or Officers of the Corporation, City of Abilene shall also provide indemnity to said Directors and Officers. However, City of Abilene's indemnification shall only apply after Corporation's ability to indemnify has been exhausted. Nothing in this section creates personal liability on the part of Officers and Directors to any extent not otherwise provided by statute or case law.

Furthermore, the Corporation agrees to indemnify and hold harmless and defend the City of Abilene, its officers, agents, and its employees, from and against liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorneys' fees and other reasonable costs arising out of or resulting from Corporation's activities and from any liability arising out of or resulting from the intentional acts or negligence or intentional acts or omissions of Corporation, including but not limited to its officers, agents, employees, licensees, invitees, and other persons.

Corporation further agrees that it shall at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, agents, employees, licensees, invitees, and other persons, as well as their property, while in the vicinity where activities are being performed. It is expressly understood and agreed that City of Abilene shall not be liable or responsible for the negligence of Corporation including but not limited to its officers, agents, employees, licensees, invitees, and other persons.

It is further agreed with respect to the above indemnity, that city of Abilene and Corporation will provide the other prompt and timely notice of any event covered which in any way, directly or indirectly, contingently or otherwise, affects or might affect Corporation or City of Abilene, and City of Abilene shall have the right to compromise and defend the same to the extent of its own interests. It is further agreed this indemnity clause shall be an additional remedy to City of Abilene and not an exclusive remedy.

SECTION XIV
MISCELLANEOUS

14.01 Relation to Articles of Incorporation

These Bylaws are subject to, and governed by, the Articles of Incorporation and applicable State statutes under which the Corporation is organized.

S:\DCOA\Bylaws & Guidelines\Revisions 2015\DCOA Bylaws revisions 2015 clean copy.docx

Resolution:
Authorizing Changes to the DCOA's Bylaws

QUESTIONS?

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Honorable Mayor & Members of City Council**

FROM: **Misty Mayo**

SUBJECT: **19. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approval of a Resolution approving of (i) a Restated Certificate of Formation (formerly Articles of Incorporation) of the DCOA with amendments and (ii) an Application to present to the Abilene City Council to amend the DCOA's Certificate of Formation (formerly Articles of Incorporation) *(Misty Mayo)***

GENERAL INFORMATION

Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approval of a Resolution approving of (i) a Restated Certificate of Formation (formerly Articles of Incorporation) of the DCOA with amendments and (ii) an Application to present to the Abilene City Council to amend the DCOA's Certificate of Formation (formerly Articles of Incorporation).

SPECIAL CONSIDERATIONS

N/A

FUNDING/FISCAL IMPACT

N/A

STAFF RECOMMENDATION

The DCOA staff's recommendation is the approve the Resolution approving of (i) a Restated

Certificate of Formation (formerly Articles of Incorporation) of the DCOA with amendments and (ii) an Application to present to the Abilene City Council to amend the DCOA's Certificate of Formation (formerly Articles of Incorporation).

BOARD OR COMMISSION RECOMMENDATION

The DCOA Board's recommendation is to approve the Resolution approving of (i) a Restated Certificate of Formation (formerly Articles of Incorporation) of the DCOA with amendments and (ii) an Application to present to the Abilene City Council to amend the DCOA's Certificate of Formation (formerly Articles of Incorporation).

ATTACHMENTS:

1. City Resolution - Certificate of Formation
2. Written Application - Certificate of Formation
3. COMPARE_Restated Certificate of Formation (9-4-20)
4. DCOA Certificate of Formation Presentation

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING THE DEVELOPMENT CORPORATION OF ABILENE, INC.'S ("DCOA") RESTATED CERTIFICATE OF FORMATION F/K/A ARTICLES OF INCORPORATION WITH NEW AMENDMENTS.

WHEREAS, the DCOA's Board of Directors has submitted a written application to the City Council of the City of Abilene requesting approval of the attached Restated Certificate of Formation with new amendments (the "**Restated Certificate of Formation**"); and

WHEREAS, the City of Abilene authorizes the DCOA to act on its behalf to further the public purposes set forth in the Restated Certificate of Formation; and

WHEREAS, the DCOA requests that the City Council of the City of Abilene approve the Restated Certificate of Formation; and

WHEREAS, the City Council of the City of Abilene (i) finds and determines that it is advisable that the proposed amendments in the Restated Certificate of Formation with amendments be adopted; (ii) authorizes the adoption of the Restated Certificate of Formation with amendments; and (iii) approves the form of the attached Restated Certificate of Formation with amendments.

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

PART 1. The City Council of the City of Abilene hereby approves the Restated Certificate of Formation and all amendments included therein.

PART 2. This Resolution takes effect immediately upon its adoption.

ADOPTED this 10th day of September, 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

RESTATED CERTIFICATE OF FORMATION OF THE DEVELOPMENT CORPORATION OF ABILENE, INC., A TEXAS NON-PROFIT CORPORATION

THE STATE OF TEXAS §

COUNTIES OF TAYLOR AND JONES §

The Development Corporation of Abilene, Inc., a Texas non-profit economic development corporation (the "**Corporation**") under the Development Corporation Act, as set forth in Tex. Loc. Gov't Code, Chapters 501, 502, and 504, as amended (collectively the "**Act**"), with the approval of the governing body of the City of Abilene, Texas (the "**City**"), as evidenced by the Resolution attached hereto and made a part hereof for all purposes, do hereby adopt this Restated Certificate of Formation f/k/a the Articles of Incorporation (this "**Certificate of Formation**") for the Corporation. Each amendment included in this Certificate of Formation conforms to the Act and this restated Certificate of Formation is an accurate copy of the Corporation's certificate of formation and all amendments to the certificate of formation that are in effect and all additional amendments made to the certificate of formation. This restated Certificate of Formation does not contain any other change to the Corporation's certificate of formation that is not set forth in this Certificate of Formation.

ARTICLE I
NAME

The name of the Corporation is DEVELOPMENT CORPORATION OF ABILENE, INC.

ARTICLE II
NON-PROFIT CORPORATION

The Corporation is a non-profit corporation specifically governed by the Act which includes, but is not limited to, Chapter 504 of the Tex. Loc. Gov't Code.

ARTICLE III
DURATION

The period of duration of the Corporation is perpetual.

ARTICLE IV
PURPOSE

The Corporation is organized exclusively for the purposes of benefiting and accomplishing public purposes of the City by promoting, assisting, and enhancing economic development activities for the City as provided by the Act.

The Corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of Texas to non-profit corporations by the Texas Nonprofit

Corporation Law, as set forth in the Tex. Bus. Orgs. Code, Chapters 20 and 22, as amended, and the additional powers as provided in Section 501.054 of the Act, including the issuance of bonds. If any conflict should arise between these statutes regarding the Corporation's powers, the Act shall control and govern the Corporation.

ARTICLE V
REGISTERED OFFICE AND AGENT

The street address of the registered office of the Corporation is 400 Pine Street, Ste. 800, Abilene, Texas 79601, and the name of the registered agent at such address is Mark Zachary.

ARTICLE VI
DIRECTORS

The affairs of the Corporation shall be managed by a Board of Directors. The number of Directors constituting the Board of Directors of the Corporation is five (5). The names and addresses of the persons who are currently serving as the Directors and the date their term expires ("**Term Expiration Date**") and years served upon the Term Expiration Date are as follows:

Director Number	Director	Address	Term Expiration Date	Years Served Upon Term Expiration Date
1	Jack Rich	174 Cypress St., Ste. 301 Abilene, Texas 79601	December 31, 2020	6
2	Vic Corley	174 Cypress St., Ste. 301 Abilene, Texas 79601	December 31, 2020	3
3	Sam Vinson	174 Cypress St., Ste. 301 Abilene, Texas 79601	December 31, 2021	3
4	Shea Hall	174 Cypress St., Ste. 301 Abilene, Texas 79601	December 31, 2022	3
5	Floyd Miller	174 Cypress St., Ste. 301 Abilene, Texas 79601	December 31, 2022	3

As described above, each of the foregoing described Directors shall serve until the expiration of their existing three (3) year term. Upon the Term Expiration Date of Director Number 2, an individual shall be appointed to a three (3) year term as Director Number 2 that expires on December 31, 2023. All other subsequent terms of office for the Directors shall be two (2) years. The Mayor shall appoint the Directors of the Corporation with the approval of the Council. No Director shall serve more than three (3) consecutive terms unless a Director is serving in a leadership role and it is determined that, to ensure the continuity and stability of the Board, a Director should be appointed for a fourth (4th) consecutive term.

Each Director shall meet at least one (1) of the following qualifications:

(a) serve, or have served, as Chief Executive Officer of a company; or

(b) serve, or have served, in a position of executive management of a company; or

(c) serve, or have served, in a professional capacity; or

(d) have experience equivalent to any of the above qualifications.

Any vacancy occurring shall be filled by appointment of the Mayor with approval by the City Council.

Each of the Directors shall reside or own a business that operates within the City or within the extra-territorial jurisdiction of the City of Abilene. Each Director shall be eligible for reappointment. Any Director may be removed from office as set forth in the Corporation's Bylaws. The Directors shall serve without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties as Directors.

ARTICLE VII
MEMBERSHIP/STOCK

The Corporation has no members and is a non-stock corporation.

ARTICLE VIII
AMENDMENTS

This Certificate of Formation may at any time and from time to time be amended as provided in the Act so as to make any changes therein and add any provisions thereto which might have been included in this Certificate of Formation in the first instance. Any such amendment shall be effected in either of the following manners: (i) the members of the Board of Directors of the Corporation shall file with the governing body of the City a written application requesting approval of the amendments to this Certificate of Formation, specifying in such application the amendments proposed to be made, such governing body shall consider such application and, if it shall by appropriate resolution duly find and determine that it is advisable that the proposed amendments be made and shall approve the form of the proposed amendments, then the Board of Directors of the Corporation may amend this Certificate of Formation by adopting such amendments at a meeting of the Board of Directors of the Corporation and delivering an amended certificate of formation to the Secretary of State, or (ii) the governing body of the City may, at its sole discretion, and at any time, amend this Certificate of Formation, and alter or change the structure, organization, programs or activities of the Corporation, or terminate or dissolve the Corporation (subject to the provisions of the Act, and subject to any limitation provided by the constitutions and laws of the State of Texas and the United States of America on the impairment of contracts entered into by the Corporation) by written resolution adopting the amendment to this Certificate of Formation or a certificate of termination at a meeting of the governing body of the City and delivering an amended certificate of formation or a certificate of termination to the Secretary of

State, as provided in the Act or upon election as provided in the Act. A restated certificate of formation may be filed with the Secretary of State as provided in the Act.

ARTICLE IX
AUTHORIZATION

The City has specifically authorized the Corporation by Resolution to act on its behalf to further the public purposes stated in said Resolution and this Certificate of Formation, and the City has by said Resolution approved this Certificate of Formation. A copy of said Resolution is attached to this Certificate of Formation and made a part hereof for all purposes.

ARTICLE X
RESTRICTIONS

The Corporation may not take any action that would be inconsistent with the requirements for a tax exemption under Internal Revenue Code Section 501(c)(3) and related regulations, rulings, and procedures and regardless of any other provision in this Certificate of Formation (i) no dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses shall be distributed to or inure to the benefit of its Directors or officers or any individual, firm, corporation or association and (ii) the Corporation may not devote more than an insubstantial part of its activities to the carrying on of propaganda, or otherwise attempting to influence legislation, and it shall not participate in, or intervene in, (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

ARTICLE XI
DISSOLUTION

If the Corporation ever should be dissolved when it has, or is entitled to, any interest in any funds or property of any kind, real, personal or mixed, such funds or property or rights thereto shall not be transferred to private ownership, but shall be transferred and delivered to the City after satisfaction or provision for satisfaction of debts and claims.

DevelopAbilene
DEVELOPMENT CORPORATION OF ABILENE

August 26, 2020

City Council
Attn: Mayor Anthony Williams and
City Secretary Shawna Atkinson
City Hall
555 Walnut Street
Abilene, TX 79601

RE: Written application requesting approval of a Restated Certificate of Formation with amendments

Dear City Council:

Please find the attached Restated Certificate of Formation of the Development Corporation of Abilene, Inc. with new amendments.

Pursuant to DCOA Resolution No. DCOA-2020.41, the DCOA's Board of Directors respectfully request that you approve the Restated Certificate of Formation of the Development Corporation of Abilene, Inc. and the amendments included therein.

Sincerely,

Jack Rich, President

Enclosures

~~ARTICLES OF INCORPORATION~~

~~OF~~RESTATED CERTIFICATE OF FORMATION OF THE DEVELOPMENT CORPORATION OF ABILENE, INC., A TEXAS NON-PROFIT CORPORATION

~~ABILENE, TEXAS~~

THE STATE OF TEXAS §

COUNTIES OF TAYLOR AND JONES §

~~WE, THE UNDERSIGNED natural persons, not less than three in number, each of whom is at least 18 years of age and each of whom is a qualified elector of the City~~The Development Corporation of Abilene, Inc., a Texas~~ which is a duly established City under the Texas Constitution), acting as incorporators of a public instrumentality and~~ non-profit economic development corporation (the ~~"~~"**Corporation**~~"~~") under the Development Corporation Act~~ of 1979~~, as set forth in Tex. ~~Rev~~Loc. ~~Civ. Stat. Ann. Art. 5190.6~~Gov't Code, Chapters 501, 502, and 504, as amended (collectively the "**Act**"), with the approval of the governing body of the City of Abilene, Texas (the "**City**"), as evidenced by the Resolution attached hereto and made a part hereof for all purposes, do hereby adopt this Restated Certificate of Formation f/k/a the~~ following~~ Articles of Incorporation (this "**Certificate of Formation**") for the Corporation~~:~~. Each amendment included in this Certificate of Formation conforms to the Act and this restated Certificate of Formation is an accurate copy of the Corporation's certificate of formation and all amendments to the certificate of formation that are in effect and all additional amendments made to the certificate of formation. This restated Certificate of Formation does not contain any other change to the Corporation's certificate of formation that is not set forth in this Certificate of Formation.

~~ARTICLE I~~

ARTICLE I
NAME

The name of the Corporation is DEVELOPMENT CORPORATION OF ABILENE, INC.

~~ARTICLE II~~

ARTICLE II
NON-PROFIT CORPORATION

The Corporation is a non-profit corporation specifically governed by ~~Section 4A of the Development Corporation~~ Act which includes, but is not limited to, Chapter 504 of ~~1979,~~the Tex. ~~Rev~~Loc. ~~Civ. Stat. Ann. Art. 5190.6~~Gov't Code.

~~ARTICLE III~~

ARTICLE III
DURATION

The period of duration of the Corporation is perpetual.

~~ARTICLE IV~~

ARTICLE IV
PURPOSE

The Corporation is organized exclusively for the purposes of benefiting and accomplishing public purposes of the City~~ of Abilene, Texas,~~ by promoting, assisting, and enhancing economic development activities for the City as provided by the ~~Development Corporation Act of 1979 as amended~~Act.

The Corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of Texas to non-profit corporations by the Texas Nonprofit Corporation ~~Act,~~Law, as set forth in the Tex. ~~Rev~~Bus. ~~Civ~~Orgs. ~~Stat. Ann. Art. 1396-1.01 et. seq.~~Code, Chapters 20 and 22, as amended, and the additional powers as provided in ~~Art. 5190.6, §23~~Section 501.054 of the Act, including the issuance of bonds. If any conflict should arise between these statutes regarding the Corporation's powers, ~~Art. 5190.6~~the Act shall control and govern the Corporation.

~~ARTICLE V~~
~~INITIAL~~

ARTICLE V
REGISTERED OFFICE AND AGENT

The street address of the ~~initial~~ registered office of the Corporation is ~~555 Walnut~~400 Pine Street, Ste. 800, Abilene, Texas 79601, ~~Abilene, Texas,~~ and the name of the ~~initial~~ registered agent at such address is ~~Dale Ferguson~~Mark Zachary.

~~ARTICLE VI~~

ARTICLE VI
DIRECTORS

The affairs of the Corporation shall be managed by a Board of Directors. The number of

Directors constituting the ~~initial~~ Board of Directors of the Corporation is five (5). The names and addresses of the persons who are ~~to serve~~currently serving as the ~~initial~~ Directors and the ~~dates of expiration of~~date their ~~initial terms as Directors~~term expires ("**Term Expiration Date**") and years served upon the Term Expiration Date are as follows:

~~Director and Address Term Expires~~

~~William P. Wright, Jr., P.O. Box 810, Abilene, TX 79604 11-30-92~~

~~Joe Davis, P. O. Box 2818, Abilene, TX 79604 11-30-92~~

~~H. C. Zachry, P. 0. Box 1739, Abilene, TX 79604 11-30-91~~

~~Joshua Owusu, 1309 Summoner Lane, Abilene, TX 79602 11-30-91~~

~~Dian Owen, 400 Pine St., Ste. 1000, Abilene, TX 79604 11-30-90~~

~~The initial terms of office for the Directors shall be two (2) Directors with three (3) year terms, two (2) Directors with two (2) year terms, and one (1) Director with a one (1) year term, as designated by the Mayor and City Council. No member of the Board shall serve more than two (2) consecutive terms.~~

Director Number	Director	Address	Term Expiration Date	Years Served Upon Term Expiration Date
1	Jack Rich	174 Cypress St., Ste. 301 Abilene, Texas 79601	December 31, 2020	6
2	Vic Corley	174 Cypress St., Ste. 301 Abilene, Texas 79601	December 31, 2020	3
3	Sam Vinson	174 Cypress St., Ste. 301 Abilene, Texas 79601	December 31, 2021	3
4	Shea Hall	174 Cypress St., Ste. 301 Abilene, Texas 79601	December 31, 2022	3
5	Floyd Miller	174 Cypress St., Ste. 301 Abilene, Texas 79601	December 31, 2022	3

As described above, each of the foregoing described Directors shall serve until the expiration of their existing three (3) year term. Upon the Term Expiration Date of Director Number 2, an individual shall be appointed to a three (3) year term as Director Number 2 that expires on December 31, 2023. All other subsequent terms of office for the Directors shall be two (2) years. The Mayor shall appoint the Directors of the Corporation with the approval of the Council. ~~The number of Directors shall be five~~ No Director shall serve more than three (3) consecutive terms unless a Director is serving in a leadership role and it is determined that, to ensure the continuity and stability of the Board, a Director should be appointed for a fourth (~~5~~4th) consecutive term. ~~The Directors~~

Each Director shall meet at least one (1) of the following qualifications:

(a) serve, or have served, as Chief Executive Officer of a company; or

(b) serve, or have served, in a position of executive management of a company; or

(c) serve, or have served, in a professional capacity; or

(d) have experience equivalent to any of the above qualifications.

~~After the initial terms of office the Directors shall serve for three (3) years.~~ Any vacancy occurring shall be filled by appointment ~~by~~of the Mayor with approval by the City Council.

Each of the ~~initial~~ Directors shall reside or own a business that operates within the City or within the extra-territorial jurisdiction of the City of Abilene. Each Director~~, including the initial Directors,~~ shall be eligible for reappointment. ~~Directors are removable by the governing body of the City for cause or at will~~Any Director may be removed from office as set forth in the Corporation's Bylaws. The Directors shall serve ~~as such~~ without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties as Directors.

~~**ARTICLE VII**~~

ARTICLE VII
MEMBERSHIP/STOCK

The Corporation has no members and is a non-stock corporation.

~~**ARTICLE VIII**~~

ARTICLE VIII
AMENDMENTS

~~These Articles of Incorporation~~This Certificate of Formation may at any time and from time to time be amended as provided in the ~~Development Corporation~~ Act~~ of 1979~~ so as to make any changes therein and add any provisions thereto which might have been included in ~~the Articles of Incorporation~~this Certificate of Formation in the first instance. Any such amendment shall be effected in either of the following manners: (i) the members of the Board of Directors of the Corporation shall file with the governing body of the City a written application requesting approval of the amendments to ~~the Articles of Incorporation~~this Certificate of Formation, specifying in such application the amendments proposed to be made, such governing body shall consider such application and, if it shall by appropriate resolution duly find and determine that it is advisable that the proposed amendments be made and shall approve the form of the proposed amendments, then the Board of Directors of the Corporation may amend ~~the Articles of Incorporation~~this Certificate of Formation by adopting such amendments at a meeting of the Board of Directors of the Corporation and delivering ~~articles~~an amended certificate of ~~amendment~~formation to the Secretary of State, or (ii) the governing body of the City may, at its sole discretion, and at any time, amend ~~these Articles of Incorporation~~this Certificate of Formation, and alter or change the structure, organization, programs or activities of the Corporation, or terminate or dissolve the Corporation (subject to the provisions of the ~~Development Corporation~~ Act~~ of 1979~~, and subject to any limitation provided by the constitutions and laws of the State of Texas and the United States of America on the impairment of contracts entered into by the Corporation) by written resolution adopting the amendment to ~~the Articles of Incorporation of the Corporation or articles of dissolution~~this Certificate of Formation or a certificate of termination at a meeting of the governing body of the City and delivering ~~articles~~an amended certificate of ~~amendment~~formation or ~~dissolution~~a certificate of termination to the Secretary of State, as provided in the ~~Development Corporation~~ Act~~ of 1979~~ or upon election as provided in the Act. ~~Restated Articles of Incorporation~~A restated certificate of formation may be filed with the Secretary of State as provided in the ~~Development Corporation~~ Act~~ of 1979~~.

~~ARTICLE IX~~
~~INCORPORATORS~~

~~The name and street address of each Incorporator is:~~

~~Dale Ferguson 1311 Summoners Lane, Abilene, TX 79602~~

~~Tom Ceniglis 1394 S. Pioneer, Abilene, TX 79605~~

~~Gary McCaleb 834 Harwell, Abilene, TX 79601~~

~~ARTICLE X~~

ARTICLE IX
AUTHORIZATION

The City has specifically authorized the Corporation by Resolution to act on its behalf to further the public purposes stated in said Resolution and these Articles of Incorporationthis Certificate of Formation, and the City has by said Resolution approved these Articles of Incorporationthis Certificate of Formation. A copy of said Resolution is attached to these Articles of Incorporationthis Certificate of Formation and made a part hereof for all purposes.

ARTICLE XI
DIVIDENDS

No

ARTICLE X
RESTRICTIONS

The Corporation may not take any action that would be inconsistent with the requirements for a tax exemption under Internal Revenue Code Section 501(c)(3) and related regulations, rulings, and procedures and regardless of any other provision in this Certificate of Formation (i) no dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses shall be distributed to or inure to the benefit of its Directors or officers or any individual, firm, corporation or association. No part of and (ii) the Corporation's may not devote more than an insubstantial part of its activities shall beto the carrying on of propaganda, or otherwise attempting to influence legislation, and it shall not participate in, or intervene in, (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

ARTICLE XII

ARTICLE XI
DISSOLUTION

If the Corporation ever should be dissolved when it has, or is entitled to, any interest in any funds or property of any kind, real, personal or mixed, such funds or property or. rights thereto shall not be transferred to private ownership, but shall be transferred and delivered to the City after satisfaction or provision for satisfaction of debts and claims.

Resolution:
Approval of a Restated Certificate of Formation of the DCOA with Amendments and an Application to Present to the City Council to Amend the DCOA's Certificate of Formation

CITY OF ABILENE TEXAS

QUESTIONS?

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Honorable Mayor & Members of City Council**

FROM: **Misty Mayo**

SUBJECT: **20. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approval of a Resolution approving an Agreement with Project Grasshopper *(Misty Mayo)***

GENERAL INFORMATION

Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approval of a Resolution approving an Agreement with Project Grasshopper.

SPECIAL CONSIDERATIONS

N/A

FUNDING/FISCAL IMPACT

Up to $500,000

STAFF RECOMMENDATION

The DCOA staff's recommendation is to approve a Resolution approving an Agreement with Project Grasshopper.

BOARD OR COMMISSION RECOMMENDATION

The DCOA Board's recommendation is to approve a Resolution approving an Agreement with

Project Grasshopper.

ATTACHMENTS:

1. City Resolution - Project Grasshopper
2. Project Grasshopper City Council Slide

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING THE DEVELOPMENT CORPORATION OF ABILENE, INC.'S ("DCOA") INCENTIVE FOR PROJECT GRASSHOPPER ("COMPANY").

WHEREAS, Company assembles and distributes agricultural implements and parts to 34 counties in Texas and 4 counties in Oklahoma; and,

WHEREAS, on August 26, 2020, the DCOA approved Resolution No. DCOA-2020.42 (the "**DCOA Resolution**") authorizing the DCOA's Chief Executive Officer to enter into an agreement with the Company for an incentive for Project Grasshopper in an amount not to exceed $500,000 (the "**Incentive**") in exchange for the Company's retention of 20 full-time employees ("**FTEs**") and creation of 11 new FTEs for total employment of 31 FTEs at the end of a five-year period; 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 20 FTEs and creation of 11 new FTEs for total employment of 31 FTEs at the end of a five-year period, 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. The DCOA's budget is hereby amended to include the expenditures described herein.

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

ADOPTED this 10th day of September, 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

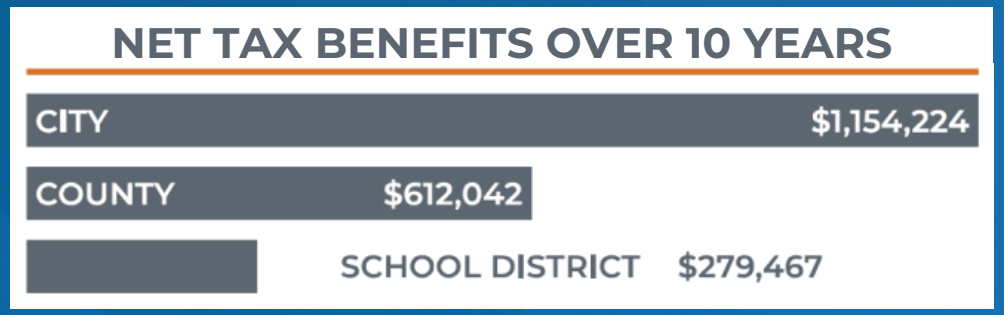
_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

PROJECT GRASSHOPPER

- Business Expansion – Regional HQ & Distribution (Type A Qualified)
- Company assembles and distributes agricultural implements and parts to 34 counties in Texas and 4 in southern Oklahoma
- Supports 1.8 million acres of agriculture
- Incentivizing 9 Jobs Created + 17 Jobs Retained
  - (Total Project includes 11 Jobs Created + 20 Jobs Retained)
- Average Salary = $60,184 (for the 9 Jobs Created)
- **Total Capital Investment Incentivized= $5,259,952.15**
  - (Total Project Capex = $6,188,179)
- **9.5% Incentive = $500,0000**



DevelopAbilene
DEVELOPMENT CORPORATION OF ABILENE

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Honorable Mayor & Members of City Council**

FROM: **Misty Mayo**

SUBJECT: **21. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approval of a Resolution approving an Agreement with Project ERG-10 (*Misty Mayo*)**

GENERAL INFORMATION

Receive a Report, Hold a Discussion and Public Hearing, and Take Action on approval of a Resolution approving an Agreement with Project ERG-10

SPECIAL CONSIDERATIONS

N/A

FUNDING/FISCAL IMPACT

Up to $300,000

STAFF RECOMMENDATION

The DCOA staff's recommendation is to approve a Resolution approving an Agreement with Project ERG-10.

BOARD OR COMMISSION RECOMMENDATION

The DCOA Board's recommendation is to approve a Resolution approving an Agreement with

Project ERG-10.

ATTACHMENTS:

1. City Resolution - Project ERG-10
2. Project ERG-10 City Council Slide

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-10 ("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-10 will support Company's business retention efforts; and,

WHEREAS, on August 26, 2020, the DCOA approved Resolution No. DCOA-2020.44 (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 36 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 36 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 10th day of September, 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

PROJECT ERG-10

- Manufacturing: Provides custom welding, steel fabrication, and code work (stru
steel, tank, and vessel) for a variety of industries around the world
- Established in 2014
- 36 full-time employees
- Participates in the BRE Program
- **$300,000 to retain 100% of 36 jobs**

DevelopAbilene
DEVELOPMENT CORPORATION OF ABILENE

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Honorable Mayor & Members of City Council**

FROM: **Robert Hanna, City Manager**

SUBJECT: **22. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving an Economic Development Agreement with KKP Investments, LLC regarding approximately 150 acres of land out of the M. Talbot Survey No. 103, Taylor County, Texas, located on FM 707 S and west of Buffalo Gap Road *(Robert Hanna)***

GENERAL INFORMATION

More information will be provided at the meeting.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. KKP Investments Eco Dev Agreement Powerpoint

Economic Development Agreement with KKP Investments for 150 Acres of Land located on FM 707 S & Buffalo Gap Road

CITY OF ABILENE TEXAS

QUESTIONS?

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Honorable Mayor & Members of City Council**

FROM: **Shawna Atkinson, City Secretary**

SUBJECT: **23. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Nominating Voting Individuals for the Texas Municipal League Intergovernmental Risk Pool Board of Trustees *(Shawna Atkinson)***

GENERAL INFORMATION

The City of Abilene is entitled to vote for the Board of Trustees of the Texas Municipal League Intergovernmental Risk Pool. The current election is for places 1-4 on the Board of Trustees. Staff is recommending nominating the incumbents for each position.

SPECIAL CONSIDERATIONS

None.

FUNDING/FISCAL IMPACT

None.

STAFF RECOMMENDATION

Approval of the item.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. TML IRP Board of Trustees Resolution
2. TML IRP Board Election Ballot
3. TML IRP Board of Trustees Presentation

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, NOMINATING VOTING INDIVIDUALS TO THE BOARD OF TRUSTEES OF THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL

WHEREAS, the City of Abilene is entitled to vote members to the Board of Trustees of the Texas Municipal League Intergovernmental Risk Pool; and

WHEREAS, the City council of the City of Abilene met in a public meeting on September 10, 2020 to consider this action;

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

SECTION 1. The City Council of the City of Abilene hereby resolves to vote the following individuals to the Board of Trustees of the Texas Municipal League Intergovernmental Risk Pool for a term of six (6) years

Place 1	Robert T. Herrera
Place 2	John W. (Buzz) Fullen
Place 3	Jeffrey Snyder
Place 4	Robert S. Hauck

PASSED AND APPROVED THIS THE 10th DAY OF SEPTEMBER, 2020.

ATTEST:

_____ _____

CITY SECRETARY MAYOR

APPROVED:

_____

CITY ATTORNEY

RECEIVED
AUG 20 2020
CITY MANAGER'S OFFICE

OFFICIAL BALLOT

Texas Municipal League Intergovernmental Risk Pool
Board of Trustees Election

This is the official ballot for the election of Places 1 – 4 of the Board of Trustees for the Texas Municipal League Intergovernmental Risk Pool. Each Member of the Pool is entitled to vote for Board of Trustee members. Please record your organization's choices by placing an "X" in the square beside the candidate's name or writing in the name of an eligible person in the space provided. You can only vote for one candidate for each place.

The officials listed on this ballot have been nominated to serve a six-year term on the TML Intergovernmental Risk Pool (Workers' Compensation, Property and Liability) Board of Trustees. The names of the candidates for each Place on the Board of Trustees are listed in alphabetical order on this ballot.

Ballots must reach the office of David Reagan, Secretary of the Board, no later than September 30, 2020. Ballots received after September 30, 2020, cannot be counted. **The ballot must be properly signed, and all pages of the ballot must be mailed to:**

Trustee Election
David Reagan, Secretary of the Board
P.O. Box 149194
Austin, Texas 78714-9194

If the ballot is not signed, it will not be counted.

PLACE 1

☐ **Robert T. Herrera** (Incumbent). City Manager, City of Cibolo (Region 7) since 2012. Mr. Herrera served as City Manager of Hondo, Texas from 2003 to 2012 and as City Manager of La Porte from 1986 to 2002. He has served other Texas cities, including management positions with the cities of San Marcos, Missouri City, and Woodway. Mr. Herrera has been a Board member of the TML Intergovernmental Risk Pool since 1993 and has served as Chair and Vice Chair of the Board. He also served as Chair of the Finance-Information Technology Committee and the Underwriting-Claims Committee of the TML Intergovernmental Risk Pool.

WRITE IN CANDIDATE:

_____

PLACE 2

☐ **Chris Armacost.** City Commissioner for the City of Hitchcock (Region 14). Mr. Armacost is Director of Technology, Transportation, Facilities, and Operations for the Hitchcock Independent School District. He serves on the Hitchcock Education Foundation and Hitchcock Chamber of Commerce. He is the president of the Hitchcock Little League Baseball Association and coached several teams. Mr. Armacort has been awarded the Hitchcock Chamber President Award and the Above and Beyond Citizen Award from the Hitchcock ISD. He has obtained a Certified Municipal Official certification from TML.

☐ **John W. (Buzz) Fullen** (Incumbent). Mayor of the City of Henderson since 2019 and from 2004 to 2012 (Region 15). Mr. Fullen also served as a Commissioner of the Henderson Housing Authority from 2011 to 2019 and is now ex-officio on same. He currently serves on the Henderson Main Street Board (2004–present), Henderson Civic Center Board (2003–present), and the Henderson ETMC Hospital Diabetes Board (2009–present). He has been a Board member of the TML Intergovernmental Risk Pool since 2010, during which time he served as Chair (2018-2020) and Vice Chair (2016-2018).

WRITE IN CANDIDATE:

_____

PLACE 3

☐ **George Hyde.** City Attorney for the City of Watuaga (Region 8). Mr. Hyde is a partner in the law firm Russell Rodriquez Hyde Bullock, LLP, located in Georgetown. He is a member of and holds Merit Certification in Municipal Law from the Texas City Attorneys Association. He has served as City Attorney for ten other cities across Texas, since 2003. He has also served local governments in various public safety positions within Fire Departments, Parks Departments, and Police Departments. During his tenure as a peace officer, Mr. Hyde received the Texas Commission on Law Enforcement Educational Achievement Award for exceeding normal expectations in job performance.

☐ **Roy E. Maynor.** City Alderman, Position 3, for the City of West Columbia (Region 14). He has been an elected official of West Columbia since 2013. Mr. Maynor is a Life Safety Systems Specialist for Vallen Safety Services and a member of Gulf Coast Christian Church. He is also part-owner of Grit Fitness in West Columbia. He and his wife, Rachel, have two children.

☐ **Jeffrey Snyder** (Incumbent). City Manager for the City of Plainview (Region 2). He previously served as the Assistant City Manager for Plainview and as the City Manager for Idalou. Mr. Snyder graduated from West Texas A&M University and obtained a Master of Public Administration from Texas Tech University. He is a member of the International City Management Association (ICMA) and TCMA. He is a graduate of the Public Executive Institute through the University of Texas and is a credentialed manager through ICMA. He has been a Board member of the TML Intergovernmental Risk Pool since 2018 and served on various committees with TML, TCMA and ICMA and as past president of the Panhandle City Management Association.

WRITE IN CANDIDATE:

_____

PLACE 4

☐ **Robert S. Hauck** (Incumbent). City Manager for the City of Tomball (Region 14), a position he has held since April 2018. He began his full-time career in public service with the Los Angeles Police Department in 1988. In 2008, Mr. Hauck retired from the LAPD and joined the City of Tomball, where he has served as Chief of Police, Assistant City Manager, and now City Manager. Mr. Hauck holds a Bachelor of Arts degree in Business Administration, and a Master of Science degree in Management. He has been a Board member of the TML Intergovernmental Risk Pool since 2019. Mr. Hauck and his wife Kathleen have three children – Lauren, Conner, and Madeline.

☐ **Dave Martin**. City Councilmember and current Mayor Pro Tem for the City of Houston (Region 14). Mr. Martin serves as Chair of the City Council Budget and Fiscal Affairs Committee. He previously served on the Humble ISD Board of Trustees and as Secretary/Treasurer of the Board of Directors for the Harris County Houston Sports Authority. Mr. Martin is a Managing Director of Marsh & McLennan Companies, Inc., the largest Global Risk Management firm. Previously he worked for two "Big Four" accounting firms, PricewaterhouseCoopers, LLP and Ernst & Young, LLP.

☐ **Kimberly Meismer**. Executive Director for General Operations for Kerrville (Region 7), overseeing Human Resources, Municipal Court, Public Library, Public Information, the Senior Services Advisory Committee, and the Kerrville Area Youth Leadership Academy. Ms. Meismer has over 23 years of public service, which includes serving Kerrville and La Porte. She is a member of the TCMA, International Public Management Association for Human Resources (IPMA-HR), Society for Human Resource Management (SHRM), and is a former President of the Bay Area Human Resource Management Association. She has a Master's degree in Public Administration and is an IPMA-HR Senior Certified Professional and a SHRM Certified Professional.

☐ **Sean Overeynder.** City Manager for the City of Lamesa, Texas (Region 3). Sean Overeynder began his career in local government administration in August 2014 in Economic Development, working for various public and private organizations. He has held the position of City Manager for the City of Lamesa since March 2020. Prior to becoming the City Manager, he was appointed as the Economic Development Director for the City of Lamesa on August 27, 2018.

WRITE IN CANDIDATE:

_____

Certificate

I certify that the vote cast above has been cast in accordance with the will of the majority of the governing body of the public entity named below.

Witness my hand, this _____ day of _____, 2020.

_____ _____

Signature of Authorized Official Title

_____

Printed Name of Authorized Official

_____

Printed Name of Political Entity

Nominating Voting Individuals for the TML IRP Board of Trustees

QUESTIONS?

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO: **Honorable Mayor & Members of City Council**

FROM: **Shawna Atkinson, City Secretary**

SUBJECT: **24.**

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)*

- **Keep Abilene Beautiful 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 10th day of September, 2020.

ATTEST:

_____
Shawna Atkinson, City Secretary

_____
Anthony Williams, Mayor

APPROVED:

_____
Stanley Smith, City Attorney

RESOLUTION NO. _____
EXHIBIT "A"

Board	Term End Date
Keep Abilene Beautiful	
Ifeoluwa "Tobi" Popoola [Reappointment]	September 2023
Chase Robertson [New]	September 2023

Resolution:

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

- Keep Abilene Beautiful Board

CITY OF ABILENE TEXAS

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO:

FROM:

SUBJECT: **25. Oral Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Evaluation of the City Manager**

GENERAL INFORMATION

To be discussed in Executive Session.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. Evaluation of City Manager

Oral Resolution:
Evaluation of the City Manager

CITY OF ABILENE TEXAS

QUESTIONS?

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO:

FROM:

SUBJECT: **26. Oral Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Evaluation of the City Attorney**

GENERAL INFORMATION

To be discussed in Executive Session

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. Evaluation of City Attorney

Oral Resolution: Evaluation of the City Attorney

QUESTIONS?

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO:

FROM:

SUBJECT: **27. Oral Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on the Evaluation of the City Secretary**

GENERAL INFORMATION

To be discussed in Executive Session

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. Evaluation of City Secretary

Oral Resolution:
Evaluation of the City Secretary

CITY OF ABILENE TEXAS

QUESTIONS?

City Council
Agenda Memo

City Council Meeting Date: 9/10/2020

TO:

FROM: **Robert Hanna, City Manager**

SUBJECT: **28. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Provide Direction on Adopting a Resolution in Support of Local Businesses and Local Control of COVID-19 Response to the Governor of Texas *(Robert Hanna)***

GENERAL INFORMATION

There has been much discussion about whether or not the City should do more or do less regarding the COVID-19 Pandemic response. Sadly, our ability to enforce State directed solutions, or implement creative local solutions is limited because the Governor has taken control of the government's response to COVID-19.

This is contrary to Texas tradition where many have long believed and held that government of the people is best accomplished by the people most closely impacted by the actions of the government.

In light of this, and based on some recent discussions by the City Council and requests from local business owners, staff is asking Council to discuss whether there is interest in adopting a resolution encouraging the Governor to restore local control and authority within a framework of minimum and maximum actions. In this way, the Governor maintains a unified approach to the pandemic and also allows local jurisdictions to adjust the pandemic response to best fit local conditions and realities.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

None at this time.

STAFF RECOMMENDATION

Staff is seeking Council direction on whether there is interest in sending the Governor a formal resolution requesting the restoration of local control to better address the pandemic response based on local conditions and realities.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. Support of Local Business & Covid Response PPT

Resolution:
In Support of Local Businesses and Local Control of COVID-19 Response to the Governor of Texas

QUESTIONS?